

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JUAN ANTONIO CASTRO RIOS,
p/k/a “Tony Tun Tun”

Civil Action No. _____

Plaintiff,

vs.

COALITION MUSIC, LLC, a Florida
Limited Liability Company, UMG
RECORDINGS, INC., a New York
Corporation, BABY RECORDS
CORPORATION, a Puerto Rican
Corporation, FELIX ORTIZ
p/k/a ZION, JOSIAS DE LA CRUZ,
p/k/a NELLY and RICHIE PENA
p/k/a REEL

Defendants,

_____ /

COMPLAINT

COMES NOW, Plaintiff, JUAN ANTONIO CASTRO RIOS, (hereinafter “CASTRO”) by and through his undersigned attorney, and sues UMG RECORDINGS, INC. (hereinafter “UMG”), COALITION MUSIC, LLC, (“COALITION”), BABY RECORDS CORPORATION (hereinafter “BABY”), FELIX ORTIZ p/k/a ZION (hereinafter “ZION”), JOSIAS DE LA CRUZ, p/k/a NELLY (hereinafter “NELLY”) and RICHIE PENA p/k/a REEL (hereinafter “REEL”) and states as follows:

JURISDICTIONAL ALLEGATIONS

1. This is an action for copyright infringement under the laws of the United States as provided by the Copyright Act of 1976, Title 17 U.S.C §§ 101 et seq., for

monetary damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), declaratory relief and other relief within the jurisdiction of this Honorable Court.

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1338(a) (copyright). Moreover, Diversity jurisdiction exists as Plaintiff, a Florida resident, hereby sues Defendants of another state, territory and individuals of various states.

3. This court has personal jurisdiction over the Defendants because the Defendants committed intentional acts in the Southern District of Florida..

4. Venue is proper in the Southern District of Florida in that at least one Defendant maintains its principal place of business in the District and all other Defendants conduct business in the District.

5. CASTRO is a resident of the State of Florida at all times material hereto and conducts business with this District.

6. COALITION is a Limited Liability Company formed in the State of Florida with its principal place of business in Miami-Dade County, Florida and does business in the Southern District of the State of Florida at all times material hereto.

7. UMG is a New York corporation doing business in the Southern District of the State of Florida at all times material hereto.

8. BABY is a Puerto Rican Corporation doing business in the Southern District of the State of Florida at all times material hereto.

9. ZION is an individual whose residence is presently unknown, a music, recording and performing artist and has done business in the Southern District of the State of Florida at all times material hereto.

10. NELLY is an individual whose residence is presently unknown and is a music recording performer and producer doing business in the Southern District of the State of Florida at all times material hereto.

11. REEL is an individual whose residence is presently unknown, a music recording performer and has done business in the Southern District of the State of Florida at all times material hereto.

12. All conditions precedent to bringing this action have occurred or been waived.

FACTUAL ALLEGATIONS

13. On or about August, 2006 CASTRO wrote a song entitled “Hagamos El Amor” (hereinafter the “Original Composition.”) At that time CASTRO’S Original Composition included musical arrangements, lyrics in Spanish, a “hook line” and title “Hagamos El Amor.”

14. On or about September, 2006, CASTRO brought the song to NELLY, a well-known musician, performing artist and music producer for NELLY’S use on a future album by NELLY.

15. At that time, CASTRO and NELLY worked on the Original Composition and other music in a music recording studio.

16. While working together, NELLY and CASTRO made changes to the musical arrangements to the Original Composition. Thereafter, upon request by CASTRO, REEL wrote English lyrics to a portion of the Original Composition. CASTRO recorded and produced those vocal recordings by REEL.

17. The result of the creation of CASTRO, NELLY and REEL (a derivative work of the Original Composition, pursuant to 17 U.S.C §101) is referred to herein as the “Composition” containing the vocal performances of CASTRO and REEL.

18. NELLY retained recorded copies of the files which embodied the Composition.

19. In approximately July, 2007, CASTRO was shocked to learn that an unauthorized version of the Composition appeared on the CD “*The Perfect Melody*” released by ZION, COALITION, BABY and UMG for the artist ZION (the “ZION Composition”) and purportedly produced by NELLY.

20. None of the Defendants nor any third parties obtained any releases, licenses or consents for the use of CASTRO’s Original Composition, the Composition, rights to make a derivative work therein, the sound recording copyright, CASTRO’s vocal performance, production work, the mechanical duplication of the Composition or the use of his name in connection therewith.

21. More so, the Composition credits and so called “liner notes” on the UMG, COALITION, BABY, ZION album are false. A true and correct copy of “*The Perfect Melody*” album front cover is attached hereto as **Exhibit “A”**. A true copy of the album back cover of “The Perfect Melody” is attached hereto as **Exhibit “B”**. A true copy of the credits/liner note page of the album “The Perfect Melody” is attached hereto as **Exhibit “C”**.

22. The back cover credits for “Hagamos El Amor” on the UMG, COALITION, BABY, ZION album state as follows:

“Hagamos El Amor” *f/Tony Tun Tun* and Reel” (**Exhibit “B”**) (emphasis added)

23. The “f” reference on the album back cover (**Exhibit “B”**) is commonly known in the music industry to mean “featuring the performance of “the artist whose name follows. Thus, the Defendants admit that the performance contains, at a minimum, the vocal performance of CASTRO (p/k/a Tony Tun Tun)

24. The credits/liner notes (**Exhibit “C”**) falsely state that ZION is the sole songwriter of the Composition and that the Composition was produced by NELLY. Both ZION and NELLY knew that information to be false.

25. ZION, COALITION, UMG, NELLY and BABY knew, or with the exercise of any diligence whatsoever standard in the industry, should have known the credit information for “Hagamos El Amor” was false.

26. In early July, 2007, CASTRO registered the copyright in the Original Composition. On July 26, 2007, Registration #Pau-143-851 was issued on the Original Composition. A true copy thereof is attached hereto as **Exhibit “D.”**

27. Plaintiff has demanded that Defendants cease and desist the unlicensed and uncompensated use of the Original Composition, the Composition, the sound recording, vocal performance, production work, his name and the false depiction of the credits set forth in the UMG, BABY, COALITION, ZION album. Defendants have failed and refused to comply with that reasonable and legally valid request.

28. CASTRO has been damaged by Defendants’ intentional actions.

29. CASTRO has been required to retain the services of the undersigned counsel to represent him in this matter. Defendants are responsible for those fees pursuant to 17 U.S.C.

COUNT I
DECLARATORY RELIEF AS TO ALL DEFENDANTS

30. CASTRO realleges paragraphs 1 through 29 as if fully set forth herein.

31. The Original Composition “Hagamos El Amor” was created solely through the artistic efforts of CASTRO. Thereafter, with CASTRO’s consent, a derivative work of the Original Composition was created by CASTRO, NELLY and REEL (the “Composition”).

32. ZION apparently added vocals to the Composition as released on his album “*The Perfect Melody*”, however those were not made with the knowledge or consent of CASTRO. The result of the same is an unauthorized derivative work of the Composition made in violation of 17 U.S.C.

33. The parties are in dispute as to their respective rights and a factual and legal issue has arisen as to the respective percentages of ownership in the Composition “Hagamos El Amor” as created by CASTRO, NELLY and REEL as well as any claims by ZION, which requires declaration by this Honorable Court.

34. The parties require the Court’s determination as to the various percentage of ownership of the Composition and Defendants’ right to make an unauthorized derivative work in the Original Composition, the Composition and to exploit the same.

35. Upon information and belief NELLY has made certain representations and warranties to UMG, COALITION AND BABY regarding his alleged creation and rights to the Composition. The parties require this Honorable Court to declare those rights as well, which are in dispute.

COUNT II
FRAUD AGAINST NELLY

36. Plaintiff realleges paragraphs 1 through 29 as if fully set forth herein.

36. NELLY has made the following false representations of material fact about CASTRO and/or the Composition:

- (a) he was the sole songwriter of the Composition;
- (b) he was the sole producer of the Composition;
- (c) he had secured all rights to use and release the Composition;
- (d) he had the rights to use the name of Plaintiff and omit other credits; and
- (e) he would use the Original Composition on his next album and compensate CASTRO for his songwriting, vocal performance and production work in the same.

38. NELLY knew the above false representations were false at the time they were made and intended CASTRO and others to rely on the same.

39. CASTRO has been damaged by NELLY's false representations

COUNT III
UNJUST ENRICHMENT AGAINST DEFENDANTS
COALITION, UMG, BABY, ZION AND NELLY

40. CASTRO realleges paragraphs 1 through 29 as if fully set forth herein.

41. CASTRO has performed the following valuable services which are exploited by all Defendants on the UMG, COALITION, BABY, ZION album "*The Perfect Melody*" including CASTRO's songwriting, musical production, sound recording and vocal performance.

42. CASTRO did not intend to provide those services without compensation as was known or should have been known by Defendants, COALITION, UMG, BABY, ZION and NELLY.

43. Defendants, UMG, COALITION BABY, NELLY and ZION have benefited from the use of CASTRO's services and have been unjustly enriched thereby.

44. CASTRO has been damaged by Defendants COALITION, UMG, BABY, ZION and NELLY's actions.

COUNT IV
ACCOUNTING AS TO ALL DEFENDANTS

45. CASTRO realleges paragraphs 1 through 29 as if fully set forth herein.

46. CASTRO, NELLY AND REEL are co-authors of the Composition.

47. UMG, COALITION, BABY, ZION and NELLY have exploited the Composition for their monetary benefit and have generated sales of the subject record album containing the Composition.

48. Defendants have failed to compensate CASTRO for that exploitation including but not limited to payment of his portion of mechanical royalties, vocal performance fees, producer's fees and sound recording license fees.

49. CASTRO has made a demand for books and records regarding said exploitation but has been denied the same.

50. Plaintiff has wrongfully withheld the books and records from the above exploitation.

51. Without a review of those books and records CASTRO is unable to determine what amounts are due to him for the use of his property and services.

COUNT V
COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS

52. Lana realleges and incorporates by reference paragraphs 1 through 29 of this Complaint as if they were full set forth herein.

53. CASTRO is the copyright owner of the Original Composition and Composition.

54. The Zion Composition is an unauthorized and illegal derivative work of the Original Composition made in violation of the Copyright Act of 1976, Title 17 U.S.C §§ 101 et seq..

55. The Defendants manufacture, perform and sell the Zion Composition which embodies the Plaintiff's copyrighted protected Original Composition in violation of Plaintiff's copyrights as set forth in 17 U.S.C. 106.

56. Cease and desist letters have been sent to the Defendants who have ignored them.

57. Based on information and belief, the Defendants are in possession of numerous infringing products.

58. The Defendants' acts as above alleged, constitute infringement of CASTRO's copyrights in CASTRO's Original Composition under the laws of the United States as provided by Title 17, § 501, et seq.

59. CASTRO has complied in all respects with Title 17 U.S.C. and secured the exclusive rights and privileges in and to the copyright in the Original Composition and Composition.

60. Upon information and belief, the Defendants infringed on CASTRO's copyright. Unless preliminary and permanently enjoined by this Court, the Defendants

will continue to infringe said copyright all to CASTRO's irreparable injury. CASTRO is without adequate remedy at law.

61. Upon information and belief, the Defendants have committed all the aforesaid acts of infringement with malice, deliberately and willfully.

62. CASTRO has sustained, and will continue to sustain, substantial injury loss and damage to its exclusive rights under the copyright in the Composition and Original Composition and further has sustained and will sustain from the loss of value of its exclusive rights by reasons of the Defendants' conduct.

63. CASTRO has also sustained lost revenues as a direct result of the Defendants' use of its infringing work without a license and the payment of appropriate royalties.

64. Defendants have benefited by the use of CASTRO'S Composition and Original Composition and have earned profits in their respective, wholesale distribution and sales based on the use of the Composition and Original Composition and have further obtained benefit by the use of the Composition and Original Composition without the payment of appropriate fees.

WHEREFORE, Plaintiff CASTRO respectfully requests that this Court:

- a. Take jurisdiction of the case;
- b. Declare the rights of the parties set forth herein;
- c. Order the Defendants to provide a full and complete accounting related to the Composition, the Original Composition and the Zion Composition;
- d. Award CASTRO his reasonable attorney's fees; and
- e. Award CASTRO damages including costs and prejudgment interest;

f. Order as follows:

1. That the Defendants, their officers, directors, agents, servants, employees, licenses, successors, assigns and all those controlled by them, or in active concert or participation with them, be preliminarily and permanently enjoined from the public performance of the Composition and Original Composition, reproducing or preparing derivative works of said works, or manufacturing, importing, distributing, selling, offering to sell, advertising, promotion or otherwise using it in any way in connection with the Defendants' business without the consent of CASTRO; and

2. That the Defendants be ordered to deliver for destruction all products or articles of merchandise, displays, advertisements, packaging, brochures, order forms, price lists, catalogs, or any other materials in its possession or control or in the possession or control of its agents, that infringes CASTRO's copyrights in its work.

3. That the Defendants be ordered to recall from all distributors, wholesalers, jobbers, dealers, retailers and all others known to the Defendants, any originals, copies, facsimiles, or duplicates of and of the infringing work.

4. That the Defendants file with the Court and serve upon Plaintiff, within 30 days after service of the Court's Order, a report in writing under oath setting forth in detail the manner and form in which the Defendants have complied with the Court's Order.

5. That the Defendants be required to account for any pay over to Plaintiff all actual damages suffered by Plaintiff; all gains, profits and advantages derived by the Defendants from the Defendants' acts of infringement of Plaintiff's copyrights;

Compensatory damages and Statutory damages, attorney fees and such other damages as to the Court shall appear proper within the provisions of the Copyright Laws.

6. That upon the election of Plaintiff that the Court order the Defendants to pay not less than statutory damages in the amount of \$150,000 per each act of infringement, jointly and severely.

7. Grant any other relief this Court deems meet and proper.

TRIAL BY JURY

Plaintiff hereby demands trial by jury of all issues triable thereby.

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By: _____
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