
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

Present: **Honorable JOSEPHINE STATON TUCKER, UNITED STATES DISTRICT JUDGE**

Ellen Matheson

Deputy Clerk

N/A

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANTS’
MOTIONS TO DISMISS UNDER RULES 12(b)(6),
8(a)(2), AND 12(b)(5), MOTION FOR A MORE
DEFINITE STATEMENT UNDER RULE 12(e), AND
MOTION TO STRIKE UNDER RULE 12(f) (Docs. 52 &
53)**

I. Introduction

On October 28, 2010, Plaintiff Bryan Pringle filed suit for copyright infringement against William Adams, Stacy Ferguson, Allan Pineda, and Jaime Gomez (individually and collectively as the music group The Black Eyed Peas), David Guetta, Frederick Riesterer, UMG Recordings, Inc., Interscope Records, EMI April Music, Inc., Headphone Junkie Publishing, LLC, Will.I.Am Music, LLC, Jeepney Music, Inc., Tab Magnetic Publishing, Cherry River Music Co., Square Rivoli Publishing, Rister Editions, and Shapiro Bernstein & Co (collectively “Defendants”).

On December 13, 2010, Defendants Adams, Ferguson, Pineda, Gomez, Tab Magnetic, Headphone Junkie, Will.I.Am Music, Jeepney, Cherry River, and EMI moved pursuant to Federal Rules of Civil Procedure 12(b)(6) and 8(a)(2) to dismiss the First Amended Complaint, pursuant to Rule 12(e) to provide a more definite statement as to certain paragraphs of the First Amended Complaint, and pursuant to 12(f) to strike certain portions of the First Amended Complaint. (Adams et al. Mot., Doc. 52.) UMG and Interscope joined the Motion. (Doc. 56.) That same day, Defendants Shapiro Bernstein, Guetta, and Rister moved pursuant to Rules 12(b)(5) and 12(b)(6) to dismiss the First Amended Complaint. (Shapiro et al. Mot., Doc. 53.) Defendants Adams, Ferguson,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

Pineda, Gomez, Tab Magnetic, Headphone Junkie, Will.I.Am Music, Jeepney, Cherry River, and EMI joined Section II of that Motion. (Doc. 55.) Plaintiff opposed each Motion, (Docs. 72 & 74,) and Defendants replied. (Docs. 80 & 86.)

Having read the papers and taken the matters under submission, the Court DENIES Defendants' Motions to Dismiss under Rules 12(b)(6), 8(a)(2), and 12(b)(5), Motion for a More Definite Statement under Rule 12(e), and Motion to Strike under Rule 12(f).

II. Background

In 1998, Plaintiff Brian Pringle allegedly wrote and recorded a song entitled "Take a Dive." (First Amended Complaint "FAC," Doc. 9, ¶ 27.) Pringle registered a copyright claim with the U.S. Copyright Office for a compact disc ("CD") entitled "Dead Beat Club: 1998," which allegedly included the original version of "Take a Dive" along with seventeen other original songs, registration number SRu 387-433. (*Id.* ¶ 28.)

In 1999, Plaintiff allegedly created a derivative work of "Take a Dive," which consisted of removing the vocals in the original version and adding a repeating eight-bar melody, using a "guitar twang" instrument, utilizing four notes – D4, C4, B3, and G3 – in the following progression: D4-C4-B3-C4-B3-C4 in the key of G3 ("guitar twang sequence"). (*Id.* ¶ 29.) Plaintiff registered the derivative version of "Take a Dive" with the Copyright Office in November 2010. (*Id.* ¶ 29.)

From 1999 to 2008, Plaintiff allegedly submitted demo CDs, all of which contained the derivative version of "Take a Dive," to Defendants UMG, Interscope, and EMI, as well as other major record labels, internet music websites, and various other parties. (*Id.* ¶ 31.) During this period, Plaintiff allegedly received letters in response from representatives of Interscope, UMG, and EMI declining to sign him as an artist or purchase his music. (*Id.* ¶ 33.)

Plaintiff alleges that Defendants Adams, Ferguson, Pinead, Gomez (collectively The Black Eyed Peas); Guetta, a songwriter and producer; and Riesterer, a songwriter and producer, accessed one of the demo CDs that included the derivative version of "Take a Dive" and then directly copied significant portions of the song when they wrote and recorded the song "I Gotta Feeling." (*Id.* ¶ 37.) Plaintiff further alleges that the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

remaining Defendants are either direct or vicarious infringers of the derivative version of “Take a Dive” as they supported the making and/or selling and distributing of “I Gotta Feeling.” (*Id.* ¶ 39.)

In October 28, 2010, Plaintiff filed suit against Defendants alleging a single claim of copyright infringement. On November 19, 2010, Plaintiff filed a First Amended Complaint. On December 13, Defendants filed two separate Motions to Dismiss the First Amended Complaint pursuant to Rule 12(b)(6) (Adams et al. Mot. & Shapiro et al. Mot.), a Motion to Dismiss the First Amended Complaint pursuant to Rule 8(a)(2) (Adams et al. Mot.), a Motion for a More Definite Statement under Rule 12(e) (*id.*), a Motion to Strike Certain Portions of the First Amended Complaint pursuant to Rule 12(f) (*id.*), and a Motion to Dismiss as to Defendant Rister for Insufficient Service under Rule 12(b)(5) (Shapiro et al. Mot.).

III. Motions to Dismiss Under Rule 12(b)(6)

A. Legal Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). Rule 12(b)(6) is read in conjunction with Federal Rule of Civil Procedure Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). When evaluating a Rule 12(b)(6) motion, the district court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994).

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 556). To be clear, the issue on a motion to dismiss for failure to state a claim “is not whether the [claimant] will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims” asserted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (quoting *Scheuer v. Rhodes*, 416, U.S. 232, 236 (1974)). However, “[a]lthough for

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we ‘are not bound to accept as true a legal conclusion couched as a factual allegation.’” *Iqbal*, 129 S. Ct. at 1949-50 (quoting *Twombly*, 550 U.S. at 555).

B. Discussion

To allege a claim for copyright infringement, a plaintiff must allege “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). Defendants argue that Plaintiff has failed to satisfy either prong.

1. Ownership of a Valid Copyright

Defendants argue that Plaintiff lacks valid copyright ownership to base his copyright infringement claim because he has failed to comply with 17 U.S.C. § 411 (Adams et al. Mot. at 6-10.) Under 17 U.S.C. § 411(a):

no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute a civil action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights.

17 U.S.C. § 411(a). Defendants argue that Plaintiff has failed to comply with 17 U.S.C. § 411 because, first, he failed to register the derivative version of “Take a Dive” with the United States Copyright Office before filing suit for copyright infringement; second, Plaintiff’s November 15, 2010 copyright application for the derivative version was insufficient because Plaintiff did not allege that he submitted a “bona fide” copy of the song as required by 17 U.S.C. § 408(b); and, third, the copyright registration for “The Dead Beat Club: 1998” CD attached to the First Amended Complaint as Exhibit “B” does not fulfill the registration requirement of § 411(a) for the original version of “Take a Dive” because the song’s title does not appear on certificate. (*See id.*)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

As to Defendant’s first two points, Plaintiff alleges that he submitted a complete application for the copyright registration for the derivative version of “Take a Dive” with the Copyright Office prior to filing the First Amended Complaint. (FAC ¶ 29.) “[R]eceipt by the Copyright Office of a complete application satisfies the registration requirement of § 411(a).” *Cosmetic Idea, Inc. v. IAC/Interactivecorp*, 606 F.3d 612, 621 (9th Cir. 2010). Plaintiff further points out that the Copyright Office has, since the filing of Defendants’ Motions to Dismiss, issued a Certificate of Registration for the derivative version of “Take a Dive,” entitled “Take a Dive (Dance version),” a copy of which Plaintiff provided in the context of his Motion for Preliminary Injunction. (Pl.’s Opp. to Adams et al., Doc. 74, at 4; *see* Declaration of Bryan Pringle, Doc. 76, Exh. D.) The Court takes judicial notice of the SR 659-360 Certificate of Registration. “As a general rule, ‘a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.’” *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)). The two exceptions to that rule, however, are materials submitted as part of the complaint and matters of public record. *Id.* Certificates of Registration from the U.S. Copyright Office are public records. *See White v. Marshall*, 693 F. Supp. 2d 873, 884 (E.D. Wis. 2009) (“Certificates of Registration from the U.S. Copyright Office are public records that the court may take judicial notice of without converting a Rule 12(b)(6) motion to a motion for summary judgment.”). The Certificate of Registration, registration number SR 659-360 with an effective date of registration of November 15, 2010, lists the title of the work as “Take A Dive (Dance Version),” the year of completion as 1999, the date of first publication as December 1, 1999, and the author as Bryan Daniel Pringle. (Declaration of Bryan Pringle, Exh. D.) Plaintiff has therefore satisfied § 411(a) as to the derivative version of “Take a Dive.”

Furthermore, to the extent that Plaintiff rests his copyright infringement claim on the original version of “Take a Dive,” Plaintiff satisfies the § 411(a) requirement for that work as well. Plaintiff alleges that on April 29, 1998, he registered a copyright for the CD entitled “Dead Beat Club: 1998,” registration number SRu-387-433, which included the original version of “Take a Dive.” (FAC ¶ 28.) Plaintiff attached a copy of the Certificate of Registration for the CD as Exhibit B to his First Amended Complaint. Pursuant to 17 U.S.C. § 410(c), this serves as prima facie evidence to Plaintiff’s valid copyright ownership over the original version. *Cosmetic Idea*, 606 F.3d at 619 (“[I]f a copyright holder secures a registration certificate within five years after first publication,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

such certificate will constitute prima facie evidence of both the validity of the copyright and the facts stated in the certificate.”). As to Defendants’ argument that “Take a Dive” is not listed on the Certificate, “individual songs included in [a] collection . . . are protected by the copyright of the collection as a whole.” *Szabo v. Errisson*, 68 F.3d 940, 944 (5th Cir. 1995); see *Educ. Testing Servs. v. Katzman*, 793 F.2d 533, 539 (3d Cir. 1986). Furthermore, “a copyright of a collection of unpublished works protects the individual works that are copyrightable, regardless of whether they are individually listed on the copyright certificate.” *Szabo*, 68 F.3d at 943; *King Records, Inc. v. Bennett*, 438 F. Supp. 2d 812, 842 (M.D. Tenn. 2006) (“As sound recordings are copyrightable, the rule from *Szabo* is applicable and individual sound recordings that are part of a collection are protected by copyright, even if the certificate of registration only identifies the collection, and not each sound recording comprising the collection.”); see *Wihtol v. Wells*, 231 F.2d 550, 553 (7th Cir. 1956) (“[T]he title [of a song], in itself, is not subject to copyright protection.”)

Defendants argue, however, that Plaintiff’s newly-acquired Certificate of Registration for the derivative version only covers the 2010 sound recording of the song – not its musical composition or the 1999 sound recording – and because Plaintiff rests his claim on the musical composition and the 1999 sound recording, Plaintiff has not sufficiently alleged copyright ownership of the works at issue. (Adams et al. Reply, Doc. 86, at 4-6.) Defendants further argue that because Plaintiff obtained the Certificate of Registration for the derivative version over ten years after the work was first published, the Certificate lacks the presumption of prima facie evidence of valid copyright ownership pursuant to 17 U.S.C. § 410(c). (*Id.* at 7.)

As to whether Plaintiff’s Certificate of Registration covers the original 1999 sound recording of the derivative version, Plaintiff has sufficiently alleged that it does. Plaintiff alleges that he “has registered the derivative version of ‘Take a Dive’ above with the U.S. Copyright Office,” referencing the version he created in 1999. (FAC ¶ 29.) The SR 659-360 Certificate of Registration also lists the year of completion and date of first publication for the sound recording as 1999. (Declaration of Bryan Pringle, Exh. D.) Moreover, the only authority Defendants provide for their argument is *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211 (9th Cir. 1998), which merely held, at summary judgment, that “reconstructions” of original drawings made from memory were not “bona fide copies” of original works. *Id.* at 1212. Considering the procedural and factual distinctions in this case, *Kodadek* is inapposite.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

As to whether Plaintiff’s Certificate of Registration evinces valid copyright ownership over the derivative version of “Take a Dive,” because it was registered over ten years after the song was first published, Defendants are correct that the Certificate does not serve as prima facie evidence of a valid copyright. Under 17 U.S.C. § 410(c):

In any judicial proceedings the certificate of a registration made *before or within five years after first publication of the work* shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

17 U.S.C. § 410(c) (emphasis added). The Court notes, however, that “[r]egistration is not a prerequisite to a valid copyright” *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 (9th Cir. 1989). “As a general rule, copyright vests initially in the author or authors of a work” and “[c]opyright protection subsists from the moment the work is ‘fixed in any tangible medium of expression.’” *Id.* (citing 17 U.S.C. §§ 201(a), 102(a)). Thus, regardless of whether Plaintiff’s Certificate of Registration serves as prima facie evidence, Plaintiff can still sufficiently *allege* ownership over a valid copyright.

Here, Plaintiff alleges that in 1998, he wrote and recorded the song entitled “Take a Dive.” (FAC ¶ 27.) He further alleges that “‘Take a Dive’ was and is comprised of material that is wholly original, and thus entitled to protection as copyrightable material” (*Id.*) Plaintiff alleges he registered a copyright, registration number SRu 387-433, for a CD entitled “Dead Beat Club: 1998,” which allegedly included the original version of “Take a Dive” along with seventeen other original songs. (*Id.* ¶ 28.; *see id.* Exh. B.) Plaintiff alleges in 1999, he made a derivative work of “Take a Dive,” in which he added the guitar twang sequence, and then registered it with the Copyright Office through the SR 659-360 Certificate of Registration. (*Id.* ¶ 29.) In the face of these allegations, Defendants have not provided any evidence attacking the elements of Plaintiff’s allegedly valid copyright, such as ownership, copyrightable subject matter, and originality. *Syntek Semiconductor Co., Ltd. v. Microchip Technology, Inc.*, 307 F.3d 775, 781 (9th Cir. 2002). Taking Plaintiff’s allegations as true, the Court finds that Plaintiff has sufficiently alleged that he is the owner of a valid copyright of the original and derivative version of “Take a Dive.”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

2. Copying of Constituent Elements of the Work that are Original

Defendants argue that Plaintiff has failed to allege sufficiently that Defendants had access to the derivative version of “Take a Dive” to commit copyright infringement. (Adams et al. Mot. at 10-11; Shapiro et al. Mot. at 3-7.) Defendants assert that Plaintiff’s allegations of Defendants’ “bare corporate receipt” of the work, i.e. Plaintiff’s “generalized allegations of unsolicited submissions of unidentified numerous variations, or of works not at issue, to a large corporate defendant,” are insufficient to state a claim for infringement. (*Id.* at 11; Shapiro et al. Mot. at 5.)

Plaintiff asserts that whether he can ultimately establish access is a question for the trier of fact and not an appropriate issue for the Court to address at the pleading stage. (Pl.’s Opp. to Adams et al. at 5.; Pl.’s Opp. to Shapiro, Doc. 72, at 3.) Regardless, Plaintiff argues that he has sufficiently alleged that Defendants directly sampled the derivative version of “Take a Dive,” which would require Defendants to have physical possession of it, and that Plaintiff repeatedly submitted the derivative version of “Take a Dive” to Defendants Interscope, UMG, and EMI over the course of approximately ten years. (Pl.’s Opp. to Adams et al. at 6-7; Pl.’s Opp. to Shapiro at 4-5.)

As a general matter, “[p]roof of copyright infringement is often highly circumstantial, particularly in cases involving music.” *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000). “Absent direct evidence of copying, proof of infringement involves fact-based showings that the defendant had ‘access’ to the plaintiff’s work and that the two works are ‘substantially similar.’” *Id.* “To prove access, a plaintiff must show a reasonable possibility, not merely a bare possibility, that an alleged infringer had the chance to view the protected work.” *Art Attacks Ink, LLC v. MGA Entm’t, Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). “Where there is no direct evidence of access, circumstantial evidence can be used to prove access either by (1) establishing a chain of events linking the plaintiff’s work and the defendant’s access, or (2) showing that the plaintiff’s work has been widely disseminated.” *Id.* Furthermore, “[a]bsent evidence of access, a ‘striking similarity’ between the works may give rise to a permissible inference of copying.” *Baxter v. MCA, Inc.*, 812 F.2d 421, 423 (9th Cir. 1987). Here, Plaintiff’s bases his infringement claim on allegations of “access” and “substantial similarity.” (*See* FAC ¶¶ 31-43.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

As to access, Plaintiff alleges that “over the time period from around 1999 to 2008, Pringle had regularly submitted demo CDs, all of which contained ‘Take a Dive’ and various other songs, to Defendants UMG, Interscope and EMI.”¹ (*Id.* ¶ 31.) Plaintiff alleges that over this period he “received numerous letters in response to his music submissions,” which included “responses from multiple A&R representatives at Interscope, UMG, and EMI, saying that while his music was of good quality, the labels were not currently interested in signing him as an artist or purchasing any of his music.” (*Id.* ¶ 33.) As Plaintiff alleges, “[t]hese letters demonstrate that Interscope, UMG, and EMI received Pringle’s music, and implicitly acknowledges that his demo CDs, all of which contained ‘Take a Dive,’ were listened to by these individuals.” (*Id.*) Plaintiff further alleges that “Will.I.Am was an Artist and Repertoire (“A&R”) at Interscope” and, as a result of this position, “had direct access to . . . Plaintiff’s song ‘Take a Dive,’ . . .” (*Id.* ¶¶ 34-35.) Plaintiff alleges that “the Black Eyed Peas, Guetta, and/or Riestler then decided to willfully and directly copy significant portions of the song when they wrote and recorded ‘I Gotta Feeling.’” (*Id.* ¶ 37.) Plaintiff further alleges that “Defendants Will.I.Am, Fergie, apl.de.ap, Taboo, Guetta, and Riestler gained access to Plaintiff’s copyrighted song ‘Take a Dive,’ and then subsequently sampled and copied additional, substantial original elements of ‘Take a Dive,’ without Plaintiff’s permission, when they wrote, recorded, performed and made derivative works of their song ‘I Gotta Feeling.’” (*Id.* ¶ 62.)

As to substantial similarity, plaintiff alleges that “[a]s a result of the Black Eyed Peas, Guetta and/or Riestler having copied ‘Take a Dive,’ ‘I Gotta Feeling,’ as a whole, is substantially similar to ‘Take a Dive’ and the guitar twang sequence is identical.” (*Id.* ¶ 40.) Plaintiff further alleges that “the sound recording of the guitar twang sequence contained in the derivative version of ‘Take a Dive’ was directly sampled . . . by one or more of the Black Eyed Peas, Guetta and/or Riestler and placed into ‘I Gotta Feeling.’” (*Id.* ¶ 41.) Plaintiff then lists twelve separate similarities, including concept, style, tempo, and use of effects, between “I Gotta Feeling” and the derivative version of “Take a Dive.” (*Id.* ¶ 43.)

Recognizing that cases such as these are “highly circumstantial” and that proof of infringement requires “fact-based showings,” at the pleading stage the Court need only determine whether Plaintiff has sufficiently *alleged* infringement, not whether it occurred

¹ In paragraph 30 of his First Amended Complaint, Plaintiff states that “[a]ny and all references to the song ‘Take a Dive’ shall hereafter refer to the derivative version, as set forth in paragraph 29 above.” (FAC ¶ 30.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

in fact. Based on the foregoing allegations, Plaintiff has sufficiently alleged both access and substantial similarity. On the access prong, Plaintiff has sufficiently alleged a “chain of events linking the plaintiff’s work and the defendant[s]’ access.” *Art Attacks*, 581 F.3d at 1143. Based on his allegations that portions of the two songs are “identical,” Plaintiff has also alleged, at minimum, “a permissible inference of copying.” *Baxter*, 812 F.2d at 423. Furthermore, Defendants’ argument based on the “bare corporate receipt” theory is misplaced. The bare corporate receipt theory typically concerns whether a plaintiff can create a triable issue of fact as to access at the summary judgment stage, not whether a plaintiff has sufficiently pled a claim for copyright infringement. *See Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 53 (2d Cir. 2003); *Gable v. Nat’l Broad. Co.*, 727 F. Supp. 2d 815, 826 (C.D. Cal. 2010), *Meta-Film Assocs., Inc. v. MCA, Inc.*, 586 F. Supp. 1346, 1357-58 (C.D. Cal. 1984).

Because Plaintiff has sufficiently alleged ownership of a valid copyright and that Defendants have copied constituent elements of his original work, the Court DENIES Defendants’ Motions to Dismiss.

IV. Motion to Dismiss Under Rule 8(a)(2)

“The failure of a complaint to state a claim upon which relief can be granted is usually dealt with by a motion made under Rule 12(b)(6) . . .” *Gilibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969). “However, in an aggravated case a district court has discretion to dismiss an action for failure to comply with the requirement of Rule 8(a)(2).” *Id.* “[A] dismissal for a violation under Rule 8(a)(2), is usually confined to instances in which the complaint is so ‘verbose, confused and redundant that its true substance, if any, is well disguised.’” *Id.* (quoting *Corcoran v. Yorty*, 347 F.2d 222, 223 (9th Cir. 1965)).

Defendants argue that “Plaintiff’s verbose, redundant, and speculative pleadings violates [sic] Rule 8(a)(2) and should be dismissed.” (Adams et al. Mot. at 12.) The Court disagrees. Rule 8(a)(2) requires only that Plaintiff’s claim must contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). As outlined above, Plaintiff’s First Amended Complaint meets this requirement for his copyright infringement claim. Accordingly, the Court DENIES Defendants’ Motion to Dismiss pursuant to Rule 8(a)(2).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

V. Motion to Dismiss as to Defendant Rister Under Rule 12(b)(5)

Defendants argue that Plaintiff has failed to serve Defendant Rister with the Complaint and First Amended Complaint, and the action as to Rister should be dismissed pursuant to Rule 12(b)(5). (Shapiro et al. Mot. at 7-8.) Under Rule 12(b)(5), a party may assert a defense by motion for insufficient service of process. Fed. R. Civ. P. 12(b)(5). Under Rule 4(c), the plaintiff is responsible for having the summons and complaint served upon defendants. Fed. R. Civ. P. 4(c).

Defendants argue that Plaintiff’s proofs of service on Rister state that service was made not on any employee or service agent of Rister, but rather on Defendant Shapiro. (Shapiro et al. Mot. at 8; *see* Docs. 40 & 50.) Plaintiff does not dispute this.

However, Rule 4(c) states the “plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)” Fed. R. Civ. P. 4(c). Under Rule 4(m), “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

Plaintiff commenced this action on October 28, 2010. (Doc. 1). Thus, Plaintiff has 120 days from then to serve Rister with the summons and First Amended Complaint. Accordingly, the Court DENIES Defendants’ motion to dismiss pursuant to 12(b)(5). Plaintiff shall promptly serve Rister with the summons and First Amended Complaint so as to not unduly delay litigation. (*See* Initial Standing Order, Doc. 4, ¶ 1.)

VI. Motion for a More Definite Statement Under Rule 12(e)

Under Rule 12(e), “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). “The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired.” *Id.* “A Rule 12(e) motion is proper only where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted.” *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). “Motions for

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

a more definite statement are viewed with disfavor and are rarely granted because of the minimal pleading requirements of the Federal Rules.” *Id.*

Defendants argue that Plaintiff’s First Amended Complaint lacks specificity as to Defendant’s access to the derivative version of “Take a Dive,” and asks the Court to “order Plaintiff to specifically allege on what dates and to whom the unsolicited submissions of the Twang Version at issue were sent,” as well as other details surrounding such submissions. (Adams et al. Mot. at 14.) As evident from this request, Defendants ascertain the nature of Plaintiff’s claim, but merely seek greater detail. “Parties are expected to use discovery, not the pleadings, to learn the specifics of the claims being asserted.” *Sagan*, 874 F. Supp. at 1077. Because Plaintiff has sufficiently stated a claim for copyright infringement that reasonably allows Defendants to prepare a response, the Court DENIES Defendants’ Motion for a More Definite Statement pursuant to Rule 12(e).

VII. Motion to Strike Under Rule 12(f)

Under Rule 12(f), a court “may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other grounds by Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994)).

“[M]otions to strike, as a general rule, are disfavored.” *Stabilisierungsfonds Fur Wein v. Kaiser*, 647 F.2d 200, 201 (D.C. Cir. 1981). This is because they are “often used as delaying tactics, and because of the limited importance of pleadings in federal practice.” *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1478 (C.D. Cal. 1996) (citing Schwarzer, et al., Federal Civil Procedure § 9:375). “[M]otions to strike should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation.” *Liley v. Charren*, 936 F. Supp. 708, 713 (N.D. Cal. 1996). “Rule 12(f) is ‘neither an authorized nor a proper way to procure the dismissal of all or a part of a complaint.’” *Yamamoto v. Omiya*, 564 F.2d 1319, 1327 (9th Cir. 1977). “Were [courts] to read Rule 12(f) in a manner that allowed litigants to use it as a means to dismiss some or all of a pleading . . . , [they] would be creating redundancies within the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

Federal Rules of Civil Procedure, because a Rule 12(b)(6) motion (or a motion for summary judgment at a later stage in the proceedings) already serves such a purpose.” *Whittlestone*, 618 F.3d at 974.

According to Defendants, the allegations they seek to strike from the First Amended Complaint fall into four categories: (1) allegations regarding unrelated third party accusations of copying; (2) allegations regarding conspiracy to commit infringement and unfair business practices, where no claim has been asserted; (3) allegations regarding a pattern and practice of copyright infringement; and (4) requests for relief that are unavailable as a matter of law, such as statutory damages and attorney fees. (Adams et al. Mot at 14.) Defendants argue that the paragraphs at issue “are improper and have no tangible bearing on the subject matter of this litigation.” *Id.*

As to the first three categories of allegations, Defendants fail to convince the Court that any of the paragraphs are clearly “redundant, immaterial, impertinent, or scandalous,” *see* Fed. R. Civ. P. 12(f), or that striking the said paragraphs would save the parties and the Court “time and money that [would] arise from litigating spurious issues.” *Whittlestone, Inc.*, 618 F.3d at 973. Because motions to strike are generally disfavored, and from Defendants’ Motion, it is not “clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation,” *Liley*, 936 F. Supp. at 713, the Court DENIES Defendants’ Motion to Strike as to the allegations of third party accusations of copying, conspiracy to commit infringement and unfair business practices, and a pattern and practice of copyright infringement.

Defendants also seek to strike Plaintiff’s request for attorneys’ fees. “[A] motion to strike may be used to strike any part of the prayer for relief when the damages sought are not recoverable as a matter of law.” *Bureerong*, 922 F. Supp. at 1479 n.34.

Defendants argue that because Plaintiff registered his copyright in the derivative version of “Take a Dive” after Defendants allegedly commenced infringement, Plaintiff is not entitled to attorneys’ fees. (Adams et al. Mot. at 21-22.) Under 17 U.S.C. § 412(2), “no award of statutory damages or of attorney’s fees, as provided by sections 504 and 505, shall be made for . . . any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.” 17 U.S.C. § 412(2). “17 U.S.C. § 412(2) of the Copyright Act precludes an award of

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1656-JST (RZx)

Date: January 27, 2011

Title: Bryan Pringle v. William Adams Jr. et al.

attorneys' fees if the copyrighted work is not registered prior to the commencement of the infringement, unless the registration is made within three months after the first publication of the work." *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 701-02 (9th Cir. 2008).

Here, infringement allegedly commenced in 2009, first publication of the derivative work occurred in 1999, and Plaintiff did not register the copyright in the derivative work until November 2010. However, Plaintiff has also alleged ownership in the original version of "Take a Dive," which was allegedly created and registered before infringement commenced. At this stage, the Court cannot predict if and how Plaintiff's copyright infringement claim will incorporate the allegedly protectable elements of the original version, and thus cannot determine that Plaintiff is precluded from seeking attorney's fees under 17 U.S.C. § 412(2). Accordingly, the Court DENIES Defendants' Motion to Strike Plaintiff's prayer for attorneys' fees.

VIII. Conclusion

For the reasons stated above, the Court DENIES Defendants' Motions to Dismiss under Rules 12(b)(6), 8(a)(2), and 12(b)(5), Motion for a More Definite Statement under Rule 12(e), and Motion to Strike under Rule 12(f).

Initials of Preparer: nkb