

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

BROADCAST MUSIC, INC,  
Plaintiff

v.

Civil No. 99-125-P-C

BROADCASTMUSIC.COM, INC.,  
Defendant

Gene Carter, District Judge

**MEMORANDUM AND ORDER ON  
REQUEST FOR SPECIAL ASSIGNMENT FOR TRIAL**

Before the Court for action is Defendant's counsel's letter to the Clerk, dated February 8, 2000 (Docket No. 52), which the Court will treat as a motion for special assignment of the above matter for trial and request for protection from trial for the period March 20-24, 27-31, and April 3-14, 2000. Opposing counsel has now joined in the request set forth therein for protection from trial for the period March 20-24, 2000 (Docket No. 53).

Counsel for the Defendant herein appears to articulate a concern that this matter has been delayed in reaching trial because of some lack of diligence on the part of the Court or its staff. I wish to address that aspect of counsel's presentation.

This case was filed in the Court on April 16, 1999. It has progressed through the normal pretrial processes of this Court to the point that it was, ahead of the usual schedule, listed on no less than three different Trial Lists. At no time has a written motion or request been filed, prior to the present one, seeking an expedited scheduling of the case for trial. The only circumstances that have contributed to the case not being reached for trial are the following:

- (1) the significant number of cases set for trial on each Trial List;
- (2) counsel's representation that the case will require at least five days of trial time; and
- (3) counsel on both sides of the case repeatedly seeking, without objection, for reasons of their own, protection from trial at specific times when the case was exposed to trial which interfered with the Court's ability to reach the case for trial on a basis consistent with the Court's other docket obligations.

In fact, counsel have asked to be protected from trial on at least five occasions, prior to Defendant's counsel's present motion, that are reflected on the docket as follows:

- (1) On September 9, 1999, Plaintiff moved for protection from trial for the period November 24-29, 1999.
- (2) On November 18, 1999, Defendant moved for protection from trial for the period December 7-10, December 14, and for the period December 22, 1999, to January 4, 2000.
- (3) On December 14, 1999, Defendant moved for protection from trial for the period January 24-28, 2000.
- (4) On January 21, 2000, Defendant moved for protection from trial for the period February 14-18, 2000.
- (5) On February 1, 2000, Plaintiff moved for protection from trial for the period February 14-25, 2000.

There was never any objection to any of these requests by any counsel in this case. The Court granted them in each case on the basis that they were consented to by opposing counsel.

Counsel's letter of February 8<sup>th</sup> now indicates Defendant's counsel's request for a special assignment in order to accommodate his personal commitments for a vacation for the period March 20-24, 2000, and his professional commitments in other matters during the periods March 27-31 and April 3-14, 2000. He seeks protection from trial during those periods.

Thus, in the period from November 24, 1999, to April 14, 2000, when there will have been a total of approximately ninety-four working days when the case might be scheduled for trial, sixty-four (or more than two-thirds of them) have been, or are sought to be, rendered unavailable by agreement of counsel to accommodate their other interests and commitments. Such a record does not exemplify a burning interest on the part of counsel in expedient trial, even as of this date.

The case is now on the nonjury portion of the Court's March 6, 2000, Trial List after having been removed from the Court's February Trial List in the face of Plaintiff's counsel's most recent, prior request for protection from trial during the period February 14-25, 2000 (Docket No. 51) and to respond affirmatively, in consequence thereof, to the demands of counsel in other cases who more aggressively sought trial. The Court, since January, has been involved in the trial of a continual succession of civil cases that are expected to fully occupy the Court's available trial time to March 6, 2000. It is scheduled to begin on that date a new Trial List, on which this case has been listed.

This Court has one of the most expeditious dockets in the federal judicial system. Its average time from filing to disposition of civil cases is several months short of the national

average in federal courts. This judge, as of January 31, 2000, carries a civil caseload of ninety cases, almost all which are less than one year old. The Court makes every reasonable effort on a continuing basis to accommodate any reasonable request of counsel for expeditious trial consistent with its obligations to counsel and litigants in other cases, and is generally able to do so. This case has not yet pended on the Court's docket for a full year. It is likely that the case would have been disposed of months ago if counsel had been prepared to go to trial during any of its three prior listings. The Court has never been made aware by counsel that there was any pressing need to take this case out of the normally expeditious routine of pretrial preparation of civil cases that is routinely followed in this Court. Many counsel and litigants seek the Court's attention at trial. It is simply impossible for the Court to accommodate on every occasion every counsel's extra-judicial commitments and other professional obligations in scheduling cases for trial and effectively move the docket. No one litigant or counsel can expect on every occasion to receive preferential scheduling commitments from the Court in fairness to other litigants and their counsel. To the extent that Defendant's counsel seeks such preferential treatment, it is unseemly, on the present record, in the absence of any showing of due diligence in seeking expeditious trial. Any such showing is wholly belied by the record in this case.

The Court is fully satisfied that this case is presently fairly scheduled for trial in accordance with regular procedures. The request for a special assignment of five days or more of trial time in the period of March 6 to March 26, 2000, and for protection from trial for the periods of March 20-24, 27-31, and April 3-14, 2000, in order to accommodate once again the vacation and other interests of counsel and requiring displacement of cases already scheduled ahead of this case, is **DENIED**. Counsel should not expect, in light of this action, that the Court

will look favorably, without a clear showing of exigency and good cause, on any future requests herein for enlargement of time or protection from scheduled trial. They should govern themselves accordingly, even to the extent of assuring that substitute trial counsel will be available and prepared to proceed with trial when the case is next reached in the due course of the docket.

**So ORDERED.**

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GENE CARTER  
District Judge

Dated at Portland, Maine this 15<sup>th</sup> day of February, 2000.