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It’s a Hard Knock Life for Damon Dash’s Planned NFT Sale

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by Evan Everist

Roc-A-Fella Records (“RAF”) owners Jay-Z and Damon Dash are clashing over Dash’s plans to sell an NFT (“nun-fungible token”) representing either a 1/3 share of the copyright to Jay-Z’s album *Reasonable Doubt* (if you believe RAF and Jay-Z) or a 1/3 ownership interest in RAF as a whole (if you believe Dash).

If you’re wondering what an NFT is, auction house Christie’s (which brokered a staggering $69 million sale of an NFT created by artist Beeple in March 2021) has a great in-depth article. To summarize (a lot), an NFT is basically a unique digital certificate representing ownership of a unique thing (e.g., a song, work of art, etc.) that is stored, verified, and transferred using blockchain technology. NFTs are created (or “minted”) using tamper-proof, self-executing contracts tied to a specific blockchain set, like Etherium.

In late June, Jay-Z (through RAF) obtained a temporary restraining order barring Dash from auctioning an NFT for *Reasonable Doubt* or doing anything else that could impact ownership rights in the album. In its complaint, RAF claims that Dash was working with a platform called SuperFarm Foundation to auction an NFT, which according to a SuperFarm memo attached to the complaint, would represent "Damon's [1/3] ownership of the copyright to Jay-Z's first album." The problem, according to RAF, is that Dash does not actually own any copyright interest in the album. Rather, RAF owns the entire copyright to the album per Jay-Z's 1995 agreement with RAF (the entirety of which is actually appended to the complaint—interesting reading). Although RAF convinced SuperFarm to stop the auction by the time it filed the complaint, RAF claims that Dash had already minted an NFT for the album would surely try to sell it elsewhere.

For his part, Dash actually agrees with RAF and Jay-Z on the copyright ownership point. In his response opposing the restraining order, Dash freely admits that RAF owns the album entirely. However, he claims the SuperFarm memo (and, thus, RAF's complaint) misstates the intended nature of the NFT auction. Dash says he never minted an NFT but that the NFT he planned to create was supposed to be for his entire 1/3 ownership of the RAF entity and not for the specific copyright interest in *Reasonable Doubt*. Any ownership of the album would merely result from owning a share of RAF. The lawsuit, according to Dash, is all part of Jay-Z's ploy to prevent Dash from sell his shares in RAF (which the initial temporary restraining order arguably accomplished).

Dash further argues that the firm Quinn Emmanuel, which filed the lawsuit on behalf of RAF, should be disqualified due to an ethical conflict. The firm, he alleges, represents Jay-Z individually in matters involving RAF corporate governance and now represents RAF in a lawsuit against another RAF shareholder, namely, Dash. Dash also alleges that Jay-Z lacked authority to even retain Quinn Emmanuel on behalf of RAF because Dash is the only person authorized to enter into contracts or retain counsel on behalf of RAF, causing a further conflict of interest.

On July 2, the parties participated in a show-cause hearing. Dash was successful in convincing RAF and the court to limit the restraining order. The parties and court agreed to include language stating that the order does not "prevent Dash from selling, assigning, pledging, encumbering, contracting with regard to, or in any way disposing of his one-third (1/3rd) ownership interest in RAF, Inc. to the extent it may otherwise be transferred in compliance with applicable laws". In a transcript of the hearing attached to RAF's post-hearing filing, the court also rejected Dash's arguments that Quinn Emmanuel should be disqualified, finding that there was no evidence Quinn Emmanuel had privileged information concerning Dash and that Jay-Z and RAF's interests were aligned in the proceeding. Addressing the apparent heart of the dispute, the court asked RAF what other evidence it has that Dash was trying to sell a copyright interest in the album as opposed to his shares in RAF. During the hearing and in its post-hearing filing, RAF argued that Dash is under extreme financial pressure due to multiple liens and that he likely saw an opportunity to profit from the 25th anniversary of *Reasonable Doubt*. The filing also includes orders from past cases in which courts found Dash not to be credible or disruptive to those proceedings.

Dash also responded by filing his own lawsuit against Jay-Z in New York state court, claiming that Jay-Z has impermissibly transferred streaming rights to *Reasonable Doubt* to his personal LLC (summons available here – link to). To make things more complicated, Dash's suit also lists RAF as a plaintiff. So, RAF is now suing both Dash and Jay-Z in their personal capacities as individual owners of RAF.

Although the case is only in its earliest stages, it highlights some interesting legal issues in the emerging NFT space.

First, despite all the talk of copyright, RAF's complaint does not actually make a copyright infringement claim against Dash. The claims are essentially all property based (with the exception of breach of fiduciary duty and unjust enrichment claims). Based on a quick search of the Copyright Office website, the copyright to *Reasonable Doubt* appears to be registered, so RAF would presumably have grounds to file a copyright lawsuit if it wanted to. So why didn't RAF include a copyright claim? It's hard to know for sure, but one potential issue is that Dash may not have copied *Reasonable Doubt*, even assuming he already minted an NFT for the album (a fact he disputes). An NFT does not typically contain a copy of the actual work to which it relates. Rather, the underlying work is stored somewhere else and/or the NFT simply references the work. Thus, even if Dash had minted an NFT representing a copyright interest in the album, he would not have necessarily made any copies of the album and may not ever need to make any copies.

Second, assuming Dash does intend to sell his ownership share of RAF as an NFT, as opposed to the copyright to *Reasonable Doubt*, this might create unintended consequences for Dash. An offer to sell shares of a highly valuable company via an NFT to essentially anyone in the world would likely be considered a securities offering, which could subject him to numerous disclosure and reporting requirements. At this point, the U.S. Securities and Exchange Commission's public search system EDGAR does not appear to show any filings by Dash or SuperFarm related to any such sale.

Third, the dueling lawsuits are certain to raise some interesting issues related to corporate authority given that both Dash and Jay-Z have sued one another on behalf of RAF. This might also press the conflicts issues previously raised by Dash, potentially for both sets of attorneys, who now each claim to represent RAF as an entity and the individual owners of RAF in disputes between RAF and those owners.

The TMCA will be monitoring the case.