

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Abdul Wali Muhammad, f/k/a)	
Eric P. Saunders,)	
)	No. 17-cv-6558
Plaintiff,)	
)	The Honorable Thomas M. Durkin
v.)	
)	Hon. Mag. Judge Sheila Finnegan
Chancellor Bennett, p/k/a Chance the Rapper,)	
and Chance the Rapper, LLC,)	Demand for Jury Trial
)	
Defendants.)	

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Now come the Defendants, Chancellor Bennett, p/k/a "Chance the Rapper," and Chance the Rapper, LLC (collectively "Defendants"), by their undersigned counsel, SWANSON, MARTIN & BELL, LLP, states as follows as its Answer and Affirmative Defenses to the Complaint of Plaintiff, Abdul Wali Muhammad f/k/a Eric P. Saunders ("Plaintiff"):

INTRODUCTION

This is an action for copyright infringement. The Plaintiff, Muhammad, is a composer and jazz musician. Muhammad composed and owns registered copyrights on the composition to a song named "Bridge Through Time." Chance sampled a significant portion of that song in Chance's song "Windows." Chance did not have permission from Muhammad to use any portion of Muhammad's copyrighted song. Chance's actions constitute copyright infringement. This Complaint seeks damages from Chance, and from his company established to license Chance's merchandise and to promote Chance's concerts and other performances, for Chance's blatant and willful infringement of Muhammad's copyright.

ANSWER: Defendants admit Plaintiff's Complaint purports to be an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. § 101, et seq., and specifically states that Plaintiff's Introduction purports to summarize allegations of his cause of action detailed in the enumerated paragraphs following the Introduction. Defendants

specifically deny that Plaintiff has any claim under the Copyright Act of 1976 or otherwise, and contend that Plaintiff's Introduction is comprised of legal conclusions for which Defendants can neither admit nor deny them. Defendants therefore deny the same and demand strict proof thereof.

PARTIES

1. Plaintiff, Muhammad, was formerly known as Eric P. Saunders. He legally changed his name to Abdul Wall Muhammad in 1985. Muhammad is a resident of Brewster, New York.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore deny the same and demand strict proof thereof.

2. Defendant, Chance, is a resident of the City of Chicago, Illinois.

ANSWER: Defendants admit the allegations contained in Paragraph 2 of the Complaint.

3. Defendant, Chance the Rapper, LLC, is an Illinois limited liability company, with its principal place of business in Chicago, Illinois.

ANSWER: Defendants admit the allegations contained in Paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. This is an action for copyright infringement arising under the Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq. The Court has subject matter jurisdiction under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).

ANSWER: Defendants admit that Plaintiff's Complaint purports to be an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. § 101, et seq. Defendants specifically deny that Plaintiff has any claim under the Copyright Act of 1976 or otherwise.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400 because Defendant, Chance, resides in this District, Chance the Rapper, LLC does business in this District, both Defendants may be found in this District, and both Defendants are subject to personal jurisdiction in this District.

ANSWER: Defendants admit the allegations contained in Paragraph 5 of the Complaint.

CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT

6. Plaintiff, Muhammad, is a jazz musician, composer and lawyer. Muhammad has performed with various musical artists including Brook Benton, Jean Cam, Freddie Hubbard, Taj Mahal, Norman Connors, Donny Hathaway, Bobbi Humphrey, Melvin Van Peebles, Noel Pointer, Lonnie Liston Smith, Peter Tosh, Marcus Miller, and Stanley Turrentine. He has scored for television, and was bandleader for the Broadway musical "Mule Bone." Muhammad is also the recipient of the ASCAP Songwriters Award. In addition, Muhammad is an attorney practicing criminal and civil rights law in New York State, the U.S. District Court and the U.S. Court of Appeals.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and therefore deny the same and demand strict proof thereof.

7. Muhammad composed the song "Bridge Through Time." Muhammad is the owner of U.S. Copyright Registration No. PAu 107-461, entitled "Bridge Through Time," which was registered May 21, 1979 (the "Copyright"). The Copyright is for the composition for the song. A true and correct copy of the Copyright registration is attached hereto as Exhibit "A." A true and correct copy of the deposit copy of the Copyright is attached hereto as Exhibit "B."

ANSWER: Defendants specifically deny that "Bridge Through Time" consists wholly of original material that is copyrightable subject matter under the laws of the United States. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 7 of the Complaint and therefore deny the same and demand strict proof thereof.

8. Muhammad is also the owner of U.S. Copyright Registration No. PA 78-599, entitled "Bridge Through Time" and registered June 23, 1980 and U.S. Copyright Registration No. PA 89-268, entitled "Bridge Through Time" and registered November 3, 1980. True and correct copies of the Copyright Registrations for PA 78-599 and PA 90-268 are attached hereto as Exhibits "C" and "D", respectively. Muhammad's copyright registrations, Exhibits "A", "C" and "D" are collectively referred to herein as the "Copyright."

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore deny the same and demand strict proof thereof.

9. The song, "Bridge Through Time," has been performed by several artists such as, for instance, Lonnie Liston Smith. The song is, and at all relevant times was, accessible through numerous websites, including but not limited to YouTube. Two examples of the song "Bridge Through Time" are available at <https://www.youtube.com/watch?v=9MHSOFGikOo>, and https://www.youtube.com/watch?v=chE_OKhiWGY.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and therefore deny the same and demand strict proof thereof.

10. Chance is a recording artist. Chance wrote and performed a song entitled "Windows." Chance's song "Windows" is available online on numerous sites, including Soundcloud and many others. Chance's song "Windows" may also be heard at <https://www.youtube.com/watch?v=76-7RoeWWw0>.

ANSWER: Defendants admit that Defendant, Chancellor Bennett, is a recording artist who wrote and performed "Windows." Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 10 of the Complaint and therefore deny the same and demand strict proof thereof.

11. Chance took a portion of the song "Bridge Through Time," and reused it in his song "Windows."

ANSWER: Defendants admit that Chancellor Bennett used a portion of a song entitled "Bridge Through Time" in his song, "Windows." Defendants deny knowingly using any portion of Plaintiff's copyrighted song, and further deny the remaining allegations contained in Paragraph 11 of the Complaint.

12. Chance took a substantial majority portion of the song "Bridge Through Time," and reused it in his song "Windows."

ANSWER: Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. Chance has never requested permission from Muhammad to allow Chance to use any portion of Muhammad's copyrighted song, "Bridge Through Time."

ANSWER: Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Muhammad has never granted permission for Chance to use any portion of Muhammad's copyrighted song, "Bridge Through Time," in Chance's song "Windows."

ANSWER: The allegations of Paragraph 14 of the Complaint state a legal conclusion that Defendants can neither admit nor deny. Defendants therefore deny the allegations contained in Paragraph 14 of the Complaint and demand strict proof thereof.

15. Chance has infringed Muhammad's Copyright through Chance's unauthorized use, distribution and public display of Chance's song "Windows."

ANSWER: The allegations of Paragraph 15 of the Complaint state a legal conclusion that Defendants can neither admit nor deny. Defendants therefore deny the allegations contained in Paragraph 15 of the Complaint and demand strict proof thereof.

16. Muhammad first became aware of Chance's infringement of Muhammad's Copyright in and around April 2017. Shortly thereafter on May 18, 2017, Muhammad's attorney wrote to Chance's attorney about Chance's infringement of the Copyright. That letter also requested that Chance take all measures to cease further infringement of the Copyright. A true and correct copy of the May 18, 2017 letter is attached hereto as Exhibit "E".

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and therefore deny the same and demand strict proof thereof.

17. Chance's copyright infringement was willful. Chance knew that he did not have permission to use any part of Muhammad's copyrighted song, yet he used a significant portion of "Bridge Through Time" in his song "Windows." Chance also distributed his song "Windows" knowing of the infringement, or acting in willful disregard for whether the song was the subject of the Copyright.

ANSWER: Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Further, Chance failed and refused to take any action to halt access to the infringing song after specifically being advised of the infringement.

ANSWER: Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. On information and belief, Chance is the sole member (owner) and manager of Chance the Rapper, LLC.

ANSWER: Defendants admit the allegations contained in Paragraph 19 of the Complaint.

20. Chance the Rapper, LLC possesses the exclusive right to use, and authorize the use of, Chance's name, logos, likenesses, trademark and all other indicia of Chance, including the right to promote and sell tickets to concerts and other performances.

ANSWER: Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Chance the Rapper, LLC also licenses the sale of merchandise, including the sale of merchandise related to Chance's album "10 Day," which contains the song "Windows."

ANSWER: Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Chance the Rapper LLC has received profits from the marketing, promotion and sale of merchandise, performances, tickets to concerts and other performances as a result of Chance's infringement of the Copyright.

ANSWER: Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Chance and Chance the Rapper LLC have received profits attributable to the infringement of Muhammad's Copyright. The song "Windows" was popular and helped to elevate Chance's career, which in turn spawned concerts, concert sales, sales of merchandise and other sources of revenue. Such profits are recoverable pursuant to 17 U.S.C. § 504(a) and (b).

ANSWER: Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Muhammad is entitled, at his election, to an award of statutory damages for the copyright infringement alleged herein pursuant to 17 U.S.C. § 504(c).

ANSWER: Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Muhammad is further entitled to an increased award of statutory damages pursuant to 17 U.S.C. § 504(c)(2).

ANSWER: Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Muhammad is also entitled to his attorney's fees and costs, pursuant to 17 U.S.C. §505, and as according to law.

ANSWER: Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. As a direct and proximate result of the foregoing acts and conduct, Muhammad has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Chance will continue to infringe Muhammad's rights in the Copyright. Muhammad accordingly is entitled to preliminary and permanent injunctive relief to restrain and enjoin Chance's continuing infringing conduct.

ANSWER: Defendants deny the allegations contained in Paragraph 27 of the Complaint.

Wherefore, the Defendants, Chancellor Bennett p/k/a “Chance the Rapper” and Chance the Rapper, LLC, deny that Plaintiff is entitled to judgment in any amount whatsoever and enter the following relief and request that judgment be entered in their favor.

JURY DEMAND

Defendants hereby demand a trial by jury on all issues triable by a jury, including claims asserted in Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Defendants hereby assert their affirmative defenses to the Complaint as follows:

First Affirmative Defense

(Estoppel)

Plaintiff is estopped by his own conduct from maintaining his claims.

Second Affirmative Defense

(Waiver)

Plaintiff has, through his own actions, conduct, and failure to act, waived any right to relief.

Third Affirmative Defense

(Statute of Limitations)

Plaintiff's claim is barred, in whole or in part, as untimely filed in violation of the statute of limitations applicable to copyright infringement claims.

Fourth Affirmative Defense

(Laches)

Plaintiff's claims are barred from pursuing any equitable claims as a result of his unreasonable delay in asserting his claim, to the prejudice of Defendants.

Fifth Affirmative Defense

(Authorization, License, Acquiescence, Ratification, Consent)

To the extent any of the acts alleged in the Complaint occurred, those acts were authorized, acquiesced in, ratified, or consented to by Plaintiff, by implication, or by conduct.

Sixth Affirmative Defense

(De Minimis)

To the extent any protectable expression contained in "Bridge Through Time" was used in "Windows," such use is *de minimis*.

Seventh Affirmative Defense

(Good Faith / No Willfulness)

To the extent Defendants engaged in any act alleged by Plaintiff, they did so innocently and in good faith. Defendants have not willfully infringed any alleged copyright in "Bridge Through Time."

Eighth Affirmative Defense

(Fair Use)

The use of any allegedly copyrighted or other material owned and/or controlled by Plaintiff (of which Defendants assert there was none) constitutes a fair use.

Ninth Affirmative Defense

(Failure to Mitigate)

Plaintiff has failed to mitigate his alleged damages, and therefore is entitled to no relief, or is entitled only to reduced relief.

Tenth Affirmative Defense

(Adequate Remedy at Law)

Plaintiff is not entitled to injunctive relief because any alleged injury is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

Eleventh Affirmative Defense

(No Originality)

Even if any elements of “Bridge Through Time” also appear in “Windows,” any such elements lack originality and thus are not protectable by copyright.

Eleventh Affirmative Defense

(Formalities of Registration)

To the extent that Plaintiff has not complied with the statutory formalities of the U.S. Copyright Act, including registering for copyright, he is barred from maintaining this action.

Twelfth Affirmative Defense

(Lack of Ownership / Standing)

To the extent that Plaintiff is not the owner or copyright proprietor of any portion of “Bridge Through Time,” including the sound recording or musical work, in he lacks standing to maintain this action, in whole or in part.

CERTIFICATE OF SERVICE

I, Jeffrey S. Becker, an attorney, certify that I caused this **Answer and Affirmative Defenses to Complaint** to be served on all counsel of record as identified below, via the ECF filing system, on November 27, 2017 before the hour of 11:59 p.m.:

Via ECF

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