

JUDGE PATTERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CIV 5695

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Index # _____

BERTRAND FRISCH, doing business as
Lovecat Music

Plaintiff,

-against-

IDAN GRIFE p/k/a "Bruno Grife", LOUISE
KAHN and SYVAN MELLER

Defendants.

X

REQUEST FOR
DECLARATORY JUDGMENT



COMPLAINT

Plaintiff, Bertrand Frisch, doing business as Lovecat Music, by its attorney, seeks a declaratory judgment from this Court as to the non-infringement of Defendants' copyright, and alleges as follows:

NATURE OF THE ACTION

1. This is an action for, inter alia, declaratory judgement for non-infringement of copyright under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the "Copyright Act") caused by defendants' wrongful refusal to abide by a non-exclusive license entered into with Plaintiff and, now, threatening copyright infringement against a third party with whom Plaintiff entered into an agreement pursuant to the terms of its non-exclusive license with Defendants.

THE PARTIES

2. Plaintiff, Bertrand Frisch, doing business as Lovecat Music, is a resident of the State of New York with his business offices located at 142 West End Avenue (23W), New York, NY (hereinafter, "Plaintiff").

3. Upon information and belief, Defendants, Idan Grife p/k/a "Bruno Grife", Louise Kahn and Syvan Meller, are individual songwriters and musical performers who entered into a contract with Plaintiff in New York, and reside and conduct business at 17 Nordau Street, Tel Aviv, 63112, Israel (hereinafter "Defendants").

JURISDICTION AND VENUE

4. This action arises under the Copyright Act. This Court's jurisdiction is based upon 28 U.S.C. § 1331 and 28 U.S.C. §§ 1338(a) and (b), in that the action arises under Acts of Congress relating to copyrights, and under the Declaratory Judgment Act, 29 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this District Court pursuant to the provisions of 28 U.S.C. §§ 1391(d).

FACTS GIVING RISE TO THIS ACTION

6. Over a period of time extending from May through July 2011, Defendants came to agreement on terms with Plaintiff and entered into a non-exclusive license contract with Plaintiff with respect to Defendants' sound recordings and musical compositions entitled "Ballroom" and "Girl On The Run".

7. Plaintiff made an offer to contract with Defendants which was accepted by Defendants (via written email correspondence to Plaintiff) and consideration was paid by Plaintiff to Defendants confirming the contract. A valid and enforceable contract was established between the parties thereto.

8. The contract, *inter alia*, granted Plaintiff a non-exclusive license with respect to the two (2) sound recordings and musical compositions, and authorized Plaintiff to enter into a non-exclusive sub-license with third parties with respect to use of the two (2) songs in one film and provided that Plaintiff would pay Defendants fifty (50%) percent of the amounts paid to Plaintiff for use of the songs.

9. Defendants confirmed to Plaintiff that they accepted the terms of the contract but insisted that Plaintiff make a payment of \$1,200 per song as consideration to Defendants before they signed and returned the written document confirming the contract terms to Plaintiff.

10. Plaintiff sent a wire transfer in the amount of \$2,500.00 to Defendant Idan Grife who received it on behalf of his Defendant partners.

11. Defendants retained and did not return the \$2,500.00 payment of consideration for the contract. Copies of certain email communications as well as the contract sent to Defendants by Plaintiff, which Defendants promised to sign and return confirming the non-exclusive license, are attached as Exhibit A.

12. In reliance on Defendants' acceptance of the contract and Plaintiff's payment of the requested consideration, Plaintiff entered into a non-exclusive sub-license agreement with movie company Class Action Pictures, Inc., the production entity set up by New Line Productions, Inc. ("Class Action Pictures")

for use of the two (2) songs in the motion picture entitled "Final Destination 5".

13. Defendants now seek to rescind the contract with Plaintiff and are threatening to sue Class Action Pictures for unauthorized use of the songs in the film "Final Destination 5". Defendants' threats against Class Action Pictures have created uncertainty for Class Action Pictures, are damaging Plaintiff's credibility and business reputation and may also cause monetary damages to Class Action Pictures, which may, in turn, cause monetary damage to Plaintiff who would be required to indemnify Class Action Pictures.

STATEMENT OF CLAIMS

First Count
(Declaratory Judgment of Non-Infringement of Copyright)

14. Plaintiff repeats and realleges each of the allegations in paragraphs 1 through 13 above as if fully set forth herein.

15. By reason of the foregoing, Plaintiff contends that there is a valid and enforceable contract with Defendants, and that the Plaintiff validly sub-licensed the masters and the compositions to Class Action Pictures and that Class Action Pictures has not infringed upon the copyrights of Defendants.

16. Defendants now contend there is no contract and that the use by Class Action Pictures is a copyright infringement. Defendants, having received the benefit of the bargain with Plaintiff, now threaten to disregard the contract and seek additional compensation by the way of damages from

Warner Brothers, the third party with whom Plaintiff, as authorized by Defendants, entered into a sub-license pursuant to the contract.

17. There is an actual, justiciable controversy between the parties arising under the Copyright Act. The rights, status, and other legal relations of Plaintiff, Defendants, and third party, Class Action Pictures, are uncertain and insecure, and there is an actual controversy arising out of the aforesaid. The uncertainty threatens to prevent Plaintiff and Class Action Pictures from otherwise conducting their business activities.

18. Plaintiff is entitled to a judicial declaration that it has not infringed Defendants' copyrights.

19. The entry of a declaratory judgment by this Court will terminate the uncertainty and controversy giving rise to this proceeding, and enable Plaintiff to proceed in accordance with the contract between Plaintiff and Defendants, and conduct its ongoing business with Class Action Pictures with reasonable certainty of its rights.

Second Count
(Tortious Interference With Contract and
with Prospective Economic Advantage)

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 19 hereof as if fully set forth herein.

21. Defendants had knowledge that Plaintiff had entered into a sub-license with Class Action Pictures for the recordings and compositions on their behalf pursuant to the