

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 10 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RALPH T. REILLY, an individual,

Plaintiff-Appellant,

v.

STEVE WOZNIAK, an individual; et al.,

Defendants-Appellees.

No. 21-16140
21-17047

D.C. No. 2:18-cv-03775-MTL

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Argued and Submitted November 16, 2022
Phoenix, Arizona

Before: BYBEE, OWENS, and COLLINS, Circuit Judges.

In the first of two consolidated cases (“First Appeal”), Ralph Reilly appeals from the district court’s summary judgment against him on his claim for breach of an implied-in-fact contract (“Count One”) and judgment on the pleadings against him on his claim for money had and received (“Count Two”). The two claims, based in California law, were part of a federal copyright infringement lawsuit

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

against Steve Wozniak, co-founder of Apple, for Wozniak’s alleged use of Reilly’s idea for and work on a “high tech university” using Wozniak’s name and likeness.¹ In the second case (“Second Appeal”), Reilly appeals from the district court’s award of attorney’s fees to Appellees. As the parties are familiar with the facts, we do not recount them here. We affirm.

1. In the First Appeal, the district court granted summary judgment on Count One because Reilly did not allege that he disclosed his idea to Wozniak for sale. We review a district court’s grant of summary judgment de novo and construe disputed facts in the light most favorable to the nonmovant. *Rollins v. Cmty. Hosp. of San Bernardino*, 839 F.3d 1181, 1185 (9th Cir. 2016). Reilly implores this court to hold that a party claiming breach of a contract for conveyance and use of an idea need not show that the claimant offered the idea to the defendant for sale because California law provides a broad equitable basis to find implied-in-fact contracts for the use of ideas. We decline to do so. Reilly’s argument is contrary to the holding in *Desny v. Wilder*, 299 P.2d 257, 269–70 (Cal. 1956) and its progeny.

When interpreting state law, we are bound to follow the decisions of the state’s highest court, and when “the state supreme court has not spoken on an issue

¹ Reilly’s claim for copyright infringement proceeded to trial. The jury found in favor of Appellees, and Reilly does not appeal that verdict.

. . . [we] must determine what result the [state] court would reach based on state appellate court opinions, statutes and treatises.” *Diaz v. Kubler Corp.*, 785 F.3d 1326, 1329 (9th Cir. 2015) (internal quotations omitted).

Reilly’s argument is foreclosed by *Aliotti v. R. Dakin & Co.*, 831 F.2d 898 (9th Cir. 1987), where we followed *Faris v. Enberg*, 158 Cal. Rptr. 704 (Ct. App. 1979), to hold that “no contract may be implied where an idea has been disclosed *not to gain compensation for that idea* but for the sole purpose of *inducing the defendant to enter a future business relationship.*” *Aliotti*, 831 F.2d at 902–03 (citing *Faris*, 158 Cal. Rptr. at 709–10) (emphasis added). Reilly, by his own admission, expected that Wozniak would “jointly market,” and be his “partner[] in exploiting,” Reilly’s idea. It was in this precise context, contemplating a future business relationship, that *Aliotti* and *Faris* held that an idea must be disclosed for sale for an implied-in-fact contract to exist. Therefore, the district court did not err in granting summary judgment because there was no genuine dispute of fact as to whether Reilly offered his idea to Wozniak for sale.

2. Also in the First Appeal, the district court held that Count Two, Reilly’s claim for money had and received, was preempted under § 301 of the Copyright Act (“Act”). “We review the granting of . . . a motion [for judgment on the pleadings] *de novo*” and accept as true the nonmovant’s allegations of fact. *Unite Here Loc. 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695, 700 (9th Cir.

2022). “We also review de novo questions of preemption and statutory interpretation.” *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Becerra*, 870 F.3d 1140, 1145 (9th Cir. 2017). We affirm.

To the extent that Reilly’s claim for money had and received is based on the transmission of his idea apart from its embodiment in any tangible medium, that claim is merely a repackaging of his *Desny* claim, and it fails for the same reasons discussed above. An essential element of a claim for money had and received is that the defendant received something that, under “principles of justice and fairness,” it ought to pay for. *See Philpott v. Superior Ct.*, 36 P.2d 635, 640 (Cal. 1934). Here, there is no tenable basis, apart from a *Desny*-based theory, for saying that Appellees ought to pay for that receipt of a mere idea. Accordingly, Reilly’s claim for money had and received can rest only on his contention that Appellees improperly made use of tangible materials that embodied his ideas. We hold that that claim is preempted.

A particular cause of action is preempted by the Act if 1) the subject matter of the state law claim is within the subject matter of copyright as set out in §§ 102 and 103 of the Act, and 2) the rights asserted under state law are equivalent to the rights under § 106 of the Act. *Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1010 (9th Cir. 2017). Reilly alleges that Appellees owe him money for the profit they made from Woz U because that profit was derived from his idea and his related

copyrighted material without Reilly’s consent or participation. His attempts to distinguish this count from his copyright claims, which he lost on the merits at trial, are unavailing.

For the first prong of the preemption test, this court has held that ideas underpinning copyrighted material fall within the subject matter of copyright if the “ideas and concepts . . . are fixed in a tangible medium,” even though “fixed ideas [are excluded] from the scope of actual federal copyright protection.” *Montz v. Pilgrim Films & Television, Inc.*, 649 F.3d 975, 979 (9th Cir. 2011) (en banc).

Reilly contends that Appellees are indebted to him “for money had and received by . . . each of them from their use, application and exploitation of Reilly’s Work in the operation, marketing and promotion of Woz U.” Because Reilly’s Work includes his ideas and their expressions in tangible media, Count Two is within the subject matter of copyright, satisfying the first prong of the preemption test.

For the second prong of the preemption test, “[t]o survive preemption, the state cause of action must protect rights which are qualitatively different from the copyright rights. The state claim must have an extra element which *changes the nature of the action.*” *Del Madera Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 977 (9th Cir. 1987) (emphasis added) (internal quotation and citations omitted), *overruled on other grounds by Fogerty v. Fantasy, Inc.*, 510 U.S. 517

(1994). Reilly argues that Count Two is not preempted because it is based on a contractual, or impliedly contractual, personal agreement with Wozniak rather than on a monopoly against the world, as in copyright.

In *Del Madera*, under much the same circumstances as Reilly alleges, a party in a joint venture with the plaintiff conveyed information that allowed a third party to develop “property” based on copyrightable materials. *Id.* While there was an extra element in the unjust enrichment claim that the plaintiff had brought—an implied promise not to use the materials, based on the existing relationship between the parties—this element did not *transform* the *nature* of the action such that the claimed right was distinct from those provided for in the Act. *Id.* For the same reasons that the analogous unjust enrichment claim was preempted in *Del Madera*, Reilly’s Count Two claim for money had and received does not assert rights qualitatively different from those under copyright and is thus preempted.

3. In the Second Appeal, Reilly challenges the district court’s award of attorney’s fees and costs on all Reilly’s claims pursuant to the Act. *See* 17 U.S.C. § 505. We review the district court’s fee award for abuse of discretion and do not reverse unless the district court’s decision “is based on an inaccurate view of the law or a clearly erroneous finding of fact.” *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 556 (9th Cir. 1996) (quotation omitted).

The district court’s decision rests on a proper weighing of the relevant

factors. *See Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 614 (9th Cir. 2010) (discussing the five factors a court should consider); *Kirtsaeng v. John Wiley & Sons, Inc.*, 579 U.S. 197, 199–200 (2016) (noting that courts should give substantial weight to the objective unreasonableness factor while giving due consideration to the other factors). In particular, the district court found that Reilly’s copyright claim was objectively unreasonable because he “[chose] to focus on his idea and not the protected elements of his copyrighted work” at trial despite it being “[h]ornbook law that ideas are not copyrightable subject matter.”

The district court did not misstate relevant law or demonstrate a clearly erroneous understanding of the facts. Accordingly, it did not abuse its discretion in awarding attorney’s fees on the copyright claim.

Nor did the district court abuse its discretion by awarding fees on Reilly’s state law claims. “Attorney’s fees are awardable . . . if there is express statutory authorization, or for work done on claims that involve a common core of facts or [are] based on . . . legal theories [related to] claims governed by statutory . . . attorney’s fees provisions, such that the lawsuit cannot be viewed as a series of discrete claims.” *Love*, 611 F.3d at 614 (internal quotations and citation omitted).

All of Reilly’s claims stem from a common core of facts—his allegation that Appellees did not compensate him for their use of his idea. Thus, the district court did not abuse its discretion in holding that Reilly’s claims were sufficiently related

to warrant application of the Act's attorney's fees and costs provision to all causes of action.

AFFIRMED.