

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the Application of

RICHARD ELI BALL, EDE LLC, JOSEPH
ARENDS SOWELL, III as trustee of the
Joseph A. Sowell, III Revocable Trust, MUSIC
WORLD ENTERTAINMENT CORPORATION,
MARTIN KELMAN, RONALD LAZAROV,
STEPHEN MADSEN, and CLARITAS PRIVATE
CREDIT FUND, I, LP,

Case No.: 24-cv-5086

**PETITION FOR JUDGMENT
CONFIRMING FINAL
ARBITRATION AWARD**

Petitioners,

-against-

UTOPIA MUSIC HOLDINGS (US) INC. and
UTOPIA MUSIC AG,

Respondents.

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Petitioners, Richard Eli Ball, Ede LLC, Joseph Arends Sowell, III as trustee of the Joseph A. Sowell, III Revocable Trust, Music World Entertainment Corporation, Martin Kelman, Ronald Lazarov, Stephen Madsen, and Claritas Private Credit Fund, I, LP (“Petitioners”), through their attorneys Reitler Kailas & Rosenblatt LLP, hereby petition this Court, pursuant to Chapter 2 of the Federal Arbitration Act (the “FAA”), 9 U.S.C. §§ 201 et seq., and Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38 (the “New York Convention”), for entry of an order confirming and recognizing the Final Award dated June 17, 2024 (“Final Award”) entered in favor of Petitioners and against Respondents, Utopia Music Holdings (US) Inc. (“Utopia Music”) and Utopia Music AG. (“Utopia AG,” and together with Utopia Music, “Utopia” or “Respondents”) in an arbitration administered by the London Court of International Arbitration (“LCIA”), sitting in London, England, pursuant

to the rules of the LCIA (the “LCIA Rules”), after a hearing on written submission. Petitioners aver as follows:

INTRODUCTION

1. This case arises out of a transaction entailing the sale of 100% of the units of Lyric Financial LLC (“Lyric”) pursuant to a Sale and Purchase Agreement made on November 11, 2021 and stated to be effective as of October 29, 2021 (the “SPA”). The Petitioners in this action are the sellers, who together owned Lyric. The Respondents, Utopia Music, is the purchaser of Lyric, and its Swiss parent company, Utopia AG, is a guarantor on the transaction.

2. The purchase price under the SPA was US\$ 8 million, which was divided between a US\$ 5 million payment due upon conclusion of the SPA, followed successively by two deferred payments of US\$ 1.5 million each.

3. Utopia failed to make the final US\$ 1.5 million installment of the purchase price and on September 29, 2023,

4. Petitioners commenced an arbitration proceeding with the London Court of International Arbitration (“LCIA”) and pursuant to the LCIA Rules against Utopia, pursuant to the terms of Section 20 of the SPA. Petitioners brought claims against Utopia Music for breach of the SPA and against Utopia Music AG as guarantor.

5. A Final Award was rendered by an Arbitration Panel (the “Panel”) on June 17, 2024. For the reasons discussed in the Final Award, the Panel concluded that the SPA was a valid and binding contract (which Respondents did not contest), and that Respondents are liable to Petitioners for Respondents’ nonpayment of the final \$15 million installment, and that Petitioners should be awarded damages, including costs, fees, and interest, as set forth therein.

6. A copy of the Final Award is attached as Exhibit A. The Panel awarded Petitioners their full damages, fees and costs, and pre-award and post-award interest. As of the filing date of this Petition, the Final Award totals \$1,862,995.54.

PARTIES

7. Richard Eli Ball (“Ball”) is a Tennessee citizen who resides in the State of Tennessee.

8. EDE LLC is a Tennessee limited liability company wholly owned by Richard Eli Ball with its principal place of business in Tennessee.

9. Joseph Arends Sowell, III (in his capacity as trustee of the Joseph A. Sowell, III Revocable Trust) is a Tennessee citizen who resides in the State of Tennessee.

10. Music World Entertainment Corporation (“MWEC”) is a Texas corporation with its principal place of business in Texas.¹

11. Martin Kelman is a Tennessee citizen who resides in the State of Tennessee.

12. Ronald Lazarov is a Tennessee citizen who resides in the State of Tennessee.

13. Stephen Madsen is a New York citizen who resides in the State of New York.

14. Claritas Private Credit Fund I, LP is a Tennessee limited partnership wholly owned by Tennessee citizens with its principal place of business in Tennessee.

15. Utopia Music is a Delaware corporation with its principal place of business in Delaware. It is a subsidiary of the parent corporation Utopia AG, which is a Swiss corporation with its principal place of business in Zug, Switzerland.

¹ MWEC was incorrectly referred to in the SPA [see page 61] as “Music World Entertainment Group.” The expression “Music World Entertainment Group” describes a group of companies controlled by Mathew Knowles, but MWEC is the specific company within this group which owned shares in Lyric (and which, pursuant to the SPA, transferred those shares to Utopia.

JURISDICTION AND VENUE

16. The United States is a party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”).

17. The Convention is implemented pursuant to the Federal Arbitration Act (“FAA”), codified at chapter 2 of Title 9 of the U.S. Code.

18. This Court has jurisdiction over this Petition pursuant to 9 U.S.C. § 203, which provides that “[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.”

19. This Court further has subject-matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

20. This Court further has *quasi in rem* jurisdiction over this Petition because of assets of Respondents located in this forum.

21. Venue is proper in this judicial district pursuant to 9 U.S.C. § 9 because the parties agreed to submit all disputes under the SPA to arbitration in accordance with the laws of the state of New York. The agreement between the parties to resolve any disputes by arbitration is set forth in Section 20 of the SPA, which provides in part:

This Agreement and any Dispute are governed by and shall be construed in accordance with the laws of the State of New York, USA.

22. Venue is further proper pursuant to 9 USCA § 204 which provides that “[a]n action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title

may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought . . .”

23. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3). At all relevant times, Respondents have maintained property and/or assets in this forum against which the Final Award may be enforced.

24. Petitioner is not in default in proceeding with such arbitration and has not failed, neglected or refused to arbitrate or pay fees due for such arbitration under the SPA.

FINALITY OF ARBITRATION AWARD

25. Pursuant to the above quoted Section 20 of the SPA, the parties entered into a private arbitration through the LCIA following the filing of Petitioners’ Request for Arbitration.

26. The Panel was appointed by the LCIA Court in accordance with the process identified in Article 5 of the LCIA Rules. The Panel was comprised of Carine Dupeyron, Shane Daly, and Alexander Uff. The LCIA designated Alexander Uff as presiding arbitrator. Neither party objected to the composition of the Panel.

27. A procedural hearing occurred on December 19, 2023 and was held before the Arbitrators via Teams.

28. The parties were present and represented by counsel and jointly declined to hold an evidentiary hearing or engage in discovery, for the purposes of efficiency and cost minimization.

29. As a result of the hearing, on December 20, 2023, the Tribunal issued to the parties Procedural Order No. 1 directing that the arbitration proceed based on written submissions. Either party had the opportunity under Procedural Order No. 1 to elect to conduct an evidentiary hearing by February 20, 2024. Neither party elected to conduct such a hearing.

30. Written submissions were made as follows:

- On December 20, 2023, Petitioners elected to treat their Request for Arbitration and Schedule of Documents as their Statement of Claim in accordance with Article 15.2 of the LCIA Rules and attached a supplementary witness statement from Ball and additional schedule of documents.
- On January 23, 2024, Respondents filed their Statement of Defense and schedule of documents.
- On February 2, 2024, Petitioners filed their Statement of Reply accompanied by a second statement from Ball, a witness statement from Edward Ginis (Lyric's former Chief Technology Officer), an additional schedule of documents, and schedule of legal authorities.
- On February 10, 2024, Respondents filed their Rejoinder accompanied by a witness statement of Sean Keenan (Senior Director of Business & Legal Affairs at Utopia), witness statement of Stephen Clancy (the former Engineering Manager at Lyric, now employed as Staff Software Engineer at Utopia), an updated schedule of documents, and a schedule of legal authorities.
- On February 15, 2024, the Panel permitted Petitioners to respond to the Rejoinder because the "Respondents' Rejoinder includes arguments and evidence that the Claimants have not had an opportunity to address."
- On February 19, 2024, the Petitioners filed their Response to Rejoinder accompanied by a third witness statement from Ball, second statement from Ginis, a statement from Justin Levenson (the Senior Product Manager of Lyric between December 2021 and November 2022), an updated schedule of documents, and updated schedule of legal authorities.

31. The Panel issued the Final Award on June 17, 2024 ("Final Award").

32. The Final Award ordered that payment be made to Petitioners of the full amount claimed, including costs, interest, and attorney's fees.

33. The Final Award provides in part that Respondents are to pay Petitioners the sum of \$1,500,000 in respect of the remaining payment due under the SPA.

34. The Final Award further provides that Respondents pay the Petitioners' Legal Costs in the amount of \$114,860.81.

35. The Final Award further provides that Respondents pay the Petitioners' Arbitration Costs in the amount of £91,787.42 (\$116,259.78).

36. The award also includes pre-award interest at an annual rate comprising the US Federal Reserve Rate of 5.33% plus 2% (two hundred basis points) per annum:

- a. With respect to the sum of \$1,500,000, from April 30, 2023 through June 17, 2024, for a sum of \$124,710.41;
- b. With respect to the sum of £59,985 (\$75,978.20), from March 4, 2024 until June 17, 2024, for a sum of \$1,602.10.

37. The award further assesses post-award interest on the entire amount at the US Federal Reserve Rate of 5.33% plus 2% (two hundred basis points) per annum from June 17, 2024 to the date of the full payment. As of the date of this filing, the post judgment interest award totals \$5,562.35

38. As of the date of this filing, no payment has been made.

39. This petition is authorized by the terms of the SPA's Arbitration Provision, and by Chapter 2 of the FAA.

40. This petition is timely.

RESPONDENTS' ASSETS IN NEW YORK

41. The business Utopia Music acquired from Lyric provides financing to customers by purchasing future royalty streams from rightsholders at a discount, including but not limited to artists, songwriters, producers, record labels, music publishers, and estates.

42. The rightsholders, and subsequently Lyric, through its contractual rights with the rightsholders, are due the accruing future royalties (including recording, producing, publishing, and streaming) and payments from performing rights organizations, publishing companies, and streaming services.

43. Utopia Music is accruing and due royalties, *inter alia*, from the American Society of Composers, Authors, and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), Sony Music Publishing (US) LLC ("Sony Publishing"), and TuneCore (TuneCore").

44. The entities are located in New York and are paying and will continue to pay royalties directly to Utopia Music.

45. ASCAP is a voluntary association with a principal office located at 250 West 57th Street, New York, New York 10107.

46. BMI is a Delaware corporation authorized to do business in New York and located at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007.

47. Sony Publishing is a Delaware limited liability company authorized to do business in New York and located at 25 Madison Ave, Floor 27, New York, New York 10010.

48. TuneCore is a Delaware corporation authorized to do business in New York and located at 5 Main Street, Suite 705, Brooklyn, New York 11201.

FIRST CAUSE OF ACTION

(For Recognition and Enforcement of the Final Award)

49. Petitioner repeats and re-alleges the allegations in paragraphs 1 through 49 as if fully restated herein.

50. The Final Award is final and binding on the parties.

51. Respondents have failed to comply with their obligations under the Award to submit payment to Petitioners.

52. Pursuant to 9 U.S.C. § 207 and Article III of the Convention, Petitioners are entitled to judicial confirmation of the Final Award.

WHEREFORE, Petitioners respectfully request judgment on this Petition as follows:

- a) Entering an Orde confirming the Final Award issued by the Panel in its entirety;
- b) Entering a judgment that conforms to the Final Award of the Panel;

- c) Any such other and further relief as this Court deems appropriate, including awarding Petitioners their costs and attorneys' fees incurred in the enforcement of the Final Award in this proceeding.

Dated: July 3, 2024

Respectfully submitted,

REITLER KAILAS & ROSENBLATT LLP

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