

SUBSTANCE OF THE ACTION

1. Plaintiffs are the Estate of the famed singer songwriter John Townes Van Zandt (“Van Zandt”), who died in 1997, and Van Zandt’s former spouse, Jeanene. Together, Plaintiffs are the owners of all copyrights in Van Zandt’s music catalog and in certain of Van Zandt’s performances. In addition, the Estate (and thus, its beneficiaries), has succeeded to all of the recording agreements Van Zandt entered into during his tragically shortened career. Van Zandt’s heirs are his three children: John Townes Van Zandt II (“JT”), William Vincent Van Zandt (“Will”), and Katie Belle Van Zandt (“Katie Belle”).

2. During his life Van Zandt entered into a series of recording agreements with companies controlled by Eggers. Since Van Zandt’s death in 1997, Eggers, through his various companies, has released a slew of albums and licensed other recordings containing Van Zandt’s compositions. Eggers has repeatedly and egregiously infringed Plaintiffs’ copyrights in Van Zandt’s compositions, failing to obtain the “mechanical licenses” required by the Copyright Act of 1976, as amended (17 U.S.C. § 101 *et seq.*) (the “Copyright Act”). In addition, Eggers and his companies have failed to provide an accounting or pay royalties to Van Zandt’s heirs under the various recording agreements, notwithstanding repeated promises to do so.

3. This action is an attempt to obtain for Van Zandt’s children their inheritance, as well as to prevent Eggers, a serial infringer, from ever again exploiting the songs, performances, or memory of Townes Van Zandt.

THE PARTIES

4. The Estate was probated in Tennessee. The beneficiaries of the Estate are Van Zandt's three children: JT age 35, Will age 22, and Katie Belle age 13 (collectively the "Beneficiaries").

5. Jeanene, a resident of Tennessee, is the former spouse of Van Zandt, the Executrix of the Estate, and the owner, by assignment, of certain of the copyrights in and to the compositions in Van Zandt's music catalog.

6. Upon information and belief, Eggers is an individual residing within this judicial district.

7. Upon information and belief, Egge is a Delaware corporation with a principal place of business at 27 West 24th Street, New York, New York 10011.

8. Upon information and belief, defendant Tomato Records is a record label owned and operated by Eggers either personally or through Egge or another legal entity.

9. Upon information and belief, TMW is a New Jersey Corporation that is located and/or does business in this judicial district.

10. Upon information and belief, TMC is a New Jersey Corporation with a principal place of business at 20 Beekman Place, New York, New York 10011.

11. Upon information and belief, Navarre is a Minnesota Corporation with a principal place of business at 7400 49th Avenue, New Hope, Minnesota 55428.

12. Upon information and belief, Orchard is a Delaware corporation with a principal place of business at 100 Park Avenue, New York, New York 10017.

13. Upon information and belief, Varese Sarabande is a California corporation with a principal place of business at 11846 Ventura Boulevard, Suite 130, Studio City, California 91604.

JURISDICTION & VENUE

14. The Court has jurisdiction under Section 1338(a) of the Judicial Code, 28 U.S.C. § 1338(a). In addition, the Court has diversity jurisdiction under Section 1332 of the Judicial Code, 28 U.S.C. § 1332, because the controversy is between citizens of different states and the matter in controversy exceeds the value of \$75,000, exclusive of interest and costs. The Court has supplemental jurisdiction over the state law claims under Section 1367(a) of the Judicial Code, 28 U.S.C. § 1367(a) and under principles of pendent jurisdiction.

15. Venue is proper under Section 1391(b) and (c) of the Judicial Code, 28 U.S.C. § 1391(b), (c), because, upon information and belief, Defendants do business in, have substantial contacts with and/or may be found in the Southern District of New York, and a substantial portion of the events at issue have arisen and will arise in this judicial district.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

Background

16. Townes Van Zandt was one of the world's most gifted songwriters who inspired numerous artists and who arguably wrote some of the most beautiful and haunting melodies and poetry ever recorded. His songs have been recorded by a number of well-known artists, including Willie Nelson, Lyle Lovett, Steve Earle, and Nora Jones.

17. During his career, Van Zandt (either individually or through his production company) entered into a series of recording agreements with companies either owned or controlled by Eggers. Specifically, Van Zandt entered into the following agreements: (i) Agreement with Poppy Records, Inc. dated February 1, 1968 ("Agreement 1"); (ii) Agreement with Poppy Industries, Inc. dated August 5, 1971 ("Agreement 2"); (iii) Agreement with TMC dated September 26, 1977 ("Agreement 3"); (iv) Agreement with TMC dated June 19, 1978 ("Agreement 4"); and (v) Agreement with TMW dated July 26, 1989 ("Agreement 5") (collectively the "Recording Agreements.")

18. Upon information and belief, Eggers and/or Egge is/are the successor(s) to all of the Recording Agreements.

19. Van Zandt fulfilled his obligations pursuant to the Recording Agreements and provided the required sound recordings (the "Van Zandt Sound Recordings").

20. Under the Recording Agreements, Van Zandt was to receive royalty payments at rates specified in such Agreements (the "Artist Royalties") for each sale of the Van Zandt Sound Recordings.

21. Separate and apart from Artist Royalties, the Copyright Act required that Van Zandt also receive so-called "mechanical royalties" for each of his original compositions that appeared on any of the Van Zandt Sound Recordings. Mechanical royalties are set by statute.

22. During Van Zandt's lifetime, Eggers, through companies owned or controlled by him, released and re-released Van Zandt Sound Recordings.

23. While he was alive, Van Zandt had great difficulty in receiving Artist Royalties and royalty accountings from Eggers and Eggers' companies. In an attempt to resolve the disputes relating to Eggers' failure to pay Artist Royalties and failure to provide accountings, in or around 1990, Van Zandt and Eggers' company, TMW, entered into what the parties referred to as the "Get-Even Agreement." Under the Get-Even Agreement, Eggers and his company agreed that, on a going-forward basis, Eggers' company would pay Artist Royalties without deducting any previous advances, recording costs, or costs of any other nature incurred in connection with the Van Zandt Sound Recordings. In addition, Eggers' company undertook the obligation to account to Van Zandt on a semiannual basis, with statements due after the end of each accounting period.

24. In May 1994, Van Zandt and Jeanene divorced. As part of the divorce settlement, Van Zandt assigned to Jeanene the copyrights in a significant number of Van Zandt's songs. Notwithstanding the divorce, Jeanene and Van Zandt maintained a close relationship. Jeanene

was given power of attorney to act in Van Zandt's stead, which she held until his death, and Jeanene continued to handle all of Van Zandt's personal and business affairs from the time of the divorce until his death.

25. Van Zandt's life ended on January 1, 1997 and upon his death, Jeanene and Van Zandt's oldest child, JT, were appointed co-Executors of the Estate. Under Van Zandt's Last Will and Testament, the Beneficiaries inherited the copyrights in Van Zandt's musical compositions not owned by Jeanene, as well as the rights to the royalty income for those licensed compositions and their performances, and the copyrights in and to all of the sound recordings created by Van Zandt which were not conveyed to any third party during Van Zandt's lifetime.

26. The Beneficiaries and Jeanene, respectively, own valid and subsisting copyright registrations for all or virtually all of Van Zandt's musical compositions (collectively the "Van Zandt Compositions").

27. Since inheriting the copyrights in certain of the Van Zandt Compositions, the Beneficiaries have exercised their rights pursuant to Section 304 (a)(2)(A)(i) of the Copyright Act to recapture the renewal term of copyright in certain Van Zandt Compositions (the "Recaptured Compositions").

28. The Estate was closed on November 6, 2002 and the Executors' duties were fully discharged. However, on October 12, 2005 the Chancery Court of Wilson County, Tennessee ordered the Estate reopened and appointed Jeanene as Executrix.

Defendants' Infringing Activities

29. After Van Zandt's death, Eggers, either through his own companies or through third party licensees, began flooding the market with Van Zandt Sound Recordings, while failing both to pay Artist Royalties or mechanical royalties, as well as failing to account for sales.

30. For example, upon information and belief, in or around May 1999, Eggers, through his company, The Tomato Company, LLC, entered into an agreement (the "Charly

Agreement”) with Charly Acquisitions Limited, an Irish Company(“Charly”), under which Charly was granted exclusive world wide rights (excluding the United States and Canada) to certain Van Zandt Sound Recordings. Eggers, through his company, received an advance against royalties of \$250,000 from Charly (the “Charly Advance”). However, the Beneficiaries have never received any portion of the Charly Advance and, despite repeated requests, neither Eggers, The Tomato Company, LLC, nor any of Eggers’ other companies, has ever accounted to the Estate or to the Beneficiaries for this payment.

31. Meanwhile, upon information and belief, since Van Zandt’s death, under the Charly Agreement, Charly has either released or licensed for release no less than a dozen Van Zandt albums. As is the case with the Charly Advance, the Beneficiaries have never received any Artist Royalties for these albums or any accounting for them, and Plaintiffs have not received any mechanical royalties for the use of the Van Zandt Compositions on the Charly recordings.

32. Eggers and his companies have also released Van Zandt Sound Recordings domestically for which they have failed to pay Artist Royalties, have failed to account, and for which they have failed to obtain the requisite mechanical licenses. Upon information and belief, in or about 2000, Eggers re-activated his label, Tomato Records, and began re-releasing Van Zandt Sound Recordings (the “Post-2000 Releases”).

33. Upon information and belief, the Post-2000 Releases include, but are not limited to the following albums:

ALBUM	RELEASE DATE
<i>Best of Townes Van Zandt</i>	November 1, 2000
<i>Texas Rain</i>	November 1, 2000
<i>Townes Van Zandt</i>	March 1, 2002

ALBUM	RELEASE DATE
<i>Townes Van Zandt – Flyin’ Shoes</i>	March 1, 2002
<i>Townes Van Zandt – For the Sake of the Song</i>	March 1, 2002
<i>High Low & In Between</i>	March 1, 2002
<i>Late Great Townes Van Zandt</i>	March 1, 2002
<i>Nashville Sessions</i>	March 1, 2002
<i>Our Mother the Mountain</i>	March 1, 2002
<i>Live at the Old Quarter</i>	July 1, 2002
<i>Townes Van Zandt – Delta Momma Blues</i>	August 1, 2003
<i>Townes Van Zandt – Be Here to Love Me</i>	August 23, 2005

34. Upon information and belief, the Post-2000 Releases have been and are distributed by defendants Navarre and Orchard.

35. As with the Van Zandt Sound Recordings released pursuant to the Charly Agreement, neither Eggers nor any of the companies that he owns and controls ever paid to the Beneficiaries any Artist Royalties for the sales of the Post-2000 Releases, as prescribed under the Recording Agreements, and none of the defendants has provided any of the regular accountings required under the Get-Even Agreement.

36. Similarly, neither Eggers nor any of the companies he owns and controls ever obtained the requisite mechanical licenses for any of the Van Zandt Compositions included on the Post-2000 Releases.

37. In addition, certain of the Defendants have released sound recordings featuring live performances by Van Zandt not authorized either by the Recording Agreements, or any other agreements (the “Infringing Live Recordings”). The Infringing Live Recordings include, but are not limited to, the following:

