

McCartney Says Beatles Song Fight Must Be Decided Now

By **Bill Donahue**

Law360, New York (March 29, 2017, 4:03 PM EDT) -- Attorneys for Paul McCartney fired back Wednesday over claims that he prematurely filed a lawsuit in a bid to recover the rights to hundreds of Beatles songs from Sony/ATV, saying the music publisher is trying to "leave McCartney in suspense."

The rock legend is suing Sony/ATV for an assurance it won't hit him with a breach of contract suit for clawing back the rights to the iconic tunes, but the publisher said earlier this month that suit was premature, since it had never actually threatened him with litigation.

In a response letter to the court Wednesday, attorneys for McCartney said the publisher had also — rather conspicuously — declined to promise that it would not sue at some point in the future.

"As long as Sony/ATV refuses to disavow any right to sue for breach of contract, McCartney has a cloud over the title to his works, which devalues his rights," McCartney's lawyers wrote. "This court should reject Sony/ATV's request for delay and instead proceed to resolve this case on its merits.

McCartney sued the publisher in January for a declaratory judgment that his efforts to reclaim control of the Beatles songs from Sony/ATV — using the Copyright Act's so-called termination right — won't be trumped by contracts he signed with the publisher.

That termination right, designed to help artists monetize works long held by a publisher, can generally not be waived by a contract, but an English court ruled last year that the band Duran Duran had done exactly that. With McCartney's songs set to revert back to him next year, he said the lawsuit was necessary to ensure that the same would not happen to him.

Earlier this month, though, the publisher said McCartney's suit should be tossed as premature. Sony/ATV said he was seeking an "advisory opinion on a hypothetical claim" that might never be filed.

Granting that order, the star's attorneys wrote Wednesday, would "leave McCartney in suspense" by declining to resolve a "legal dispute Sony/ATV created."

"Is he exposed to claims for damages if he relies on his undisputed rights under U.S. copyright law or not?" the filing asked. "Will it sue him for breach of contract or not? Can he license his copyrights as his termination notices become effective, or does that present legal risks? Will third parties be willing to negotiate with McCartney, and at what reduction in price, concerned that they may ultimately face a

Sony/ATV lawsuit for interference with contractual relations?”

If Sony doesn't want to fight in court, McCartney's attorneys said, there's an easy solution.

“Sony/ATV could, through an unconditional covenant not to sue, eliminate the threat of legal action it earlier raised and has not foresworn,” the letter said.

McCartney lost out on the rights to many of The Beatles' most iconic songs in 1985, when they were purchased by Michael Jackson. The estate of the late pop star sold the rights to Sony/ATV last year for a reported \$750 million.

U.S. copyright law allows creators to “terminate” assignments of their rights after a number of years, a provision created in the 1970s in part to give artists and their heirs a chance to monetize valuable works that were handed over to a publisher.

The termination right generally cannot be waived under a publishing contract, but the English court ruling on the Duran Duran case said the band's contract with Gloucester Place Music Ltd. essentially trumped the group's bid to regain its rights.

After the ruling, McCartney's attorneys reached out to Sony for assurances the publisher would hand over its rights without a similar fight, but the company would say only that it didn't want to get tangled in litigation.

McCartney responded with his lawsuit, saying any breach of contract claim would run contrary to U.S. copyright law.

McCartney is represented by Michael A. Jacobs, Roman Swoopes, J. Alexander Lawrence and Paul Goldstein of Morrison & Foerster LLP, and John L. Eastman and Lee V. Eastman of Eastman & Eastman.

Sony/ATV is represented by Donald S. Zakarin and Ross McClintic Bagley of Pryor Cashman LLP

The case is James Paul McCartney v. Sony/ATV Music Publishing LLC et al., case number 1:17-cv-00363, in the U.S. District Court for the Southern District of New York.

--Editing by Aaron Pelc.