

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 11-08095 DMG (AJWx)** Date February 9, 2012

Title ***Rick Cunningham v. Lamar Seymour, et al.*** Page 1 of 6

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

VALENCIA VALLERY

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

Proceedings: IN CHAMBERS—ORDER GRANTING DEFENDANT CASH MONEY RECORD, INC'S MOTION TO DISMISS [DOC. # 16]; ORDER TO SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE DISMISSED

This matter is before the Court on Defendant Cash Money Records, Inc.'s ("Cash Money") motion to dismiss Plaintiff's claims for an accounting and constructive trust [Doc. # 16], currently set for hearing on February 10, 2012. The Court deems this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

On August 16, 2011, Plaintiff Rick Cunningham filed a complaint against Defendants Lamar Seymour, Lanelle Seymour (together with Lamar Seymour, the "Seymour Defendants"), Noel Fisher, Dwayne Michael Carter, Jr. aka "Lil Wayne" ("Carter"), and Cash Money in Los Angeles County Superior Court. On September 29, 2011, Defendant Cash Money removed the action to this Court on the basis of federal question jurisdiction under the Copyright Act, 17 U.S.C. § 101 *et seq.*

On November 2, 2011, Plaintiff filed a first amended complaint against Defendants. Plaintiff alleges claims for (1) breach of contract; (2) fraud and deceit based on intentional misrepresentation; (3) intentional interference with prospective economic advantage; (4) conversion; (5) accounting; and (6) imposition of constructive trust. Only Plaintiff's fifth and sixth causes of action are alleged against Cash Money.¹

¹ The Copyright Act preempts state laws that regulate in the area of copyright. 17 U.S.C. § 301(a); *see also Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1150 (9th Cir. 2008). The Ninth Circuit has adopted a two-part test to determine whether a state law claim is preempted by the Copyright Act: (1) the subject matter of the state law claim must fall within the subject matter of copyright as described in 17 U.S.C. §§ 102 and 103; and (2) the right asserted under state law must be equivalent to the exclusive rights contained in section 106 of the Copyright Act." *Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1152-53 (9th Cir. 2010) (citing *Laws v. Sony Music Entertainment, Inc.*, 448 F.3d 1134, 1137-38 (9th Cir. 2006)). Here, the subject matter of Plaintiff's state law claims are musical beats, which fall within the "musical works" category under the Copyright Act. *See* 17 U.S.C. § 102(a)(2).

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On November 17, 2011, Defendant Cash Money filed a motion to dismiss Plaintiff's claims for an accounting and a constructive trust. [Doc. # 16.] Plaintiff filed an opposition on December 29, 2011. [Doc. #19.] Defendant filed a reply on January 12, 2012. [Doc. # 21.]

I. DEFENDANT CASH MONEY'S MOTION TO DISMISS**A. Facts Alleged in the First Amended Complaint**

Plaintiff alleges that on or about January 2006, and continuing through September 2009, he entered into oral agreements with the Seymour Defendants employing them to create and perform music and works for hire for Plaintiff and that he paid the Seymour Defendants for performing and recording musical "beats" in Plaintiff's studio. (1st Am. Compl. ¶ 9.) On or about September 1, 2009, Plaintiff and the Seymour Defendants confirmed all of their prior oral agreements and contracts by recording a videotaped confirmation, in which the Seymour Defendants acknowledged that the beats were the exclusive and sole property of Plaintiff and that the Seymour Defendants had no right to them. (*Id.* ¶ 10.)

In November 2010, Defendant Fisher falsely represented to Defendants Carter and Cash Money that the Seymour Defendants owned the music and the beat (the "Beat") that was of interest to them. (*Id.* ¶ 26.) On or about January 15, 2011, the Seymour Defendants entered into a written agreement with Fisher, Carter, and Cash Money in which the Seymour Defendants claimed ownership to, and authority to grant use of, the Beat. (*Id.* ¶ 27.) Fisher incorporated the Beat into a single, "How to Love," to be performed and recorded by Carter. (*Id.*) The Seymour Defendants were paid a 35% contract royalty for use and recording of the Beat in the performance of "How to Love." (*Id.* ¶ 28.)

Commencing on or about March 26, 2011, Defendants assigned a royalty interest to the Seymour Defendants for their ownership of the Beat and, since February 1, 2011, the Seymour Defendants have received approximately \$1 million in royalty payments. (*Id.* ¶¶ 42-43.)

B. Legal Standards Governing Motions to Dismiss Under Fed. R. Civ. P. 12(b)(6)

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Although a complaint need not

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contain “detailed factual allegations,” it must contain “more than labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Id.* at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)). Rather, the plaintiff must articulate “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

Under Federal Rule of Civil Procedure 12(b)(6), a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. Legal conclusions, in contrast, are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009) (citing *Twombly*, 550 U.S. at 555).

“The theory of Rule 8(a), and of the federal rules in general, is notice pleading.” *Starr v. Baca*, 652 F.3d 1202, 1212 (9th Cir. 2011). “[T]o be entitled to the presumption of truth, allegations in a complaint or counterclaim . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Id.* at 1216. “[T]he factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” *Id.*

C. Discussion

Defendant Cash Money argues, *inter alia*, that the only claims against it, *i.e.*, Plaintiff’s fifth cause of action for an accounting and sixth cause of action for constructive trust, fail because Plaintiff cannot establish that he is the legal owner of the Beat. In his opposition, Plaintiff argues that “a videotaped agreement between the parties describ[es] the full and complete body of work and its transfer to the plaintiff by the Seymour defendants.” (Opp’n at 2.) He contends that pursuant to 17 U.S.C. § 204, a non-author can acquire ownership of a copyright through a transfer and that the videotaped recording complies with that writing requirement. (*Id.* at 3-5.)

1. Legal Standards Governing a “Work Made for Hire” and Transfers of Ownership under the Copyright Act

Under Section 201 of the Copyright Act, copyright ownership “vests initially in the author or authors of the work.” 17 U.S.C. § 201(a). If a work is made for hire, “the employer or

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other person for whom the work was prepared is considered the author” and owns the copyright “unless the parties have expressly agreed otherwise in a written instrument.” 17 U.S.C. § 201(b). The Copyright Act defines a “work made for hire” as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use . . . as a part of a motion picture or other audiovisual work . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

17 U.S.C. § 101 (emphasis added).

The Copyright Act provides that a transfer of copyright ownership “is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner’s duty authorized agent.” 17 U.S.C. § 204; *see also Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1157 (9th Cir. 2010) (“Section 204(a) is designed to resolve disputes between owners and transferees and to protect copyright holders from persons mistakenly or fraudulently claiming oral licenses or copyright ownership).

2. Plaintiff Fails to Allege the Existence of a Written Instrument or Any Writing Signed by the Parties

In his opposition, Plaintiff appears to concede that there is neither a written instrument signed by the parties establishing that the Beat is a “work made for hire,” pursuant to 17 U.S.C. § 101, nor one transferring ownership of the copyright to Plaintiff, pursuant to 17 U.S.C. § 204. Instead, Plaintiff argues that the videotaped recording “is better than either an oral or written agreement, as it shows the parties’ demeanor, intent, and purpose” and is the “purest embodiment” of the parties’ intent. (Opp’n at 2, 5.) The Court disagrees.

First, Plaintiff glosses over the explicit requirements set forth in the Copyright Act. Section 101 of the Copyright Act states in no uncertain terms that a “work made for hire” is one where the parties “expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” 17 U.S.C. § 101 (emphasis added). Section 204(a) similarly provides that transfers of copyright ownership are not valid unless the “instrument of

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conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights.” 17 U.S.C. § 204(a) (emphasis added).

Moreover, Plaintiff’s reliance on *Effects Associates, Inc. v. Cohen*, 908 F.2d 555 (9th Cir. 1990) is misplaced. Plaintiff cites *Effects Associates* for the proposition that the writing requirement “prevents misunderstandings by spelling out the terms of a deal in black and white, forces parties to clarify their thinking and consider problems that could potentially arise, and encourages them to take their promises seriously” and reasons that the videotaped recording satisfies the writing requirement because it embodies the parties’ intent to transfer the copyright. *Id.* at 557. Plaintiff fails, however, to explain how his loose interpretation of the court’s decision comports with the court’s explicit statement just five sentences later:

The rule is really quite simple: If the copyright holder agrees to transfer ownership to another party, that party must get the copyright holder to sign a piece of paper saying so. It doesn’t have to be the Magna Charta; a one-line pro forma statement will do.

Id. Indeed, “[c]ommon sense tells us that agreements should routinely be put in writing.” *Id.*

In his opposition, Plaintiff asks that the Court permit him the opportunity to amend his complaint to set forth the actual transcript of the videotaped agreement. As discussed *supra*, however, in order to satisfy the requirements of the Copyright Act, Plaintiff must have a signed writing by the parties establishing either that the Beat is a work made for hire or that ownership was transferred to Plaintiff. Plaintiff’s proposal to transcribe the videotape does not meet the requirement of a “written instrument signed by” the parties. Moreover, Plaintiff alleges that all prior agreements between himself and the Seymour Defendants upon which the videotaped agreement was based were oral. (1st Am. Compl. ¶ 9.) Thus, any amendment would be futile.

The Court therefore GRANTS Defendant’s motion to dismiss, without leave to amend.

II. ORDER TO SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE DISMISSED

As of the date of this Order, there is no indication that Plaintiff has served any of the Seymour Defendants, or Defendants Fisher and Carter. None of these Defendants have filed any

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responsive pleadings or otherwise appeared in this action. Plaintiff should have effected service on these Defendants by January 27, 2011.² See Fed. R. Civ. P. 4(m).

Accordingly, Plaintiff is ORDERED TO SHOW CAUSE why the Seymour Defendants and Defendants Fisher and Carter should not be dismissed for failure to prosecute.

III. CONCLUSION

In light of the foregoing:

- A. Defendant Cash Money's motion to dismiss is **GRANTED** without leave to amend.
- B. Plaintiff is **ORDERED TO SHOW CAUSE** why the Seymour Defendants and Defendants Fisher and Carter should not be dismissed due to Plaintiff's failure to prosecute. Plaintiff shall have 15 days from the date of this Order to file a written response to the Court's Order to Show Cause.
- C. The February 10, 2012 hearing is **VACATED**.

IT IS SO ORDERED.

² Rule 4(m) of the Federal Rules of Civil Procedure provides:

If 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).