

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: [Illegible]

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LAW OFFICES
EMMERBOCKER BUILDING
112 WEST 44th STREET
NEW YORK, CITY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

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JESSICA M. HILL, :
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 Plaintiff, :
 :
 -against- :
 :
 SAM H. HARRIS, SAM H. HARRIS THEATRICAL : Equity #78-350
 ENTERPRISES, INC., IRVING BERLIN AND :
 MOSS HART, :
 :
 Defendants. :
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MEMORANDUM IN OPPOSITION TO CERTAIN NUMBERED
INTERROGATORIES PROPOUNDED TO SAM H. HARRIS
THEATRICAL ENTERPRISES, INC., IN THE ABOVE-
CAPTIONED MATTER.

STATEMENT

Plaintiff is allegedly the copyright owner of a song or ditty entitled "Good Morning to All". She charges that in a play entitled "AS THOUSANDS CHEER", and in a skit entitled "World's Wealthiest Man Celebrates 95th Birthday", this song or ditty of which she is the copyright owner was sung or recited without her authority or permission. She complains that each rendition of this song or ditty is a violation of her copyright, and that, therefore, she is entitled to statutory damages for each such alleged infringement.

On September 20, 1934, the plaintiff herein addressed some 26 interrogatories to Sam H. Harris, which were answered by Mr. Harris in full.

On March 6, 1935, the plaintiff addressed some 23 interrogatories to Sam H. Harris Theatrical Enterprises, Inc. All except 8 of these interrogatories were answered by this corporation.

The following interrogatories were not answered because defendant and its counsel deem them highly improper and totally irrelevant.

I.

Interrogatory 2.

"How many shares of stock does said Sam H. Harris own in said corporation?"

Sam H. Harris is a co-defendant with the corporation and the corporation submits that the number of shares of stock which he owns in the corporation is neither pertinent to the issues raised in the case, nor competent for any purposes of proof which the plaintiff may advance. It is totally irrelevant what relation Sam H. Harris bears to the Sam H. Harris Theatrical Enterprises, Inc., as far as stockholding is concerned.

In answer to the previous interrogatory (No. 1), this defendant has answered that Sam H. Harris is President and Treasurer of Sam H. Harris Theatrical Enterprises, Inc., and this is all the plaintiff is entitled to know and all that is relevant to the issues in this case.

II.

Interrogatory No.3

"What is the number of issued and outstanding shares of stock in said corporation?"

The same objections are applicable to this interrogatory as are addressed to Interrogatory No.2. It is entirely irrelevant and incompetent how many shares of stock are issued and outstanding in this corporation, and such information has no bearing on the issues in this case.

III.

Interrogatory No.18 - -

"Was any song or ditty sung in the skit entitled 'World's Wealthiest Man Celebrates 95th Birthday'?"

In the first place, attached to the answers to these interrogatories, and marked Exhibit "A", is a copy of the script for the skit entitled "World's Wealthiest Man Celebrates 95th Birthday", so that any information they seek in Interrogatory No.18 is necessarily included in the answer to Interrogatory No.4.

In the second place, the interrogatory is improper. The plaintiff would be entitled to ask whether "Good Morning to All" was sung in the skit entitled "World's Wealthiest Man Celebrates 95th Birthday", but certainly plaintiff is not entitled to the broad question seeking to ascertain whether any song or ditty was sung.

The purpose of the question is further confused when followed in to the succeeding interrogatory.

IV.

Interrogatory No.19.

"Was such song or ditty as sung accompanied by the orchestra?"

If there were more than one song or ditty sung in the skit, then this question becomes meaningless. The only song or ditty with which the plaintiff is concerned is "Good Morning to All", and were the interrogatory addressed to this point, to seeking information whether that song, if sung was accompanied by an orchestra, same would be proper. As now written it is highly improper.

V.

Interrogatory No.20.

"Was any song or ditty recited in the skit "World's Wealthiest Man Celebrates 95th Birthday" as presented in the production "As Thousands Cheer?"

We have likewise failed to answer this interrogatory because of the word any. If the interrogatory is changed to ask whether "Good Morning to All" was sung or recited in the skit, we would consider the question proper. We do not consider the question as now phrased or worded pertinent to the issues in the case.

Likewise, we consider all of these questions to be annoying redundancies, because all of them are in substance answered when we attached a script of the sketch (Exhibit "A") in which the plaintiff claims her work was sung.

VI.

Interrogatory No. 21

"Was such recitation accompanied by the orchestra?"

This, of course, is supplemental to Interrogatory No. 20 and, therefore, the objections that apply to Interrogatory No.20, likewise apply to this interrogatory.

VII.

Interrogatory No.22

"Set forth the words of such song or songs, ditty or ditties, recitation or recitations, as used in said skit."

The same objections apply to this interrogatory. In the first place, it is fully answered by the script (Exhibit "A") and thus is useless redundancy and, in the second place, it is too broad when it asks us to set forth the words of song or songs. The words to each and every recitation or song used in the skit are set forth in Exhibit "A". So, we might have answered this question by "See answer to Interrogatory No.4".

VIII.

Interrogatory No.23.

"Set forth the score of any music played in accompaniment to any song, ditty, or recitation as presented in said skit."

Again, we object that if the scope of the interrogatory were restricted to the song or music of theirs which they say was infringed, the question would be proper. In its present form, however, the scope is much too broad. As a matter of fact, and to save time, there was no score played in accompaniment to the song, ditty or recitation, to the use of which they have complained.

CONCLUSION

It is therefore, respectfully urged that the motion upon which these proceedings are based be denied.

RESPECTFULLY SUBMITTED,

O'BRIEN, DRISCOLL & RAFTERY,

Attorneys for Defendant
Sam H. Harris Theatrical Enterprises,
Inc.

Paul D. O'Brien,

of Counsel