

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|   |   |                     |
|---|---|---------------------|
| <b>EDDIE LEVERT, WALTER WILLIAMS</b>    | : | <b>CIVIL ACTION</b> |
| <b>d/b/a THE O'JAYS</b>                 | : |                     |
|   | : |                     |
| <b>v.</b>                               | : |                     |
|   | : |                     |
| <b>PHILADELPHIA INTERNATIONAL</b>       | : | <b>NO. 04-1489</b>  |
| <b>RECORDS, ASSORTED MUSIC, INC.,</b>   | : |                     |
| <b>GAMBLE-HUFF PRODUCTIONS, KENNETH</b> | : |                     |
| <b>GAMBLE, CHUCK GAMBLE and LEON</b>    | : |                     |
| <b>HUFF</b>                             | : |                     |
|   | : |                     |
| <b>and</b>                              | : |                     |
|   | : |                     |
| <b>THE RIGHT STUFF / A DIVISION OF</b>  | : |                     |
| <b>CAPITOL RECORDS</b>                  | : |                     |

**Norma L. Shapiro, S.J.**

**December 12<sup>th</sup>, 2004**

**MEMORANDUM AND ORDER**

Plaintiffs, Eddie Levert and Walter Williams, singers, songwriters and original members of the “rhythm and blues” group “The O’Jays,” have filed suit against defendants for copyright violations, fraud, and breach of contract. Jurisdiction is based on diversity of citizenship and Pennsylvania law governs. Plaintiffs’ Amended Complaint alleges, amongst other things, that defendants failed to pay royalties on contracts signed in 1972, 1975, and 1979.<sup>1</sup>

Under Pennsylvania’s discovery rule, the statute of limitations does not begin running “until the plaintiff knew, or through the exercise of reasonable diligence should have known, of the injury and its cause.” Ayers v. Morgan, 397 Pa. 282, 292, (1959). See also, Pocono International Raceway,

---

<sup>1</sup> The 1972 contract was amended once in 1975, and the 1979 contract was amended three times: 1980; 1982; and 1984.

Inc. v. Pocono Produce, Inc., 503 Pa. 80, 85 (1983); Urland v. Merrell-Dow Pharmaceuticals, 822 F.2d 1268, 1271 (3d Cir.1987).

On September 14, 2004, the court heard oral argument on the scope of discovery and decided that discovery would be limited to the period of time from 1998 to present. Plaintiffs have now filed a Motion to Expand the Scope of Discovery Based on the Tolling of the Statute of Limitations. Plaintiffs' argue for tolling the statute of limitations because defendants failed "to report on at least six (6) accounts over a period of two decades," and the royalty statements provided "obscured specific account information." The statute of limitations' due diligence requirement imposes a heavy burden on a plaintiff seeking to toll the statute of limitations in a breach of contract action. Vernau v. Vic's Market, Inc., 896 F.2d 43, 49-50 (3d Cir. 1990).

Under Pennsylvania tolling principles, the statute is tolled until "plaintiffs knew or using reasonable diligence should have known of the claim." Urland, 822 F.2d at 1272 (3d Cir.1987). Plaintiffs have failed to exercise the due diligence required to toll the statute of limitations. First, plaintiffs were very successful recording artists and they were assisted by lawyers and accountants during the years in question. Second, if plaintiffs did not receive regular royalty statements, or if the statements were confusing, plaintiffs had an obligation to make inquiry. Plaintiff's depositions reveal that they personally failed to take much interest in their contractual rights. Defendants paid plaintiffs advances under their contracts and the royalties from the music were used to reimburse defendants. Defendants' royalty statements would state if royalty payments exceeded the advances. When Mr. Williams was asked whether he had been in the habit of reviewing defendants' royalty statements, Mr. Williams replied he only looked at them when the statements included payments. (Williams Deposition at 177-78).

Finally, the statute of limitations should not be tolled because one of the provisions of the

1977 contract was that the 1972 contract would be deemed expired. Similarly, the 1979 contract stated that the 1977 contract would be deemed expired and the parties' respective obligations would be deemed fulfilled.

The court declines to expand the scope of discovery; discovery shall be limited to the period of 1998 to present. This ruling applies to plaintiffs and defendants alike; defendants shall not be allowed to offset any liability incurred since 1998 by deficits they claimed to have been outstanding since before 1998.<sup>2</sup>

Plaintiffs Motion will be **DENIED**.

---

<sup>2</sup> PIR has asserted that there are still outstanding deficits on recording costs since June 1983. PIR had originally assessed the deficit as \$135,071.16. According to PIR, recent accounting reveals that the deficit is actually \$491,401.459. The adjustment results in an additional debt of \$356,330.33 that plaintiffs allegedly owe defendants. PIR has agreed to remove the claimed adjustment so the deficit allegedly owed to defendants remains at \$135,071.16. Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Extend the Temporal Scope of Discovery [Paper #40] pp.20-22.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|   |   |                     |
|---|---|---------------------|
| <b>EDDIE LEVERT, WALTER WILLIAMS</b>    | : | <b>CIVIL ACTION</b> |
| <b>d/b/a THE O'JAYS</b>                 | : |                     |
|   | : |                     |
| <b>v.</b>                               | : |                     |
|   | : |                     |
| <b>PHILADELPHIA INTERNATIONAL</b>       | : | <b>NO. 04-1489</b>  |
| <b>RECORDS, ASSORTED MUSIC, INC.,</b>   | : |                     |
| <b>GAMBLE-HUFF PRODUCTIONS, KENNETH</b> | : |                     |
| <b>GAMBLE, CHUCK GAMBLE and LEON</b>    | : |                     |
| <b>HUFF</b>                             | : |                     |
|   | : |                     |
| <b>and</b>                              | : |                     |
|   | : |                     |
| <b>THE RIGHT STUFF / A DIVISION OF</b>  | : |                     |
| <b>CAPITOL RECORDS</b>                  | : |                     |

**ORDER**

AND NOW, this 12<sup>th</sup> day of December, 2004, it appearing that plaintiffs have filed a Motion to Expand the Scope of Discovery (Paper #34) and Defendants have responded (Paper #40), it is **ORDERED** that plaintiffs Motion is **DENIED** for the reasons stated in the attached Memorandum.

                  /s/ Norma Shapiro                    
Norma L. Shapiro, S.J.