

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CRAIG REED, et al.,

Plaintiffs

vs.

FREEBIRD FILM PRODUCTIONS, INC., et al.,

Defendants.

CASE NO. 1:08-CV-01761

JUDGE CHRISTOPHER A. BOYKO

**DECLARATION OF JEFFREY L.
RINGLER**

I, Jeffrey L. Ringler, make this declaration pursuant to the provisions of Title 28 U.S.C. §1746.

1. I am a Senior Vice President of RHI Entertainment, LLC. RHI Entertainment Distribution, LLC, (“RHI”) is a wholly owned subsidiary of RHI Entertainment, LLC. I make this declaration upon personal knowledge of the matters set forth herein and the business records of RHI in support of the RHI Motion for Summary Judgment in the matter of *Craig Reed, et al. v. Freebird Film Productions, Inc., et al.*, Case No. 1:08-CV-01761.

2. RHI is the successor in interest to Hallmark Entertainment Dist., LLC, a named defendant in this case. RHI and its predecessors are referred to herein collectively as “RHI.”

3. On or about March 2, 1998, RHI purchased the assets of Cabin Fever Entertainment, Inc., a Delaware corporation (“Cabin Fever”). A copy of that Asset Purchase Agreement (“Asset Purchase Agreement”) is attached hereto as Exhibit A. Among the rights RHI acquired were “any and all home video, non-theatrical, merchandising, or soundtrack rights

anywhere in the world which the Company [Cabin Fever] owns, or currently has under license from unaffiliated third parties ('Additional Rights')." (Asset Purchase Agreement, ¶1.1(a)(ii).) Cabin Fever specifically assigned all of its "rights, title and interest" in, *inter alia*, the movie "Freebird" pursuant to an Assignment dated as of March 2, 1998. A copy of that Assignment is attached hereto as Exhibit B.

4. RHI also agreed to assume "the Company's [Cabin Fever's] obligations to account and pay royalties or other similar amounts to unaffiliated third parties . . . to the extent such obligations accrue on or after the Closing Date . . ." (Asset Purchase Agreement, ¶1.2(a)(i).)

5. Among the assets acquired by RHI pursuant to this transaction was the Agreement dated January 15, 1995 between Cabin Fever and Freebird Video Productions, Inc. ("Freebird"). A copy of that Agreement ("License Agreement") is attached hereto as Exhibit C.

6. The License Agreement provided, in essence, that Freebird would license Cabin Fever to utilize various tapes of the band Lynyrd Skynyrd in return for certain advance payments, and the right to participate in future receipts from the exploitation of a film to be created from, *inter alia*, those tapes after certain costs incurred in preparing the film (which was called "Freebird . . . The Movie") ("the Movie") had been "recouped" by Cabin Fever. Cabin Fever did in fact produce the Movie and incurred substantial production costs.

7. Pursuant to the License Agreement, Cabin Fever paid an advance of \$60,000 to Freebird; paid a \$70,000 minimum tape fee to Freebird; and was allowed a minimum \$10,000 fee for legal expenses to be added to production costs (the "Initial Advances"). (License Agreement, ¶¶ 4.1(a), 4.1(b) and 4.5.) The Initial Advances were "recoupable from royalties

payable to Participant under paragraphs 4.2 and 4.3 hereof.” (License Agreement, ¶ 4.1(d).) Additionally, the parties agreed that one half of the production costs would be charged back against the royalties provided for in ¶ 4.2 (non-device proceeds), and one half the production costs would be charged back against the royalties set forth in section ¶ 4.3 (audio visual devices) (collectively, the “Production Advances”). (License Agreement, ¶ 4.4.)

8. Once the Initial Advances and the Production Advances set forth in paragraph 7 were “recouped” (or “earned” or “offset”) by royalties earned by virtue of the exploitation of the Movie, Freebird had a right to participate in additional monies earned or received by Cabin Fever. Pursuant to paragraph 1.2(a)(1) of the Asset Purchase Agreement, RHI assumed this obligation of Cabin Fever to make payments owed to Freebird, which was an unaffiliated third party, to the extent those obligations might arise after the closing date.

9. RHI did not itself manufacture or sell audiovisual devices (such as tapes, DVD’s, etc.) of the Movie. Instead, it licensed third parties, principally defendant Artisan Entertainment, Inc. and its successor, Lions Gate, Inc. (collectively “Lions Gate”) to do so. In the case of third party licenses, the License Agreement provided that Cabin Fever would pay to Freebird 50 percent of Cabin Fever’s “net receipts with respect to licenses to third parties.” (The “Freebird Royalties”). (License Agreement, ¶ 4.3, Ex. A thereto, Sec 1.02(a).)

10. Between the date of the Asset Purchase Agreement and today (over ten years), the Freebird Royalties earned by virtue of the exploitation of the Movie aggregate to approximately \$88,000, which is less than the amount of the Initial Advances. With respect to the unrecouped Production Advances, they were approximately \$941,000, according to documentation supplied to RHI by Cabin Fever, at the time of execution of the Asset Purchase Agreement, of which

\$219,542 was unrecouped production costs chargeable against royalties for audio visual devices under License Agreement, ¶ 4.4. Accordingly, \$131,542 (\$219,542 minus \$88,000 earned since the Asset Purchase Agreement was signed) remains to be recouped from the exploitation of audio-visual devices of the Movie before any royalties for audio visual devices are due Freebird. There have been essentially no non-device proceeds generated by the Movie.

11. RHI did not copy, use, display and/or distribute, or have anything whatsoever to do with, any of the following DVD's or music videos that the Complaint alleges infringe plaintiffs' copyrights:

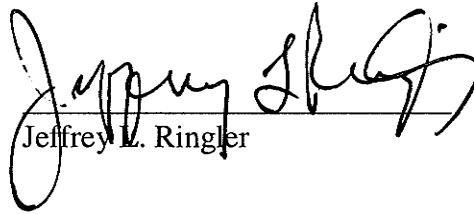
- (a) the DVD entitled "Lynyrd Skynyrd – Lyve from Steel Town,"
- (b) the DVD entitled "Lynyrd Skynyrd – The Vicious Cycle Tour,"
- (c) the DVD entitled "2003 Nashville Live,"
- (d) the music video for the song "Simple Man,"
- (e) the music video for the song "Freebird," or
- (f) the music video for the song "Sweet Home Alabama."

12. RHI has not infringed the copyrights alleged to be owned by plaintiffs in this lawsuit.

13. RHI has no corporate affiliation whatsoever with Lions Gate or any other defendant in this case, but is instead a wholly separate legal entity from all of the other defendants herein. RHI is satisfied that Lions Gate has properly accounted to it with respect to sales and royalties. RHI has itself provided current, accurate accounting to Freebird concerning the Movie. If Freebird has any question about the accuracy of that accounting, it has audit rights that it can exercise pursuant to ¶ 5.3(a) of the License Agreement.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 14th

January, 2009.



Jeffrey L. Ringler

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