

Supertramp's Ex-Drummer Says Royalty Deal Was For Good

By **Craig Clough**

Law360 (February 21, 2024, 10:58 PM EST) -- Supertramp's former drummer took the stand Wednesday in a breach of contract suit he and two other former band members brought against co-songwriter Roger Hodgson, telling a California federal jury that a 1977 agreement for all members to receive a piece of songwriting royalties was meant to be permanent.

Plaintiff Robert Siebenberg, the band's longtime drummer, took the stand as the first witness in the trial that **began Tuesday** and told the jury that despite the great success Supertramp achieved from 1973 through 1977 with hit records and world tours, his financial situation had not improved.

Supertramp's contract with its record company allowed the company to take back "millions and millions" of dollars the band earned in album sales and tour tickets, leaving him and some other band members in debt, while the group's songwriters, defendant Hodgson and Rick Davies, were doing much better financially due to songwriting royalties, Siebenberg said.

"I didn't think it was right," Siebenberg said, adding that people didn't "come to see the Rick and Roger show." He testified that, at a 1977 meeting, Hodgson and Davies agreed to share the royalties, with Hodgson telling the others he wanted a "happy band."

Siebenberg said at no point during the '77 meeting did anyone say the royalty agreement was to be temporary until record sales and tour money started improving — refuting a statement Hodgson's attorney made to the jury during his opening statement. Rather, Siebenberg testified, the agreement was meant to be forever.

The band signed the deal sharing songwriting royalties with Siebenberg and co-plaintiffs Douglas Thomson and John Helliwell near the end of 1977. The initial payment arrived in 1978, and Siebenberg said he remembers it well because he bought a car with his first check. Quarterly payments arrived for decades until a few years ago, when the payments slowed and then stopped, Siebenberg said.

The royalty money first went to co-defendant Delicate Music, which is an entity formed by Hodgson and Davies, with Delicate then sending Siebenberg his share, Siebenberg said.

Siebenberg spent much of the morning outlining the history of Supertramp, a primarily British group that released two records through A&M Records to little fanfare before he, Thomson and Helliwell joined in 1973, with Siebenberg being the lone American. Siebenberg said he met Davies and Hodgson when he was living in London and playing in another band, and they became friendly before he was asked in 1973 to join a reconstituted Supertramp lineup.

That five-member lineup lasted 10 years, with the band's success peaking at the release of 1979's "Breakfast in America," a record that topped the charts in the U.S. and numerous other countries, Siebenberg said.

He also discussed the band's recording habits in an effort to tell the jury that he and the other plaintiffs made significant contributions to the recording of songs even if they didn't write them, such as when either Davies or Hodgson hadn't completed a song or fully figured out how to arrange it.

Once the songs were recorded, the band also needed to work together to come up with ways to

present the music in a live act, he said.

"We were a great live act," Siebenberg said.

Hodgson left the band in 1983, and he reached an exit agreement the next year with the rest of the band members, who continued to record and tour as Supertramp, Siebenberg said. His attorney, David M. Given of Phillips Erlewine Given & Carlin LLP, asked him to read from a portion of the exit agreement, and he agreed it kept in place the same royalty agreement reached in 1977 and slightly adjusted for the band's 1983 release, "Famous Last Words."

Under the '77 and '84 agreements shown to the jury, Davies and Hodgson would each receive 27%, regardless of which one of them wrote the songs, and the three other members and a former manager would receive 11.5% each.

Alan S. Gutman of Gutman Law, who represents Hodgson and Delicate, focused on some language in the 1977 agreement, Hodgson's 1984 exit agreement and other agreements from that era in an effort to bolster a key point he made during his opening statement on Tuesday, which is that rights are given to others "in perpetuity" but not to the plaintiffs.

The band's former manager left in 1983 and received some songwriting royalty rights "in perpetuity," as did the band's sound engineer around the same time, Siebenberg agreed, also agreeing that he signed the documents.

The 1984 exit agreement — which Hodgson argues supersedes the '77 agreement — keeps the same ratios of songwriting royalties from the '77 agreement, and Gutman attempted to pin Siebenberg down about whether it granted him rights "in perpetuity," although some of his questions were successfully objected to by Given.

"Did you see that it contains the word 'perpetuity'?" Gutman asked, and Siebenberg said he did.

"Did you see that the way the word 'perpetuity' is used, it applies only to Roger Hodgson having rights in perpetuity?" Gutman asked, but Given's objection that the question calls for a legal conclusion was sustained by U.S. District Judge André Birotte Jr.

"Did you ever see the word perpetuity used in a sentence referring to you receiving any benefits in perpetuity?" Gutman asked, although Given objected on the same grounds, and it was sustained.

Supertramp is best known for a string of hit rock songs and records in the late 1970s, including "The Logical Song," "Bloody Well Right" and "Give a Little Bit," but has not been active for over a decade.

Thomson, Helliwell and Siebenberg filed their lawsuit in Los Angeles Superior Court in 2021 against Hodgson, Davies, Delicate Music, Universal Music Corp., Universal Publishing Group and The American Society of Composers, Authors and Publishers, and the suit was later moved to federal court.

The Universal entities and the American Society of Composers, Authors and Publishers were eventually dismissed from the suit. Davies reached a settlement with the plaintiffs in 2023. He is not expected to testify at the trial.

The trial is scheduled to resume Thursday.

The plaintiffs are represented by David M. Given and Nicholas A. Carlin of Phillips Erlewine Given & Carlin LLP.

The defendants are represented by Alan S. Gutman and Matthew E. Hess of Gutman Law.

The case is Douglas Campbell Thomson et al. v. Charles Roger Pomfret Hodgson et al., case number 2:21-cv-08124, in the U.S. District Court for the Central District of California.

--Editing by Rich Mills.

