UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL **'O' JS-6**

Case No.	2:14-cv-09237-CAS(RZx)	Date	May 4, 2015
Title	DONALD HEPBURN v. CONCORD MUSIC GROUP, LLC, ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER	
Catherine Jeang	Laura Elias	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Julie Abelev	Robert Besser

Proceedings: DEFENDANT CONCORD MUSIC GROUP, LLC'S MOTION TO DISMISS (Dkt. No. 53, filed March 31, 2015)

I. INTRODUCTION

On December 2, 2014, plaintiff Donald Hepburn ("plaintiff" or "Hepburn") filed this action against defendants Concord Music Group, L.L.C. ("Concord"); Universal Music Group, Inc.; Sony Music Entertainment, Inc.; Third Story Music, Inc. / Six Palms Music Corp.; Rykomusic, Inc.; Ryko Corporation; and Does 1 through 5. Dkt. No. 1 (Compl.). Concord is the only remaining defendant.[1] Plaintiff seeks declaratory relief and an accounting concerning Concord's interests in certain copyrights. The complaint asserts subject matter jurisdiction on the bases of federal question and diversity jurisdiction. Id. ¶¶ 9–10.

On March 31, 2015, Concord filed a motion to dismiss the complaint on the grounds that (1) this Court lacks subject matter jurisdiction over the action, and (2) the complaint fails to state a claim. Dkt. No. 53. Hepburn opposed the motion on April 13, 2015. Dkt. No. 54. Concord filed a reply on April 20, 2015. Dkt. No. 55. Concord's

[1]On February 25, 2015, Hepburn stipulated to dismiss Third Story Music Inc. / Six Palms Music Corp., Ryko Corporation, and Rykomusic, Inc. Dkt. Nos. 45, 46. On March 30, 2015, Hepburn stipulated to dismiss Sony Entertainment, Inc., Dkt. No. 51, and filed a notice of dismissal as to Universal Music Group, Inc., Dkt. No. 52. Hepburn represents that each of these defendants "has voluntarily provided an accounting of

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motion is presently before the Court. After considering the parties' arguments, the Court finds and concludes as follows.

II. BACKGROUND

A. Factual Allegations of the Complaint

Hepburn is a keyboardist and songwriter who was a member of a musical band called "Pleasure," which was active from 1972 to 1982. Compl. ¶ 13. In 1974, the band's producer, Wayne Henderson, entered the band into a "Record Company Agreement" with a company called Fantasy Records. Id. ¶ 21. Pleasure recorded six albums with Fantasy Records, and one album with RCA Records. Id. ¶ 13. Hepburn alleges that he "is the author or co-author" of Pleasure songs referenced in the complaint. Id. He attaches "[a] selection" of these songs in an exhibit to the complaint, and names in the complaint additional songs that have been "sampled by other artists." See id. ¶ 14 & Attach. A.

Hepburn alleges that in the years since Pleasure broke up, he has "received few royalty payments for his compositions," even though the compositions have been used in media outlets and sampled by other artists. Id. ¶ 14. Hepburn further alleges that several albums containing Pleasure music have recently been released. For example, Hepburn asserts that in 2006, Fantasy Records—which he alleges to be "the predecessor of Concord"—released an album compilation entitled *Dust Yourself Off/Accept No Substitutes* that includes Pleasure songs. Id. Hepburn also submits that in September 2013, Concord re-released several Pleasure songs on the album *Glide: The Essential Selection 1975–1982*. Id. ¶ 16. Hepburn alleges that the *Glide* album was released under the Decision Records label, which "may be an affiliate of Fantasy Records." Id. Hepburn contends that all of these "albums and songs were published without [Hepburn's] input," and that "he has not received any royalties from them." Id. ¶ 17. With regard to royalty statements provided to him by Fantasy Records, as well as checks issued by publishing agencies and other documents concerning royalties, plaintiff asserts that these documents "do not specify the titles, amounts sold, or the sources for the amounts," making it "difficult for Hepburn to trace the ownership and licensing of his individual songs, as well as monitor the songs' status and commercialization." Id. ¶ 19.

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Hepburn alleges that some of the companies to have owned rights in Pleasure's music have undergone mergers and acquisitions that complicate the current state of ownership of rights to the Pleasure songs. For example, he asserts that Fantasy Records completed a merger and transferred its catalogue to Concord. Id. ¶ 24. Hepburn contends: "In view of the many entities that have worked with Pleasure, published the band's compositions, or held royalty privileges, Hepburn lacks sufficient information and access to secure his rights, requiring the cooperation and participation of" the defendants named in his complaint. Id. ¶ 25. Plaintiff alleges that the defendants or their assignees "have and are continuing to receive payments from the reproduction, use or other exploitation of the compositions performed and/or written by Hepburn as a member of Pleasure," as "evidenced by the extensive sampling of Pleasure songs and the recent release of the *Glide* album without Hepburn's consent." Id. ¶ 32.

B. Hepburn's Claims for Relief

In his first claim for relief, Hepburn alleges that an actual controversy exists between him and defendants "concerning who has an ownership interest in the copyrights [and] who must provide Hepburn an accounting of royalties and profits." Id. ¶ 27. He asserts that various "mergers, transfers, and shell companies" have "made tracking the Pleasure songs' chain of title highly difficult," so that only defendants "are in a position to clarify how and why they respectively received ownership, control, or management rights." Id. Hepburn alleges that the "issuance of declaratory relief by this Court of which of the [defendants] should provide an accounting under the Copyright Act, due to an ownership, licensee, transferee, or management interest, will terminate the existing controversy and allow Hepburn to move forward with infringement actions against the appropriate parties." Id. ¶ 28. To this end, Hepburn contends that the Court "must declare" the defendants' "status as assignees, transferees, licensees, and managers." Id. ¶ 31. Hepburn seeks judicial declarations of (1) "the respective interests of each Defendant in the relevant Pleasure copyrights," and (2) "which Defendants the Plaintiff may pursue in a copyright infringement action for the Pleasure compositions sampled and featured in the newly released *Glide* album." Id. at 9.

In his second claim for relief, Hepburn alleges that he "has a right to demand an accounting from the listed [defendants] under the Copyright Act," but "lacks sufficient

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Hepburn seeks an accounting under California common law. Id. ¶ 31. He alleges "improper use of Pleasure compositions in the distribution of the *Glide* album" and other acts, but states that "tracking the movement of Hepburn's compositions and [the parties'] various interests [is] difficult," and that an "accounting is necessary to determine the exact amount of all monies, revenues, profits, and property and the proceeds thereof received by the [defendants] and owed to Hepburn." Id. ¶ 33. He seeks an accounting of sums and money received by each defendant in connection with the exploitation of Pleasure compositions listed in his complaint, as well as an explanation from each defendant of "the chain of title" for those compositions. Id. at 9–10.

III. LEGAL STANDARD

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) raises the objection that a federal court lacks subject matter jurisdiction. This defect may exist despite the formal sufficiency of the allegations in the complaint. T.B. Harms Co. v. Eliscu, 226 F. Supp. 337, 338 (S.D.N.Y. 1964), aff'd 339 F.2d 823 (2d Cir. 1964). Once a Rule 12(b)(1) motion has been raised, the burden is on the party asserting jurisdiction. Sopcak v. N. Mountain Helicopter Serv., 52 F.3d 817, 818 (9th Cir. 1995); Ass'n of Am. Med. Coll. v. United States, 217 F.3d 770, 778-79 (9th Cir. 2000). If jurisdiction is based on a federal question, the pleader must show that he has alleged a claim under federal law and that the claim is not frivolous. See 5B Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, § 1350, pp. 211, 231 (3d ed. 2004). If jurisdiction is based on diversity of citizenship, the pleader must show complete diversity and that the asserted claim places more than $75,000 in controversy.

IV. ANALYSIS

Concord argues that the complaint should be dismissed for lack of subject matter jurisdiction and for failure to state a claim. Because a federal court "may not hypothesize subject-matter jurisdiction for the purpose of deciding the merits," Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999), the Court first analyzes whether it has jurisdiction over this action. Determining that it lacks jurisdiction, the Court does not consider whether the complaint states a claim under Rule 12(b)(6).

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A. The Court Lacks Subject Matter Jurisdiction.

Hepburn alleges that this Court has both federal question and diversity jurisdiction over his action. Compl. ¶¶ 8–9. The Court addresses each ground in turn.

1. This Action Does Not Arise Under Federal Law.

The Declaratory Judgment Act, 28 U.S.C. § 2201, "permits a federal court to 'declare the rights and other legal relations' of parties to a case of actual controversy." Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., Inc., 655 F.2d 938, 942 (9th Cir. 1981). There must be an independent jurisdictional basis to bring an action under the Declaratory Judgment Act, which "does not itself confer federal subject matter jurisdiction." Fidelity & Cas. Co. v. Reserve Ins. Co., 596 F.2d 914, 916 (9th Cir. 1979). Additionally, there must be an actual Article III case or controversy between the parties. Hunter Eng'g Co., 655 at 942.

Hepburn alleges that this action is "based solely on Copyright Act principles, not state contract law." Id. ¶ 8. Federal courts have exclusive jurisdiction over cases "arising under" the Copyright Act. 28 U.S.C. § 1338(a). "However, a case does not arise under the federal copyright laws . . . merely because the subject matter of the action involves or affects a copyright." Topolos v. Caldeway, 698 F.2d 991, 993 (9th Cir. 1983); see, e.g., Danks v. Gordon, 272 F. 821, 827 (2d Cir. 1921) (holding suit involving copyright royalties owed by contract did not arise under federal law). To determine whether a case "arises under" the Copyright Act, the Ninth Circuit has adopted the T.B. Harms test, under which a district court has jurisdiction only if: "(1) the complaint asks for a remedy expressly granted by the Copyright Act; (2) the complaint requires an interpretation of the Copyright Act; or (3) federal principles should control the claims." Scholastic Entm't, Inc. v. Fox Entm't Group, Inc., 336 F.3d 982, 986 (9th Cir. 2003).

Applying this test, Hepburn's claims for declaratory relief and accounting do not arise under the Copyright Act. First, Hepburn does not seek a remedy "expressly granted" by the Copyright Act, as the text of that Act does not provide for declaratory relief or an accounting of the type Hepburn requests. See 17 U.S.C. §§ 502–05 (listing

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