

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-12-00014 MWF (JEMx) Date: January 3, 2013
Title: KTS Karaoke, Inc. et al. v. Sony ATV Music Publishing LLC, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

<u>Rita Sanchez</u>	<u>Not Reported</u>	<u>N/A</u>
Deputy Clerk	Court Reporter/Recorder	Tape No.

Attorneys Present for Plaintiffs:
Not Present

Attorneys Present for Defendants:
Not Present

Proceedings (In Chambers): ORDER DENYING PLAINTIFFS/COUNTER-DEFENDANTS' MOTION TO DISMISS UNSUBSTANTIATED CLAIMS [71]

This matter is before the Court on Plaintiffs/Counter-Defendants' Motion to Dismiss Unsubstantiated Claims ("Motion"). (Docket No. 71). The Court finds the matter appropriate for submission on the papers without oral argument. *See* Fed. R. Civ. P 78(b) and Local Rule 7-15 (the Court may dispense with oral argument on any matter unless otherwise required). The matter is therefore removed from the Court's January 7, 2013, calendar. Having considered the parties' submissions, the Court DENIES Plaintiffs/Counter-Defendants' Motion.

Plaintiffs/Counter-Defendants KTS Karaoke, Inc. and Timmy Sun Tom ("KTS") move to dismiss claims in Defendants/Counter-Plaintiffs' ("Sony/ATV") First Amended Complaint and Amended Counterclaim pursuant to Federal Rule of Procedure 12(b)(1), arguing that the Court lacks subject matter jurisdiction because Sony/ATV has not identified copyright registration numbers for certain works and because Sony/ATV has not proven ownership of the copyright registrations it has identified. However, neither ground is a proper basis for the Rule 12(b)(1) Motion.

With regard to the works for which Sony/ATV has not identified copyright registration numbers, federal subject matter jurisdiction exists over intellectual property disputes involving unregistered works. *See, e.g., Reed Elsevier, Inc. v. Muchnick*, -- U.S. --, 130 S.Ct. 1237, 176 L.Ed.2d 18 (2012) ("[N]either §1331, which confers subject-matter jurisdiction over questions of federal law, nor

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§1338(a), which is specific to copyright claims, conditions its jurisdictional grant on whether copyright holders have registered their works before suing for infringement.”). Accordingly, registration is not a jurisdictional requirement and subject matter jurisdiction exists over this action. Because the Court’s recent orders as to discovery and identification of the works at issue cannot be construed as jurisdictional, a motion to dismiss for lack of subject matter jurisdiction is an inappropriate mechanism for addressing a purported deficiency in compliance.

The Motion also fails with regard to proof of ownership. KTS has no basis for its claim that “[t]he Sony/ATV parties were ordered to prove their copyright ownership as part of their initial disclosures.” (Docket No. 76 at ¶6). KTS cites no order of this Court requiring such proof and no legal authority to suggest that such proof should be required at this early juncture. And, even if the Court had ordered the production of “chain of title” evidence, failure to comply with that order would not divest the Court of subject matter jurisdiction over this action. The Court also already ruled that the pleadings sufficiently allege ownership interests in exclusive rights protected by the Copyright Act. (Docket No. 49 at 2). Whether Sony/ATV can prove infringement may indeed hinge in part on whether it can prove ownership interests in the works, but that question of proof is not one for a Rule 12 motion.

It appears that Sony/ATV is attempting to comply in good faith with the Court’s orders regarding discovery in this far-reaching, factually complicated matter. The concerns underlying KTS’s Motion should be addressed during the course of discovery and ameliorated by the parties’ cooperation and compliance with their continuing obligations under Rule 26.

IT IS SO ORDERED.

_____: N/A
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