

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: INTERSCOPE GEFFEN A & M, A)
DIVISION OF UMG RECORDINGS, INC.,)
)
Petitioner.)
)
)

ORDER

FILED

FEB - 4 2002

LEONARD GREEN, Clerk

Before: NORRIS and CLAY, Circuit Judges; SARGUS, District Judge.*

The petitioner seeks a writ of mandamus directing the district court to vacate an order that denied a motion to transfer under 28 U.S.C. § 1404(a) and to transfer this matter to the Central District of California. Because the petitioner has not demonstrated a clear and indisputable right to the requested relief, the petition shall be denied without any further response. *See* Fed. R. App. P. 21(b)(1).

This action was originally commenced by four plaintiffs who filed a 901-page complaint naming over 700 defendants. Therein, the plaintiffs alleged that the defendants had engaged in copyright infringement in violation of 17 U.S.C. §§ 101, et seq., by use of "sampling" in recordings by rap music artists. (Sampling is the practice of recording rap music over, or accompanied by, other musical recordings.) Each of the counts of copyright infringement in the original complaint involved a single recording alleged to have infringed upon a work in which the plaintiffs claimed a right. The complaint also included counts under state law.

*The Honorable Edmund A. Sargus, Jr., United States District Judge for the Southern District of Ohio, sitting by designation.

TRUE COPY
Attest
LEONARD GREEN, Clerk
By Patty Eldon
Deputy Clerk

Numerous motions to sever were filed by various defendants. On July 25, 2001, the district court issued a decision that granted those motions. *Bridgeport Music, Inc. v. IIC Music*, 202 F.R.D. 229 (M.D. Tenn. 2001). Therein, the court concluded that each claim of infringement was transactionally discrete and that severance was appropriate. In a subsequent order, the court directed the plaintiffs to file amended complaints, with each complaint to include only those plaintiffs and defendants involved in a particular alleged infringement. Accordingly, two of the original four plaintiffs filed an amended complaint against the petitioner.

The petitioner then moved pursuant to 28 U.S.C. § 1404(a) to transfer this action to the district court for the Central District of California. The district court denied the motion in a brief order that referenced its earlier orders and concluded “based on the totality of the circumstances, that it is not in the best interest of justice to transfer this case . . . to another venue.” Following the entry of that order, the petitioner filed the instant petition for relief in mandamus.

An order overruling a motion for transfer under 28 U.S.C. § 1404(a) is not immediately appealable. *Bufalino v. Kennedy*, 273 F.2d 71 (6th Cir. 1959). Relief, if at all, may be via a writ of mandamus. See *Lemon v. Druffel*, 253 F.2d 680 (6th Cir.), *cert. denied*, 358 U.S. 821 (1958); *Sun Oil v. Lederle*, 199 F.2d 423 (6th Cir. 1952).

Mandamus, however, is reserved for the exceptional case where there is a clear abuse of discretion or a usurpation of judicial power. *Panhandle Easter Pipe Line Co. v. Thornton*, 267 F.2d 459 (6th Cir.), *cert. denied*, 361 U.S. 820 (1959). The petitioner must demonstrate that its right to issuance of the writ is clear and indisputable. *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379 (1953). Relevant factors are: 1) whether the petitioner has other adequate means, such a direct appeal, to obtain relief; 2) whether the petitioner will be damaged in a way not correctable on appeal; 3) whether the district court’s order is clearly erroneous as a matter of law; 4) whether the order is

an oft-repeated error or manifests a persistent disregard of the federal rules; and 5) whether the district court's order raises new and important problems or issues of first impression. *In re Bendectin Products Liability Litigation*, 749 F.2d 300, 303-304 (6th Cir. 1984).

The district court's order denying transfer relies upon the basis for the original severance, which was granted in part because the initial complaint presented an action that could not be administered. To leave the case in its original form would have been unworkable and would have excessively burdened the defendants. By severing the counts and requiring reservice of amended complaints, the district court took steps to effectively manage what threatened to be unmanageable. The court relies upon those same concerns of administration in keeping the severed claims in the original jurisdiction. There also appears to be the possibility of common discovery interests. Thus, this case does not present one in which the district court refused to engage in a balancing of factors, *see Hustler Magazine, Inc. v. United States Dist. Court*, 790 F.2d 69 (10th Cir. 1986), but rather one in which the court has relied upon an interest against transfer. We are not convinced that an abuse of discretion warranting intervention in mandamus has been demonstrated.

Therefore, the instant petition for a writ of mandamus hereby is **DENIED**.

ENTERED BY ORDER OF THE COURT


Clerk