

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SONY MUSIC ENTERTAINMENT	:	
INC., a Delaware corporation; UMG	:	CIVIL ACTION
RECORDINGS, INC., a Delaware	:	Case No.: 03-5757
general partnership; MOTOWN RECORD	:	
COMPANY, L.P., a California limited	:	COUNTER CLAIM
Partnership; and SONY MUSIC	:	
ENTERTAINMENT, INC., a Delaware	:	COMPLAINT FOR
Corporation,	:	DAMAGES AND
	:	INJUNCTIVE AND
Plaintiffs,	:	DECLARATORY
	:	RELIEF
v.	:	
	:	
MICHELE SCIMECA,	:	
	:	DEFENDANT DEMANDS
Defendant.	:	A TRIAL BY JURY
	:	

COMPLAINT

Michele Scimeca, defendant herein, by and through her undersigned attorneys, for her complaint and counterclaim herein, alleges as follows:

INTRODUCTION

This action is brought pursuant to the civil provision of Chapter 96 of Title 18, United States code, codified at 18 U.S.C. §§1961-1968, entitled Racketeer Influenced and Corrupt Organizations (“RICO”), that authorize the plaintiff to seek declaratory and injunctive relief; for actual, consequential and expleary damages; and for all other relief which this Court deems just and proper.

This is a complex civil action for RICO remedies authorized by federal statutes, including but not limited the recovery of legal fees, related court costs and any additional fees that the court sees fit to be paid for and furnished as a result of the fraudulent and

tortuous conduct of defendants, and to restrain defendants and their co-conspirators from engaging in fraud and other unlawful conduct in the future, and to compel defendants to disgorge the proceeds of their unlawful conduct.

Defendants, who manufacture and sell almost all of the copyrighted music in the United States, and their co-conspirators, have filed hundreds of frivolous copyright infringement claims against United States citizens in an effort to reach financial settlements with these individuals. The primary cause of action is a widespread criminal enterprise engaged in a pattern of racketeering activity across State lines, and a conspiracy to engage in racketeering activity, including extortion as defined by 18 U.S.C. § 1951, mail fraud as defined by 18 U.S.C. § 1341, and bank fraud as defined by 18 U.S.C. § 1344. The primary objective of the racketeering enterprise has been to inflict severe economic hardship upon Plaintiff, with the intent to seize funds through a means of deceptive and fraudulent claims.

JURISDICTION

This honorable District Court has original jurisdiction pursuant to the civil RICO remedies at 18 U.S.C. § 1964.

PROCEDURAL HISTORY

On December 4, 2003, Plaintiff filed a federal lawsuit in the District Court of the United States for the New Jersey District, alleging one count of copyright infringement. That case is currently pending before the District Court of the United States for the New Jersey District, as are hundreds of similar suits pending throughout the various District Courts.

PARTIES

Defendant, Michele Scimeca (“Defendant”), is a individual residing in this District.

A. Recording Company Plaintiffs

Plaintiffs have subjected themselves to this District through the current pending matter before this Court. Plaintiff Sony Music Entertainment, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York. Plaintiff Motown Record Company, L.P. is a limited partnership duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

COUNT ONE

A. PLAINTIFFS LIABILITY FOR VIOLATION OF THE RACKETEER INFLUENCE AND CORRUPT ORGANIZATIONS STATUTE

In order to conform to FRCP Rule 8, and not to burden the Court, the outline in this complaint contains only statements, together with documentation, of the small number of predicate acts that are required under RICO and Hobbs in order to void the anticipated motion to dismiss on the basis of insubstantiality. Supporting documents submitted now are only a demonstration to the court that this complaint has genuine merit, is not an

exercise in legal sophistry, and more importantly that it is substantive in law and in damages.

Defendant alleges that the "predicate acts" under both RICO and Hobbs, do establish a pattern of racketeering, and extortion, by the Plaintiffs through and organized by the "enterprise" of the Recording Industry Associate of America. A "pattern of racketeering activity" is defined to be a pattern that has both continuity and relationship. 18 U.S.C. § 1964(c). This pattern began on or about July 24, 2002, when the RIAA served subpoenas upon various internet providers to learn the identity of alleged copyright infringers and it continues to this moment, and there is certainly a threat that such activity will continue into the future. The activities of racketeering continue, and there is no evidence available to Plaintiffs that even suggests discontinuance of these activities. Continuation of this pattern by Defendants is also a continuation of damages to Plaintiffs.

Plaintiffs further allege that this pattern contains a sequence of events that all have the same and common purpose, and that that purpose is one of egregiously deliberate, calculated and malicious, fraud and extortion which is a "pattern of racketeering activity".

The Plaintiffs did unlawfully, knowingly, and intentionally conduct and participate in the conduct and affairs of the enterprise. The enterprise, as required by 18 U.S.C. § 1962, sits squarely as the Recording Industry Association of America "(RIAA)" who has prompted and filed many of the current infringement suits against individual citizens. Beginning in September 2003 Plaintiffs have filed over 800 civil law suits against individuals claiming copyright infringement under 17 U.S.C. 501 et al., including a recent round of 532 suits filed against individuals. Instead of merely providing service

of the complaint upon the various defendants, including Ms. Scimeca, the Plaintiffs have opted to include a letter discussing and prompting a settlement of the copyright infringement action. This scare tactic has caused a vast amount of settlements from individuals who feared fighting such a large institution and feel victim to these actions and felt forced to provide funds to settle these actions instead of fighting the institution. The settlement notice is a clear violation of 18 U.S.C. 1951, which details the criminal liability of extortion as is the “obtain[ment] of property from another with his consent, induced by wrongful use of action or threatened force, violence or fear...” . The Plaintiffs’ notice provides to the defendant: “Your liability for infringement under the Copyright Act is clear... You violated the record company plaintiffs’ copyrights and are liability for damages as a result.” Such clear legal interpretations act as scare tactics to the general public who may not have a clear understanding of the liability associated with copyright infringement. This notice paints a clear picture that these defendants have no way out and that they would be better served to settle such a matter instead of attempting to allow the judicial system to determine such liability. The notice goes on to state that the damages for the alleged infringement can range from \$750 to \$150,000 per violation (or per recording). This sum is multiplied by each recording on the defendant’s computer thus creating an astronomical value of liability to the individual defendant. These types of scare tactics are not permissible and amount to extortion.

The Defendant further contends that the Plaintiffs’ actions violate 18 U.S.C. 1341, as the U.S. mail was used as an instrument of the initial fraud, conspiracy to commit fraud, and in the continuation of this fraud and fear inducing extortion.

The continuation of this fraud and fear inducing extortion would cause this Defendant, as well as those similarly situated, to withdraw funds out of the custody or control of various banks , thus violating the bank fraud provisions of 18 U.S.C. 1344(d). The Plaintiffs fraudulently represented clear liability to the Defendant in an effort to obtain settlement funds. This is clear by the letter included with service of process to the Defendant. Exhibit A.

From this continuing, egregious and malicious pattern of racketeering and extortion by Defendant, in violation of RICO and also because Plaintiffs are in violation of common laws prohibiting fraud, extortion and theft, Defendant allege further that as a proximate cause of Plaintiffs' Pattern of Racketeering activities, Defendant has suffered great emotional and financial harm and damage.

Defendant alleges that the peoples which Plaintiffs have named in their hundreds of suits, and on behalf of whom Defendant also complains, have also been personally and financially damaged, through their sense of justice, and in their attempt to mitigate and contain, to the best of their ability, the damages of proximate cause that have been maliciously and insistently inflicted by Plaintiffs, on Defendants, over a period of one (1) year.

RELIEF SOUGHT

The Defendant requests that this Court grant any and all such relief from continuing racketeering and extortion activities as provided in 18 U.S.C. 91367, including, but not limited to: Any damages, plus interest, that may be payable and due, to

the Court itself, in compensation for whatever relief the Court itself may have accorded the Defendant; All Defendant's costs in this litigation, and as well, just compensation for the destructive and onerous work and effort that has been forced, under duress and extortion, upon Defendants by Plaintiffs' actions; Defendant requests special consideration from the court in a determination of attorneys' fees, by the court, in recognition of the work done, and cost of necessary tools required to act as attorney; and Any further damages of whatever kind that the Court may deem suitable, just or appropriate, to Defendant, the Court, or any persons or entities upon whose behalf the Defendant also complain.

DEMAND FOR JUDGMENT AND TRIAL BY JURY

On the basis of all the foregoing, Plaintiffs demand judgment for the stated relief, in trial by jury .

DEFENDANT'S AVERMENT REGARDING RULE 11, FRCP

Further extant evidence and argumentation, elucidating the pattern of racketeering activity, and information which will be acquired in the process of discovery, will establish the necessary preponderance of evidence as is required by the Court in accordance with the Federal Rules of Civil Procedure. In particular, with regard to Rule 11 of FRCP, Defendant aver that all statements and allegations are true upon information, belief, and reasonable investigation, and further that this action is not brought with any purpose to harass or defame Plaintiffs, and further that it is not of any nature that could be called frivolous. Defendant has, in good faith, attempted to balance the necessary requirements of specificity and particularity, under Rule 9(f) of FRCP to establish

sufficiency of this pleading, with the requirements of concision and directness under Rule 8(e) of FRCP, all in accordance with Rule 11 of FRCP.

Dated: February 4, 2004

FRIERI CONROY & LOMBARDO

By: _____

BART W. LOMBARDO (8896)

PROOF OF SERVICE

The undersigned declares as follows:

I am employed in the County of Union, State of New Jersey I am over the age of eighteen years and not a party to the within action. My business address is 777 Walnut Avenue, Cranford, New Jersey.

On February 5, 2004, I served the foregoing **Counterclaim** on the attorneys of record/interested parties in this action by placing a true copy(ies) enclosed in an envelope for mailing to the following address on the date shown above following our ordinary business practices. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with New Jersey Lawyer's Service. Correspondence so collected and processed is deposited with the New Jersey Lawyer's Service that same day in the ordinary course of business.

Karen A. Confoy
Sterns & Weinroth, P.C.
50 West State Street, Suite 1400
Trenton, NJ 08607-1298

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on February 4, 2004 at Cranford, New Jersey.

DATED:

By: _____

Bart W. Lombardo (8896)
Attorneys for Defendant
FRIERI CONROY & LOMBARDO

LOCAL RULE 11.2 CERTIFICATION

I, Bart W. Lombardo, attorney for the Defendant, Michelle Scimeca, hereby certify, in accordance with Local Rule 11.2, that to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or in any arbitration or administrative proceeding. However, we reserve our right to seek leave to file a third party complaint against internet cable providers and internet-based shareware portals for claims of consumer fraud and any other such just claims as discovery may reveal.

Dated: February 4, 2004

BART W. LOMBARDO (8896)