

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

C. DELORES TUCKER and : CIVIL ACTION  
WILLIAM TUCKER, her husband, :  
Plaintiffs, : NO. 97-4717  
v. :  
MTS, INC. t/a TOWER RECORDS, :  
INTERSCOPE, INC.; :  
INTERSCOPE RECORDS; TED FIELD :  
TIME WARNER; JAMES IOVINE; :  
SEAGRAM CO.; MCA INC.; DEATH :  
ROW RECORDS, INC.; :  
DAVID KENNER; :  
ESTATE OF TUPAC SHAKUR; :  
RICHARD FISCHBEIN as :  
co-administrator of the ESTATE :  
OF TUPAC SHAKUR and AFENI :  
SHAKUR as co-administratrix of :  
the ESTATE OF TUPAC SHAKUR, :  
Defendants. :

M E M O R A N D U M

BUCKWALTER, J.

February 18, 1998

In the instant diversity action plaintiff, C. Delores Tucker, ("Tucker") along with her husband, Plaintiff, William Tucker, ("William Tucker" collectively the "Tuckers") allege that certain lyrics from late rap superstar Tupac Shakur's ("Shakur") album All Eyez on Me have caused them emotional distress, are defamatory, and have invaded their privacy. The Tuckers seek in excess of \$10,000,000 in damages and an order enjoining further sale and distribution of the recording. In their amended

complaint ("Amended Complaint")<sup>1</sup> thirteen individuals and/or entities are named as defendants. Presently the court is faced with numerous motions filed by defendants requesting dismissal and/or transfer of the action.

### I. Transfer

The following defendants request transfer of this action to the United States District Court for the Central District of California; Interscope Inc., Interscope Records, Ted Field, James Iovine, MCA Inc., Seagram Co., and Time Warner.<sup>2</sup> (Docket No. 38). Defendants Death Row Records and David Kenner have joined this motion. (Docket No. 37). Hereafter defendants moving for transfer are referred to collectively as the "California Defendants." Defendant MTS Inc. t/a Tower Records ("Tower") and the Tuckers have filed briefs opposing California Defendants' motion for transfer. (Docket Nos. 48 and 57).

Title 28 of the United States Code, Section 1404(a) provides: "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Thus, in deciding a § 1404(a) motion, the court must first determine whether the proposed transferee district is one

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1. The original complaint was filed on July 21, 1997 and was amended on August 27, 1997.

2. The names of several defendants in the case caption are incorrect. Interscope, Inc. should be Interscope Records Inc.; Ted Field should be Frederick W. Field; Seagram Co. should be Joseph E. Seagram & Sons, Inc. and Time Warner should be Time Warner Inc. (Docket No. 38)

in which the plaintiff could have initially filed the action. Hoffman v. Blaski, 363 U.S. 335, 343-344 (1960). Notably, no party mentions this threshold test. Section § 1391 provides in relevant part: "(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought in . . . (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. . . ." The Tuckers' Amended Complaint stems from the release of Shakur's infamous recording All Eyez on Me. All Eyez on Me was produced in Los Angeles, California, therefore, the instant action could have been brought in the Central District.

The district court has broad discretion to transfer an action, but defendants have the burden of establishing propriety of such action. Tranor v. Brown, 913 F.Supp. 388, 391 (E.D.Pa.1996) (citations omitted). California Defendants have failed to meet this burden.

In August 1995, Interscope Records sued Tucker claiming that she attempted to induce CEO of Death Row Records, Suge Knight, into breaching the company's distribution contract with Interscope and signing a new distribution agreement with Tucker. Based on the same factual allegations Death Row Records also instituted an action against Tucker and several other defendants containing extortion, contract and RICO claims. The two suits

(the "California Actions") were deemed related and were assigned to the same Central District of California Judge. California Defendants now argue that many issues and proceedings in the instant action are duplicative of the California Actions and therefore all three cases should be heard by the same judge, specifically the one presently presiding over the California Actions in the Central District of California.

California Defendants are correct in that presence of a related case in the transferee forum is a powerful reason to grant a change of venue. Blender v. Sibley, 396 F.Supp. 300 (E.D.Pa. 1975) (citing Blanning v. Tisch, 378 F.Supp. 1058, 1061 (E.D.Pa. 1974)). However, any relation between the instant action and the California Actions is insignificant. The California Actions are merely mentioned in conjunction with the Tuckers' defamation and emotional distress claims and these allegations are clearly tangential to the focus of their suit, Shakur's allegedly slanderous lyrics.<sup>3</sup> Therefore, I find that the existence of the California Actions does not warrant transfer. Accordingly, California Defendants' motion for transfer is denied.

## II. 12(b)(6): Statue of Limitations

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3. Interscope's lawsuit is mentioned by name, but, references are later made to "the lawsuits", therefore I find that the Tuckers' allegations relate to both Interscope's and Death Row Record's suits. This finding is supported by the Tuckers brief in opposition to transfer.

The following twelve defendants have submitted Rule 12(b)(6) motions to dismiss the Tuckers' Amended Complaint for failure to state a claim; the California Defendants (Docket Nos. 36, 40 and 58); Tower (Docket Nos. 47 and 60) and Richard Fischbein, as co-administrator of the Estate of Tupac Shakur and Afeni Shakur, as co-administratrix of the Estate of Tupac Shakur (collectively, the "Estate Representatives") (Docket Nos. 44 and 61).<sup>4</sup>

The Tuckers' Amended Complaint contains three causes of action; intentional infliction of emotional distress (Count II); slander (Count III) and invasion of privacy (Count IV).<sup>5</sup> Moving defendants argue that all three counts are time barred.<sup>6</sup>

Under Pennsylvania law, which no party disputes the applicability of, the tort of intentional infliction of emotional distress carries a two year statute of limitations and the applicable limitations period for a claim of slander or invasion of privacy is one year. 42 Pa.C.S.A. §§ 5523(2), 5524 (7) (1981 & Supp. 1997).

The exact actions that give rise to the Tuckers' claims are far from clear from the pleadings. From a broad reading of

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4. The thirteenth defendant, the Estate of Tupac Shakur, has made an appearance but filed no motions.

5. Count I of the Amended Complaint entitled "Preliminary Injunction" is actually a request for injunctive relief not a cause of action.

6. William Tucker's claims are derivative of his wife's, therefore, grounds for dismissing Tucker's claims are equally applicable to his.

the Amended Complaint it appears as though the Tuckers' claims are based on Shakur's album, which was released in February 1996, and the filing in August 1995 of the California Actions. Additionally, on March 2, 1996 Tucker protested sale of All Eyez on Me in front of a Tower Records store in Philadelphia, which is owned and operated by defendant Tower. As a result of her protest and amid much publicity, Tucker was arrested, handcuffed and forcibly removed by police at the express direction of Tower. The Tuckers' claim that this incident has also tarnished Tucker's reputation and caused her emotional distress.<sup>7</sup> The instant action was not filed until July 21, 1997, well beyond the one year statutory limitations period applicable to slander and privacy claims. In September 1996 Shakur was murdered in a drive by shooting. Under Pennsylvania law, suit may be brought against an alleged tort-feasor's estate within one year after his death although the applicable limitation would have barred the action sooner. 20 Pa.C.S.A § 3383 (1975 & Supp. 1997). This extension is applicable only to suits against the estate. Therefore, the Tuckers' slander and privacy claims are dismissed as time barred as to all defendants except the Estate Representatives and the Estate of Tupac Shakur.

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7. The Tuckers also refer to allegedly defamatory statements made by defendant Richard Fischbein. These statements are the subject of a related suit filed by Tucker that is also before me (Tucker, et al v. Fischbein, et al., 97-cv-6150) and therefore will not be reviewed in the present context.

Because the "gravamen" of the Tuckers' intentional infliction of emotional distress claim is Shakur's allegedly defamatory lyrics, California Defendants, Tower and the Estate Representatives argue that the emotional distress claim should be accorded the shorter one year limitations period and therefore should also be dismissed as time barred.

In Evans v. Philadelphia Newspapers, Inc., the Pennsylvania Superior Court recognized that where a tortious interference claim springs from the same conduct as a defamation claim parties should not be able to circumvent the statute of limitations merely by terming the claim as tortious interference when in essence it is one of defamation subject to a one year statute of limitations. Evans v. Philadelphia Newspapers, Inc., 601 A.2d 330 (Pa. Super. 1991). This reasoning has been acknowledged by several courts in this district and is applicable to the case at hand. See Rolite v. Wheelabrator, 958 F.Supp. 992 (E.D.Pa. 1997); Hanenberg v. Borough of Bath, 1994 WL 388279 \*3 (E.D.Pa. July 27, 1994); Hurst v. Beck, 1992 WL 396592 \*3, 4 (E.D.Pa. December 17, 1992). The Tuckers' emotional distress and slander claims are virtually identical. There is no independent basis for Tucker's emotional distress claim -- the claim exists solely because of various defendants' roles in disseminating allegedly defamatory statements (Shakur's lyrics) and various defendants' allegedly derogatory actions (the filing of the

California Actions and Tucker's publicized arrest). Therefore, because it springs from their defamation claim, the Tuckers' emotional distress claim is subject to a one year statute of limitations and is time barred against all defendants except the Estate Representatives and the Estate of Tupac Shakur. See 20 Pa.C.S.A § 3383 (1975 & Supp. 1997).

Finally, Estate Representatives argue that the Tuckers' failure to comply with California's nonclaim statute precludes any action against them. This statute provides, in part, that a tort claimant may not recover money damages from an estate unless within four months after the issuance of the letters of administration the claimant files a claim with the estate. Ca. Prob. Code §§ 9000(a)(1), 9351 (West 1997). Letters of administration were issued in November 1996 and the Tuckers admit they have never filed a claim with the estate. Thus it appears that the Tuckers' failure to file a claim will have a fatal effect on their ability to collect from Shakur's estate if they ultimately receive a favorable money judgment. Their probable inability to collect, however, does not mandate dismissal of their claim by this court. The Tuckers' may proceed in the instant action at their own risk. Accordingly, the Tuckers' slander, invasion of privacy and intentional infliction of emotional distress claims against the Estate Representatives and the Estate of Tupac Shakur are not dismissed.

An order follows.

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DAVID KENNER; :  
ESTATE OF TUPAC SHAKUR; :  
RICHARD FISCHBEIN as :  
co-administrator of the ESTATE :  
OF TUPAC SHAKUR and AFENI :  
SHAKUR as co-administratrix :  
of the ESTATE OF TUPAC SHAKUR, :  
Defendants. :

O R D E R

AND NOW, this 18th day of February 1998, upon  
consideration of:

1. Defendants' Interscope Records, Interscope Inc.,  
Ted Field, James Iovine, MCA Inc., Seagram Co., Time Warner,  
Death Row Records, and David Kenner, motion for transfer  
(collectively the "California Defendants") (Docket Nos. 37 and  
38); Plaintiffs' memorandum in opposition (Docket No. 57); and  
Defendant's, MTS Inc. t/a Tower Records ("Tower"), memorandum in  
opposition (Docket No. 48), it is hereby ORDERED that California  
Defendants' motion to transfer is **DENIED**;

2. California Defendants' motion to dismiss (Docket Nos. 36 and 40); Tower's motion to dismiss (Docket No. 47); Defendants', Richard Fischbein, co-administrator of the Estate of Tupac Shakur and Afeni Shakur, co-administratrix of the Estate of Tupac Shakur (collectively the "Estate Representatives") motion to dismiss (Docket No. 44); Plaintiffs' answer to all motions to dismiss (Docket No. 55); California Defendants' reply (Docket No. 58); Tower's reply (Docket No. 60) and Estate Representatives' reply (Docket No. 61) it is hereby ordered that California Defendants' motion to dismiss is **GRANTED**; Tower's motion to dismiss is **GRANTED** and Estate Representatives' motion to dismiss is **DENIED**. Accordingly, **all defendants except** the Estate of Tupac Shakur, Richard Fischbein as co-administrator of the Estate of Tupac Shakur and Afeni Shakur as co-administratrix of the Estate of Tupac Shakur **are DISMISSED**; and

3. California Defendants' 12(b)(2) motion to dismiss (Docket Nos. 35 and 39); Plaintiffs' answer (Docket No. 56) and California Defendants' reply (Docket No. 59), it is hereby ordered that California Defendants' 12(b)(2) motion is **DISMISSED** as moot.

BY THE COURT:

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RONALD L. BUCKWALTER, J.