

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

RODSONGS, CONTROVERSY MUSIC, :  
and EMI APRIL MUSIC INC., :  
: :  
: :  
Plaintiffs, : No. 3:04CV1984 (DJS)  
: :  
v. : :  
: :  
D & S ENTERTAINMENT, LLC and :  
FRANCIS B. DELMASTRO, :  
: :  
Defendants.

RULING ON PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

This is an action by plaintiffs Rodsongs, Controversy Music, and EMI April Music Inc. against defendants D & S Entertainment, LLC, and Francis Delmastro alleging copyright infringement in violation of Title 17 of the United States Code. The action was filed on November 23, 2004, and a complaint and summons were served on D & S Entertainment on December 8, 2004 and on Delmastro on December 18, 2004 pursuant to Rule 4 of the Federal Rules of Civil Procedure. (See Dkt. #s 3 & 4). Both defendants failed to appear or otherwise defend the action, thus default was entered against them on January 20, 2005, pursuant to Rule 55 of the Federal Rules of Civil Procedure. (See Dkt. # 6).

Now pending before the Court is the plaintiffs' motion for a default judgment (dkt. # 7). For the foregoing reasons, plaintiffs' motion is **GRANTED in part.**

## DISCUSSION

"It is well established that a party is not entitled to a default judgment as of right; rather the entry of a default judgment is entrusted to the sound judicial discretion of the court." Cablevision of S. Conn. Ltd. Partnership v. Smith, 141 F. Supp. 2d 277, 281 (D. Conn. 2001) (quoting Shah v. N.Y. State Dep't of Civil Serv., 168 F.3d 610, 615 (2d Cir. 1999)). In civil cases, however, "where a party fails to respond, after notice the court is ordinarily justified in entering a judgment against the defaulting party." Bermudez v. Reid, 733 F.2d 18, 21 (2d Cir. 1984). In this case, plaintiffs are entitled to an entry of default judgment in light of defendants' failure to appear or respond to the complaint. Furthermore, plaintiffs have sufficiently alleged the facts that underlie their claim of copyright infringement. Thus, entry of a default judgment is warranted.

In deciding the extent of damages to be awarded in a default judgment, the court must consider several factors, including (1) the monetary award requested; (2) the prejudice suffered by the plaintiff; (3) whether or not the default is clearly established and (4) the nature of the plaintiff's claims against the defendant. Pinaud v. County of Suffolk, 52 F.3d 1139, 1152 n.11 (2d Cir. 1995) (citing 10 Moore's Federal Practice § 55.20[2][b]). The Second Circuit has provided some

guidance in this matter, and has stated:

The outer bounds of recovery allowable are of course measured by the principle of proximate cause. The default judgment did not give [plaintiff] a blank check to recover from [defendant] any losses it had ever suffered from whatever source. It could only recover those damages arising from the acts and injuries pleaded . . . ."

Greyhound Exhibit Group, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158-59 (2d Cir. 1992). In making this determination and evaluating the allegations asserted against the defendant, the court may "deem[] all the well-pleaded allegations in the pleadings to be admitted" by the defendant. Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 108 (2d Cir. 1997).

Based on plaintiffs' allegations, which must be taken as admitted by defendants for the purposes of this default judgment, plaintiffs request an injunction against further infringement, statutory damages in the amount of \$35,000.00, attorneys' fees in the amount of \$2,203.35, and costs in the amount of \$259.35. The court finds that injunctive relief is appropriate under these circumstances. The proposed award of attorneys' fees is appropriate based upon the affidavit submitted in support of the motion for a default judgment. The proposed amount of costs is also reasonable.

The court, however, declines to award plaintiffs the amount of statutory damages requested. Plaintiffs arrived at

the \$35,000 figure by roughly doubling the amount of license charges, interest, and penalties due pursuant to the licensing agreement, which totaled \$16,595.45. The \$16,595.45 figure includes \$7,890.45 attributable to the establishment "Bar With No Name", \$8,633.17 attributable to the establishment "Civic Pub", and \$71.83 attributable to the establishment "Civic Café", which are all owned or operated to some extent by Delmastro. Because the complaint only alleges that defendants allowed infringing performances at Bar With No Name, the court will award a total of statutory damages of \$16,000, which is slightly more than double the balance due and owing with respect to that establishment only and amounts to \$3200 per violation for the five violations set forth in the complaint.

#### **CONCLUSION**

For the foregoing reasons, plaintiffs' motion for default judgment (dkt. # 7) is **GRANTED in part**. Judgment shall enter in favor of Rodsongs, Controversy Music, and EMI April Music Inc. against D & S Entertainment, LLC, and Francis Delmastro, jointly and severally, for statutory damages in the total amount of \$16,000, for attorneys' fees in the amount of \$2,203.35, and costs in the amount of \$259.35, for a total of \$18,462.70. Further, the judgment shall state that D & S Entertainment, LLC, and Francis Delmastro are hereby **ORDERED** enjoined and restrained from publicly performing any and all

copyrighted musical compositions in the American Society of Composers, Authors and Publishers repertory and from causing or permitting said compositions to be publicly performed in D & S Entertainment, LLC's and Francis Delmastro's premises, or in any place owned, controlled or conducted by D & S Entertainment, LLC, and Francis Delmastro, and from aiding and abetting the public performance of such compositions in any place, without the permission of the copyright owner. The Clerk of the Court shall close this case.

So ordered this 11th day of March, 2005.

**/s/DJS**

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**DOMINIC J. SQUATRITO  
UNITED STATES DISTRICT JUDGE**