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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NKLOSURES, INC.,
Plaintiff,

v.

AVALON LODGING LLC, et
al.,
Defendants.

CV 22-00459-RSWL-JDE_x

**ORDER re: MOTION TO
DISMISS [41]**

Plaintiff nKlosure, Inc. ("Plaintiff") brought this Action against Defendants Avalon Lodging, LLC ("Defendant Avalon"); Bipin Morari ("Defendant Morari"); Best Western International, Inc.; W&W Land Design Consultants, Inc.; Winston Liu, P.E.; and Tom Lau, AIA (collectively, "Defendants") alleging copyright infringement, breach of contract, and unfair business practices. Currently before the Court is Defendants Avalon and Morari's Motion to Dismiss [41] ("Motion"). Having reviewed all papers submitted pertaining to this

1 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
2 Court **GRANTS in part** and **DENIES in part** Defendants'
3 Motion.

4 I. BACKGROUND

5 A. Factual Background

6 Plaintiff's First Amended Complaint ("FAC") alleges
7 as follows:

8 On or about May 25, 2014, Plaintiff, a licensed
9 architectural firm, contracted with Mr. Thakor Patel to
10 provide architectural design services for a new
11 Los Angeles hotel. First Am. Compl. ("FAC") ¶ 12, ECF
12 No. 39. The contract (the "Agreement") indicated that
13 Plaintiff was the sole author, owner, and copyright
14 holder of the architectural drawings and plans (the
15 "Drawings") and that once the Planning Department
16 approved the Drawings, Mr. Patel would retain Plaintiff
17 as the architect for the hotel's construction. Id.
18 Moreover, the Drawings were stamped with language
19 providing that they could not be copied or transmitted
20 without Plaintiff's express written permission. Id.
21 ¶ 13.

22 After the Drawings were approved, Plaintiff learned
23 in June 2015 that Mr. Patel was selling the hotel
24 project to Defendant Avalon. Id. ¶ 14. In response,
25 Plaintiff's principal, Mr. Nikhil Kamat ("Mr. Kamat"),
26 reached out to Defendant Avalon's principal and managing
27 agent, Defendant Morari, to notify him that the Planning
28 Department had approved the Drawings and Plaintiff could

1 continue work on the project. Id. ¶¶ 5, 15. Defendant
2 Morari then asked for a proposal for Plaintiff's work.
3 Id. ¶ 15. Mr. Kamat made it clear that Plaintiff would
4 only disclose the Drawings in its proposal on the
5 condition that Defendant Avalon could not use the
6 Drawings for the hotel unless Defendant Avalon paid
7 Plaintiff for them and hired Plaintiff as the project
8 architect. Id.

9 Three weeks later, Mr. Kamat sent Defendant Morari
10 an e-mail containing Plaintiff's proposal. Id. ¶ 17.
11 In the e-mail, Mr. Kamat indicated that Plaintiff was
12 the sole owner, author, and copyright holder of the
13 Drawings created for the hotel, and that upon execution
14 of a contract, Plaintiff would grant Defendant Avalon a
15 license to use the Drawings in the hotel's construction.
16 Id. In two subsequent phone calls, Defendant Morari
17 told Mr. Kamat that he would review the proposal and get
18 back to him. Id. ¶ 18. Defendant Morari understood
19 that if he decided to use the Drawings, Defendant Avalon
20 would have to pay for them and use Plaintiff as the
21 architect on the project. Id. Thereafter, Defendant
22 Morari went silent and cut off all contact with Mr.
23 Kamat. Id.

24 Several weeks later, Mr. Kamat sent an e-mail to
25 follow up on the proposal, but Defendant Morari did not
26 respond nor contact Plaintiff again. Id. ¶ 19.
27 Mr. Kamat therefore inferred that Defendant Morari was
28 not interested in using the Drawings for the hotel. Id.

1 On or about June 22, 2020, Mr. Kamat saw an
2 advertisement for the sale of a hotel that had since
3 been constructed on the property and recognized the
4 design as his own. Id. ¶ 21. He also learned that
5 Defendant Avalon had hired Defendant W&W Land Design
6 Consultant, Inc. ("W&W") for the next stage of project
7 development and that Defendants had used Plaintiff's
8 preliminary schematic design and drawings in the hotel's
9 construction. Id. Sometime thereafter, Plaintiff
10 learned that the Drawings were included in a Power Point
11 presentation (the "Presentation") marketing the
12 property. Id. ¶ 20.

13 On January 13, 2022, Plaintiff filed a copyright
14 application for the Drawings and the United States
15 Copyright Office granted Copyright Registration
16 Certificate No. VA 2-282-647 for the Drawings five days
17 later. Id. ¶¶ 24-25.

18 **B. Procedural Background**

19 Defendants filed the instant Motion [42] on September
20 8, 2022. Plaintiff opposed [48] the Motion on October
21 4, 2022. Defendants replied [49] on October 7, 2022.

22 **II. DISCUSSION**

23 **A. Legal Standard**

24 Federal Rule of Civil Procedure 12(b)(6) allows a
25 party to move for dismissal of one or more claims if the
26 pleading fails to state a claim upon which relief can be
27 granted. Fed. R. Civ. P. 12(b)(6). A complaint must
28 "contain sufficient factual matter, accepted as true, to

1 state a claim to relief that is plausible on its face.”
2 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotation
3 omitted). Dismissal is warranted for a “lack of a
4 cognizable legal theory or the absence of sufficient
5 facts alleged under a cognizable legal theory.”
6 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699
7 (9th Cir. 1988) (citation omitted).

8 In ruling on a Rule 12(b)(6) motion, a court may
9 generally consider only allegations contained in the
10 pleadings, exhibits attached to the complaint, and
11 matters properly subject to judicial notice. Swartz v.
12 KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). A court
13 must presume all factual allegations of the complaint to
14 be true and draw all reasonable inferences in favor of
15 the non-moving party. Klarfeld v. United States, 944
16 F.2d 583, 585 (9th Cir. 1991). The question is not
17 whether the plaintiff will ultimately prevail, but
18 whether the plaintiff is entitled to present evidence to
19 support its claims. Jackson v. Birmingham Bd. of Educ.,
20 544 U.S. 167, 184 (2005) (quoting Scheuer v. Rhodes,
21 416 U.S. 232, 236 (1974)). While a complaint need not
22 contain detailed factual allegations, a plaintiff must
23 provide more than “labels and conclusions” or “a
24 formulaic recitation of the elements of a cause of
25 action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
26 (2007). However, “a well-pleaded complaint may proceed
27 even if it strikes a savvy judge that actual proof of
28 those facts is improbable, and ‘that a recovery is very

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