

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 1:14-CV-22040-UU

----- X
EMMI KOZULIN,

Plaintiff,

v.

ANGELA HUNTE AND TAMAR BRAXTON,

Defendants.
----- X

**DEFENDANT TAMAR BRAXTON'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant Tamar Braxton ("Defendant"), by and through her undersigned counsel, hereby files her response to the Plaintiff's Complaint, dated May 30, 2014, denies each and every allegation not specifically admitted in this answer and states to each correspondingly numbered paragraph of the Complaint as follows:

NATURE OF ACTION

1. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 of the Complaint, except admits that the Complaint purports to state claims for copyright infringement, declaratory relief, breach of fiduciary duty, an accounting, and unjust enrichment.

2. Paragraph 2 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2.

PARTIES

3. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the Complaint, except admits that Angela Hunte is a songwriter.

5. Defendant admits that Defendant is a recording artist with Sony Music Entertainment and that Defendant resides in Los Angeles, California, and otherwise denies the allegations in paragraph 5 of the Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the Complaint, except admits that the Complaint purports to seek damages and an injunction.

JURISDICTION

7. Paragraph 7 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7.

8. Paragraph 8 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 8.

9. Paragraph 9 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 9.

GENERAL ALLEGATIONS

10. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the Complaint, and specifically avers that Defendant is a co-author and co-owner of the song "One on One Fun" (the "Disputed Song").

13. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the Complaint, and avers that Defendant was entitled and authorized to record the Disputed Song for use and exploitation by her record company, Epic/Streamline Records.

15. Defendant denies the allegations in paragraph 15 of the Complaint, and avers that Defendant Hunte presented Defendant Braxton with an unfinished work that ultimately became the Disputed Song by their joint contributions.

16. Defendant denies the allegations in paragraph 16 of the Complaint and avers that Defendant is a co-writer and co-owner of the Disputed Song, which appears on her album "Love and War" (the "Braxton Album"), which was permissibly distributed and sold.

17. Defendant denies the allegations in paragraph 17 of the Complaint, except admits that the Disputed Song appears on the Braxton Album. Defendant expressly denies that Defendant "illegally copied" any sound recording and that she had any obligation to contact Plaintiff. Defendant Braxton avers that she is a co-writer and co-owner of the Disputed Song.

18. Paragraph 18 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18 to the extent it alleges anything more than legal conclusions.

19. Paragraph 19 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 and avers that the described copyright registration appears on the Copyright Office online searchable site, www.copyright.gov.

20. Defendant denies the allegations in paragraph 20 of the Complaint, and avers that Defendant is a co-writer and co-owner of the Disputed Song, and that Defendant participated in creating the sound recording of the Disputed Song. Defendant denies that she unlawfully or illegally "copied" any sound recording.

COUNT I

21. In response to Paragraph 21 of the Complaint, Defendant repeats and reiterates her responses to each of the allegations in paragraphs 1 through 20 of the Complaint as if set forth at length herein.

22. Defendant denies the allegations in paragraph 22 of the Complaint and avers that Defendant is a co-writer and co-owner of the Disputed Song.

23. Defendant denies the allegations in paragraph 23 of the Complaint and avers that Defendant is a co-writer and co-owner of the Disputed Song.

24. Defendant denies the allegations in paragraph 24 of the Complaint and avers that Defendant is a co-writer and co-owner of the Disputed Song. Defendant expressly denies that Defendant unlawfully or illegally copied any sound recording.

25. Paragraph 25 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 25.

26. Paragraph 26 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 26.

27. Paragraph 27 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 27.

28. Paragraph 28 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 28.

29. Paragraph 29 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 29 and avers that Plaintiff attached to the Complaint an email that was purportedly sent to third parties.

30. Paragraph 30 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 30.

31. Paragraph 31 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 31.

32. The "WHEREFORE" paragraph following paragraph 31 contains a request for relief for which no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph and expressly denies that Plaintiff is entitled to any of the requested relief.

COUNT II

33. In response to Paragraph 32 of the Complaint, Defendant repeats and reiterates her responses to each of the allegations in paragraphs 1 through 20 of the Complaint as if set forth at length herein.

34. Paragraph 33 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant avers that Plaintiff purports to allege a claim for declaratory relief in paragraph 33.

35. Paragraph 34 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 34.

36. Paragraph 35 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 35.

37. Paragraph 36 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of

the allegations in paragraph 36, and avers that Defendant is a co-writer and co-owner of the Disputed Song

38. Paragraph 37 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 37.

39. Paragraph 38 of the Complaint contains a request for relief for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 38, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

40. Paragraph 39 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 39, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

41. The "WHEREFORE" paragraph following paragraph 39 contains a request for relief for which no response is required. Furthermore, Count II of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as

to the truth or falsity of the allegations therein, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

COUNT III

42. In response to paragraph 40 of the Complaint, Defendant repeats and reiterates her responses to each of the allegations in paragraphs 1 through 20 of the Complaint as if set forth at length herein.

43. Paragraph 41 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 41.

44. Paragraph 42 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 42.

45. Paragraph 43 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 43, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

46. Paragraph 44 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 44, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

47. Paragraph 45 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 45.

48. The "WHEREFORE" paragraph following paragraph 45 contains a request for relief for which no response is required. Furthermore, Count III of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein.

COUNT IV

49. In response to paragraph 46 of the Complaint, Defendant repeats and reiterates her responses to each of the allegations in paragraphs 1 through 20 of the Complaint as if set forth at length herein.

50. Paragraph 47 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required,

Defendant avers that Defendant had the right and authority to use and exploit the Disputed Song, including as embodied on the Braxton Album, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

51. Paragraph 48 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 48, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

52. Paragraph 49 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 49, and avers that Plaintiff does not appear in the song credits to the Disputed Song.

53. Paragraph 50 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50.

54. Paragraph 51 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required,

Defendant denies that she was required to obtain any license to use or exploit the Disputed Song or the sound recording thereof.

55. Paragraph 52 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 52.

56. Paragraph 53 of the Complaint contains legal conclusions for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 53.

57. The "WHEREFORE" paragraph following paragraph 53 contains a request for relief for which no response is required. Furthermore, Count IV of the Complaint is alleged only against Defendant Hunte for which no response is required by Defendant Braxton. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein.

COUNT V

58. In response to Paragraph 54 of the Complaint, Defendant repeats and reiterates her responses to each of the allegations in paragraphs 1 through 20 of the Complaint as if set forth at length herein.

59. Paragraph 55 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, and to the extent alleged against Defendant

Braxton, she denies the allegations in paragraph 55. Defendant otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55.

60. Paragraph 56 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 56, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

61. Paragraph 57 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 57 to the extent that it alleges she has received any benefit greater than her entitlement, and avers that Defendant is a co-writer and co-owner of the Disputed Song.

62. Paragraph 58 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the allegations in paragraph 58.

63. Paragraph 59 of the Complaint contains legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 59 to the extent that it alleges she has received any benefit greater than her entitlement, and avers that Defendant is a co-writer and co-and co-owner of the Disputed Song.

64. The "WHEREFORE" paragraph following paragraph 59 contains a request for relief for which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to any relief that would reduce Defendant's share of the benefits from the Disputed Song or otherwise.

AFFIRMATIVE DEFENSES

As and for her affirmative defenses, Defendant states the following:

1. The Complaint fails to state a claim against the Defendant upon which relief can be granted.

2. The claims purportedly alleged in the Complaint against Defendant are barred, in whole or in part, under the applicable statute of limitations or the doctrine of laches.

3. Plaintiff is equitably or promissorially estopped from asserting the claims purportedly alleged in the Complaint against Defendant based on an agreement or agreements between Plaintiff and Defendant Hunte.

4. Plaintiff's purported losses or damages, if any, were proximately caused by the negligent, careless, reckless or intentional acts of third parties as to which Defendant neither had the right, duty, nor opportunity to exercise any control over, and who acted without the knowledge, participation, approval or ratification of Defendant.

5. Defendant has not engaged in any willful or improper conduct against Plaintiff.

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

7. The claims purportedly alleged in the Complaint against Defendant are barred by the doctrine of unclean hands.

8. Plaintiff is barred from asserting or otherwise pursuing the claims purportedly alleged in the Complaint against Defendant based on consent or license, both express and implied.

9. Plaintiff is barred from asserting or otherwise pursuing the claims purportedly alleged in the Complaint against Defendant on the ground that Plaintiff had knowledge of or

acquiesced in all uses and exploitations of the Disputed Song and the sound recording thereof by any of the Defendants.

10. Plaintiff is barred from asserting or otherwise pursuing the claims purportedly alleged in the Complaint against Defendant based on her approval or ratification of the acts she complains of in the Complaint.

11. Plaintiff is barred from asserting or otherwise pursuing the claims purportedly alleged in the Complaint against Defendant because Defendant is a co-writer and co-owner of the Disputed Song.

12. Plaintiff's damages, if any, should be mitigated, in whole or in part, based on the doctrine of innocent infringement or innocent intent.

13. Defendant adopts the defenses asserted by any other defendant in this action to the extent they provide a defense to this action.

14. Because no discovery has been taken as of this date, Defendant reserves the right to file and serve additional defenses as appropriate.

15. Defendant reserves the right to amend, supplement and/or correct these affirmative defenses as necessary.

Dated: September 15, 2014

Respectfully submitted,

GRAYROBINSON, P.A.

By: s/ Ronald J. Tomassi, Jr.
Ronald J. Tomassi, Jr.
Florida Bar No. 029751
401 East Las Olas Blvd., Suite 1000
Fort Lauderdale, Florida 33301
Telephone: (954) 761-8111
Facsimile: (954) 761-8112

Email: ronald.tomassi@gray-robinson.com

- and -

JONATHAN D. DAVIS, P.C.
(*pro hac vice* motion to be submitted)
10 Rockefeller Plaza, Suite 1015
New York, New York 10020
Telephone: (212) 687-5464
Facsimile: (212) 697-2521

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2014 the foregoing document was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Ronald J. Tomassi, Jr.

SERVICE LIST

Richard C. Wolfe, Esq.
E-Mail: rwolfe@wolfelawmiami.com
WOLFE LAW MIAMI, P.A.
175 SW 7th Street, Suite 2410
Miami, Florida 33130
Telephone: 305-384-7370
Facsimile: 305-384-7371
Counsel for Plaintiff Emmi Kozulin

Darren Adam Heitner
E-Mail: dheitner@wolfelawmiami.com
HEITNER LEGAL, P.L.L.C.
1108 Kane Concourse , Suite 305
Bay Harbor Islands, Florida 33154
Telephone: 954-558-6999
Facsimile: 954-927-3333
Counsel for Plaintiff Emmi Kozulin

Angela Hunte
349 The Promenade
Edgewater, New Jersey 07020
Via US Mail

Ronald J. Tomassi, Jr., Esq.
E-Mail: ronald.tomassi@gray-robinson.com
GRAY ROBINSON, P.A.
401 East Las Olas Boulevard , Suite 1000
Fort Lauderdale, Florida 33301
Telephone: 954-761-8111
Facsimile: 954-761-8112
Counsel for Defendant Tamar Braxton

Jonathan D. Davis, Esq.
E-Mail: jdd@jddavispc.com
JONATHAN D. DAVIS, P.C.
(pro hac vice motion to be submitted)
10 Rockefeller Plaza, Suite 1015
New York, New York 10020
Telephone: 212-687-5464
Facsimile: 212-697-2521
Counsel for Defendant Tamar Braxton