

**FILED**

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

CURB RECORDS, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
SAMUEL T. McGRAW, p/k/a/ TIM McGRAW, )  
)  
Defendant. )

2011 MAY 13 PM 3:01  
CLERK & MASTER  
DAVIDSON CO. CHANCERY CT. *GA*  
Civil Action No. 11-0631-12  
D.C. & M.

**COMPLAINT FOR A DECLARATORY JUDGMENT**

**I. The Parties, Jurisdiction and Venue**

1. Curb Records, Inc. ("Curb Records") is a corporation organized and existing under the laws of the state of Tennessee with its principal office in Nashville, Davidson County, Tennessee. It is engaged in, among other things, the business of creating and funding records and other media embodying the performances of recording artists and marketing them nationally and internationally.

2. The Defendant Samuel T. McGraw p/k/a Tim McGraw ("Tim McGraw") is a citizen and resident of the state of Tennessee. He is a recording artist and entertainer.

3. Venue is appropriate in this judicial district, as the claims and causes of action set forth herein arose in this county and, pursuant to the Recording Agreement, the parties agreed that Davidson County is the exclusive venue in which to bring these claims.

**II. The Facts**

4. The parties entered into an exclusive Recording Agreement dated March 2, 1997 ("the Recording Agreement"). Although the Recording Agreement sets forth in detail the terms and conditions which govern the relationship between Curb Records and Tim McGraw, the

arrangement regarding the recordings which Tim McGraw is obligated to provide to Curb Records is basic.

5. After completion of an initial period, Tim McGraw granted to Curb Records six (6) options, exercisable at Curb Records' sole discretion, to require that, during each applicable option period, Tim McGraw would record and Deliver to Curb Records one (1) studio album embodying Masters per each option period (hereinafter an "Option Period Album").

6. Tim McGraw agreed that an Option Period Album would contain musical selections which would be approved by himself and Curb Records.

7. He agreed that prior to recording any such musical selection, he would obtain Curb Records' written approval of a recording budget to record such musical selections.

8. To insure that his recordings would be topical and new he agreed that all Masters embodied upon each Option Period Album would be recorded "no earlier than twelve (12) months nor later than eighteen (18) months following Delivery to Curb of the immediately preceding album in fulfillment of" his recording commitment.

9. Finally, he must Deliver each Option Period Album during the twelve (12) to eighteen (18) month period following Delivery of the immediately preceding album in fulfillment of his recording commitment. This period can be extended for six (6) additional months if Curb Records elected, during any such option period, to release a Greatest Hits album.

10. These four provisions of the Recording Agreement identified in paragraphs 6-9 hereinabove protect significant interests of both parties designed to maximize sales of each album. The musical selections to be recorded are subject to mutual approval because, pursuant to the Recording Agreement, Tim McGraw recognized that the sale of records is speculative. He recognized that it is Curb Records' ultimate judgment as to any matter affecting the sale,

distribution and exploitation of records. In connection therewith, Curb Records has reserved the right, among others, to approve the musical selections which appear on the records it is responsible for selling.

11. A schedule for Delivery of Option Period Albums is designed to ensure that Tim McGraw's albums are received by Curb Records with all permissions and rights secured in order that all of those details are accomplished so that the record is market-ready. In addition, the Delivery schedule also ensures that the albums are not "dumped" on Curb Records, but may be received, released and marketed to the public on a schedule designed to maximize the sale of each recording.

12. Finally, the requirement that the Masters be recorded within twelve (12) to eighteen (18) months following Delivery of the prior album in fulfillment of his recording commitment assures that the Masters embody Tim McGraw's most current and topical performances. Particularly for an artist such as Tim McGraw, this factor becomes vitally important. His image and his music have changed since the inception of the Recording Agreement. From early recordings such as "Indian Outlaw" to later recordings such as "Live Like You Were Dying", to his most recent hit recording "Felt Good On My Lips", Tim McGraw's vocal style has matured and evolved. He has grown from a club performer to one who now fills arenas and concert halls, commands large fees and audiences, and is an accomplished TV performer and movie star. His recordings reflect an artist whose selection of vocal material, performances and maturity level have changed since the early days of his career. In order to maximize the sales of his recordings, Curb Records insisted, and Tim McGraw agreed in the Recording Agreement, that Masters on each Option Period Album would be recorded within these specified contractual time parameters.

13. This basic arrangement has worked well since 1997 and allowed him to sell millions of records and earn millions of dollars in payments and royalties from Curb Records. Four (4) Option Period Albums have been released. The Recording Agreement provides that during its term, Tim McGraw shall render his services as a recording artist exclusively for Curb Records.

14. The fourth Option Period Album was released by Curb Records on or about October 20, 2009. Tim McGraw asserts that the fourth Option Period Album was Delivered at that time, October 20, 2009.<sup>1</sup>

15. Pursuant to the Recording Agreement, therefore, and as he recognizes based upon his own assertions, Tim McGraw was obligated to record Masters for inclusion on the fifth Option Period Album between twelve (12) and eighteen (18) months after Delivery of the fourth Option Period Album, or between October 20, 2010 and April 20, 2011.

16. On October 22, 2010, however, he provided to Curb Records twelve (12) Masters which he referred to as the "Emotional Traffic LP" (hereinafter the "Emotional Traffic Masters"). The Emotional Traffic Masters, however, contained Masters which were recorded prior to October 20, 2010. In fact, Tim McGraw started to record the Emotional Traffic LP in 2008 or before. Moreover, on June 23, 2010, these same Emotional Traffic recordings, labeled by Tim McGraw's representative as "rough mixes", had been provided to Curb Records. Obviously, all of the Emotional Traffic Masters were recorded prior to the allowable period for recording Masters for inclusion on the fifth Option Period Album – October 20, 2010. In addition, because a Greatest Hits album was released by Curb Records during the fifth option

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<sup>1</sup> Different representatives of McGraw have asserted two different Delivery dates for the fourth Option Period Album, October 20, 2009 and August 10, 2009. In either case, McGraw is in breach of the Recording Agreement for the reasons set forth herein.

period, the Emotional Traffic Masters were provided to Curb Records prior to the period for which Delivery of the fifth Option Period Album is permitted.

17. Further, the musical selections embodied in the Emotional Traffic Masters had not been submitted for Curb Records' approval, despite its specific prior written requests and demands that Tim McGraw comply with the Recording Agreement and submit the selections to be included on the fifth Option Period Album for its approval.

18. Both after the receipt on June 23, 2010 of the "rough mixes" and after receipt of the Emotional Traffic Masters, Curb Records advised Tim McGraw that the Emotional Traffic Masters could not and did not constitute the fifth Option Period Album. Curb Records reiterated that notice on January 13, 2011.

19. Nevertheless, ignoring the clear breach of the Recording Agreement's requirement that Masters embodied on the fifth Option Period Album cannot be recorded before October 20, 2010 in this instance, and based upon Tim McGraw's own insistence as to the applicable Delivery date of the fourth Option Period Album, Tim McGraw has refused to Deliver the fifth Option Period Album, instead insisting that the Emotional Traffic Masters constitute such album. This is a transparent tactic to attempt to fulfill his contractual recording commitments to Curb Records prematurely in breach of the Recording Agreement.

20. On April 20, 2011, again based upon his own insistence of the date of Delivery, the period during which Tim McGraw must record Masters for inclusion on the fifth Option Period Album closed. Accordingly, he is now in breach of the Recording Agreement in that regard.

21. On March 23, 2011, Tim McGraw's representative confirmed in writing Tim McGraw's continuing refusal to record and Deliver the fifth Option Period Album.

22. On or about April 20, 2011, Tim McGraw stated publicly that “the ‘Emotional Traffic’ album would be his ‘absolute last album’ with Curb if it kills him....”, and that “All the songs have been done for a long time, and the label has had it. It’s the last album that they have of mine, so they’re trying to hold on to it as long as they can.”

23. On or about April 26, 2011, Tim McGraw’s representative once again advised Curb Records that Tim McGraw is refusing to record new Masters and affirmed Tim McGraw’s position that the Emotional Traffic Masters were the final recordings that he would provide to Curb Records.

24. Moreover, on June 21, 2001, Curb Records agreed to reduce its options under the Recording Agreement from six (6) to five (5) in order to induce Tim McGraw to perform under the Recording Agreement and to record and Deliver his five Option Period Albums as he had agreed in the Recording Agreement. The Recording Agreement mandates that Tim McGraw was obligated to provide Curb Records with two (2) new Greatest Hits Masters for inclusion on a Greatest Hits album (“the First Hits LP”), which was to be the initial “Greatest Hits” album released after the execution of the Recording Agreement. The Recording Agreement also provided that if the First Hits LP’s sales exceeded 1,500,000 units according to a “Formula” (as defined in the Recording Agreement), Curb Records’ six (6) option periods would be reduced to five (5). Tim McGraw failed to Deliver those two Greatest Hits Masters. Nevertheless, Curb Records elected to release an initial Greatest Hits album without the two (2) Greatest Hits Masters. The Greatest Hits album exceeded sales of 1,500,000 units. Although he had failed to Deliver the two Greatest Hits Masters, as he had agreed in the Recording Agreement (and thus the conditions necessary to reduce the options from six (6) to five (5) were not met), Tim McGraw, nevertheless, demanded that Curb Records reduce the option period albums from six

(6) to five (5). Although it continued its insistence upon the correctness of its contractual position, Curb Records reduced the number of its options only upon his reaffirmation of Curb Records' right to require five (5) Option Period Albums. Accordingly, Curb Records' representative confirmed on June 21, 2001 that Curb Records would consider the Greatest Hits album to be the First Hits LP ("the June 21, 2001 Settlement"). Curb Records also provided to Tim McGraw a \$250,000 advance payable in connection with the First Hits LP.

25. Because he has refused to record and Deliver the fifth Option Period Album to Curb Records, Tim McGraw has also repudiated the June 21, 2001 Settlement. Curb Records is entitled, therefore, not only to a fifth Option Period Album, but also to a sixth Option Period Album under the Recording Agreement.

26. If the Defendant is allowed to violate the essential and agreed-upon parameters during which he agreed to record the fifth (and sixth) Option Period Albums; and to repudiate the June 21, 2001 Settlement, and otherwise violate the Recording Agreement, Curb Records will be harmed. Curb Records will suffer damages which can, in part, be remedied through damages, but will also incur losses and damages which are irreparable, as well as consequential damages. Moreover, Curb Records and the recording industry will suffer broader harm if the Defendant and others can ignore the provisions of recording agreements, selecting which provisions they may choose to follow and refusing to acknowledge others. If permitted, this would create chaos and vitiate the reliance on the contracts upon which relationships with recording artists are based.

### **III. Declaratory Relief Sought By Plaintiff**

27. Accordingly, Curb Records seeks this Court's declaratory judgment that Tim McGraw is in breach of the Recording Agreement because, among other things, he has failed to record and Deliver the fifth Option Period Album pursuant to the terms of the Recording

Agreement and that Curb Records may, accordingly, exercise all of the rights provided to it in the Recording Agreement upon Tim McGraw's failure and/or refusal to Deliver Masters.

28. In addition, Curb Records seeks this Court's declaration that because Tim McGraw has failed to record and Deliver the fifth Option Period Album, he is not only in breach of the Recording Agreement, but that he has also repudiated the June 21, 2001 Settlement and that, therefore, Curb Records is also entitled to a sixth Option Period Album recorded pursuant to the terms and conditions of the Recording Agreement.

29. Curb Records is entitled to those consequential damages which it has incurred and may incur because of Tim McGraw's breaches of the Recording Agreement and his repudiation of the June 21, 2001 Settlement and his failure to deliver the fifth and sixth Option Period Albums.

30. The parties also recognized in the Recording Agreement that Tim McGraw's services thereunder are of a "special, unique and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated for by damages in an action of law." As the parties recognized, the personal services which Tim McGraw agreed to render to Curb Records are special, unique and invaluable. Accordingly, as he has failed and refused to perform his obligations, including, but not limited to recording and Delivering the fifth Option Period Album, Curb Records seeks injunctive relief preventing him from agreeing to provide, or providing, his personal services as a recording artist for the benefit of parties other than Curb Records until he has fulfilled his duties and obligations under the Recording Agreement.


WHEREFORE, Curb Records, Inc. demands judgment as follows:

1. That the Court declare that Tim McGraw is in breach of the Recording Agreement because, among other things, he has failed and refused to record and Deliver the

fifth Option Period Album during the six (6) month period ending April 20, 2011 pursuant to the terms of the Recording Agreement; and

2. That the Court declare that the Emotional Traffic Masters do not and cannot constitute the fifth Option Period Album; and
3. That Curb Records may exercise all of the rights provided to it in the Recording Agreement upon Tim McGraw's failure or refusal to Deliver Masters; and
4. That the Court declare that as he has repudiated the June 21, 2001 Settlement, Tim McGraw is obligated to record and Deliver a sixth Option Period Album to Curb Records under the Recording Agreement; and
5. For compensatory damages to Curb Records; and
6. For consequential damages to Curb Records; and
7. That the Court enjoin Tim McGraw from providing personal services as a recording artist, or agreeing to do so, other than to Curb Records for so long as he, among other things, fails and refuses to record and Deliver to Curb Records the fifth Option Period Album and the sixth Option Period Album under the Recording Agreement; and
8. That Curb Records have and recover its attorneys' fees pursuant to the Recording Agreement; and
9. For such other and further general relief to which it may be entitled.

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