

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, CAPITOL : 12 Civ. 0095 (RJS)
CHRISTIAN MUSIC GROUP, INC. and :
VIRGIN RECORDS IR HOLDINGS, INC., :
Plaintiffs, :
-against- :
REDIGI INC., JOHN OSSENMACHER and :
LARRY RUDOLPH a/k/a LAWRENCE S. :
ROGEL, :
Defendants. ----- X -----

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO REGISTER JUDGMENT IN OTHER DISTRICTS**

Plaintiffs Capitol Records, LLC, Capitol Christian Music Group, Inc. and Virgin Records IR Holdings, Inc. (collectively “Plaintiffs”) submit this memorandum of law in support of their motion, pursuant to 28 U.S.C. § 1963, for an order authorizing registration of the final judgment in this case in the District Courts in the States of Massachusetts, California and Florida.

PRELIMINARY STATEMENT

A final judgment was entered in this action on consent of all parties on June 3, 2016 (Docket No. 222) (the “Judgment”). Mandel Decl. ¶ 2. The Judgment sets forth the form of injunction to which the parties agreed, preserves Defendants’ right to appeal the Court’s prior liability finding on summary judgment and provides in paragraph 4 for stipulated damages to be awarded against the Defendants jointly and severally in the amount of three million five hundred thousand dollars (\$3,5000,000). Id. Defendants have filed a Notice of Appeal, but have not posted a bond to secure the damages provided for in the Judgment pending appeal. Id. ¶ 3. Plaintiffs’ post-judgment investigation into Defendants’ assets did not reveal the existence of any

assets located within the State of New York that could be potentially available to satisfy the Judgment. Id. ¶¶ 4-5. Indeed, none of the Defendants appear to reside in New York. Id. Defendant Larry Rogel resides and is employed in Massachusetts, where defendant ReDigi Inc. was based while it was in operation. Id. ¶¶ 6-7. Defendant John Ossenmacher appears to reside in California and/or Florida. Id. ¶ 8. Accordingly, under these circumstances, it appears that Plaintiffs cannot effectively enforce the Judgment in New York and that their only recourse to obtain satisfaction of the Judgment is to register it in other jurisdictions in which one or more of the Defendants reside and appear to have assets.

ARGUMENT

Under 28 U.S.C. § 1963, “a judgment in action for the recovery of money or property entered in any … district court may be registered for enforcement in another judicial district when the judgment has become final by appeal or expiration of the time to appeal or when ordered by the court that entered the judgment for good cause shown.” BC Media Funding Co. II & Media Funding Co. v. Lazauskas, 2009 WL 290526, at *4 (S.D.N.Y. Feb. 6, 2009) (internal quotations omitted) (emphasis in original).

In Fasolino Foods Co., Inc. v. Banca Nazionale Del Lavoro, 1991 WL 107440 (S.D.N.Y. June 7, 1991), the Court analyzed the “good cause” requirement of 28 U.S.C. § 1963. The Court ruled that “where an appeal is pending, good cause is established by showing that the judgment debtor lacks assets in the rendering district but has assets in another district.” Id. at *2. The Court explained that such a “construction furthers Congress’ underlying purpose in amending the statute to prevent judgment debtors from frustrating the rights of judgment creditors.” Id. The Court also noted that “[a]ll other courts faced with the issue reached the same conclusion.” Id. at *1 (citing cases).

The present circumstances fall squarely within the rule cited in Fasolino for showing “good cause.” None of the Defendants reside in or appear to have any assets located in New York. Mr. Rogel resides in a million dollar home he owns (with his wife) in Massachusetts, and Mr. Rogel also appears to be employed there by MIT. Mandel Decl. ¶ 6. Massachusetts is also the same location where defendant ReDigi Inc. has been historically based and where it listed its headquarters as of the time of trial 3 months ago. Id. ¶ 7. Accordingly, the Judgment is appropriately registered in the District of Massachusetts. See, e.g., Owen v. v. Soundview Fin. Group, Inc., 71 F. Supp. 2d 278, 279 (S.D.N.Y. 1999) (authorizing registration of judgment in California district courts where defendant currently lived in Newport Beach, California, was employed by a company located there and had no assets in New York).

Moreover, Plaintiffs’ investigative efforts have uncovered evidence that Mr. Ossenmacher has had significant contacts with both the States of Florida and California. Mr. Ossenmacher has listed a Florida address in connection with two vehicles registered in his name, and also shows a Florida address in connection with his current voter registration status. Mandel Decl. ¶ 8. In addition, the most recent available address reported for Mr. Ossenmacher’s actual residence is in Laguna Niguel, California. Id. Mr. Ossenmacher has also had a number of other judgments entered against him showing additional addresses in California. Id. Based on the foregoing, it appears that Mr. Ossenmacher resides in California and/or Florida, and any assets he owns are likely to be located there.

Plaintiffs “need not show exact evidence of assets” at this stage in order to support registration of the Judgment in other districts. Owen, 71 F. Supp. 2d at 279 (quoting AT&T Corp. v. Public Serv. Enter. of Pennsylvania, Inc., 1999 U.S. Dist. LEXIS 13108, at *20 (S.D.N.Y. Aug. 24, 1999)). Rather, where there do not appear to be any available known assets

in New York, Defendants can offer no substantial reason why the Judgment should not be protected by registration in the areas where they live and/or work. Owen, 71 F. Supp. 2d at 279.

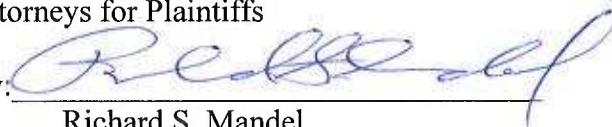
CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion permitting the Judgment to be registered in the District Courts of Massachusetts, California and Florida.

Dated: New York, New York
July 8, 2016

Respectfully submitted,

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