

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

WRIGHT et al,

Plaintiff,

- against -

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A",

Defendants,

Case No. 1:23-cv-24437-BB

MOTION TO DISSOLVE TEMPORARY RESTRICTION ORDER

Defendants wowcugi (Doe No. 360 in Schedule A, hereafter "Deo 360"), by and through the counsel undersigned, hereby requests that this Court dissolve the Temporary Restriction Order [DE 15] granted for Plaintiffs' *Ex Parte* Application for Entry of TRO, PI and Order Restraining Transfer of Assets and Incorporated Memorandum of Law [DE 10] ("Motion for TRO" hereafter) and states as follows:

I. LEGAL STANDARD

"The standard for obtaining a TRO is the same as the standard for obtaining a preliminary injunction." *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001). Thus, the objections to the TRO here shall apply to the motion for preliminary injunction portion of this Motion.

Factors a movant must show to be entitled to a TRO include: "(1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the

threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest." *Ingram v. Ault*, [50 F.3d 898, 900](#) (11th Cir. 1995) (*per curiam*).

II. ARGUMENT AND MEMORANDUM OF LAWS

A. Probability of Success on the Merits of Plaintiffs' Claims.

In *Dubay v. King*, 366 F. Supp. 3d 1330, 1336 (M.D. Fla. 2019), the court explained the doctrine of *scènes à faire* as follows:

In addition to non-original works and broad ideas, noncopyrightable material includes *scènes à faire*, which are stock scenes or, " 'sequences of events which necessarily follow from a common theme,' or 'incidents, characters of settings that are indispensable or standard in the treatment of a given topic.' " *Peter Letterese and Assoc.*, [533 F.3d at 1302](#) (quoting *Herzog*, [193 F.3d at 1248](#)). See, e.g. *Herzog*, [193 F.3d at 1262](#) (holding that characters in a murder mystery who keep secrets are not protectable); *Williams v. Crichton*, [84 F.3d 581, 588](#) (2d Cir. 1996) (holding figures of muscular superheroes in fighting poses are examples of *scènes à faire*); *Beal*, [20 F.3d at 463](#) (noting that in all works involving courtship and marriage have a wedding, usually towards the end of the work); *Walker*

v. Time Life Films, Inc., [784 F.2d 44, 50](#) (2d Cir. 1986) (concluding no protection for "drunks, prostitutes, vermin, and derelict cars," as well as "foot chases and the morale problems of policemen, not to mention the familiar figure of the Irish cop" as they are common elements in police fiction); *Warner Bros. Inc. v. Am. Broad. Cos.*, [654 F.2d 204, 210](#) (2d Cir. 1981) (observing that the fact that both heroes fight villains is nothing more "than the classic theme of good versus evil"). *Dubay v. King*, 366 F. Supp. 3d 1330, 1336 (M.D. Fla. 2019).

Plaintiffs accused that Defendant Doe 360 infringed their copyrights with the comparison as follows:



Figure 1: Alleged Infringement of V 1-153-915.

See DE 009-009, p. 203. See V 1-153-915 at DE 1-1, p. 3.

In Figure 1, Plaintiffs' copyrighted picture is merely a stock scene of a fish, similar to "figures of muscular superheros in fighting poses." *Id.* It is a non-copyrightable *scènes à faire*. *Id.* "[C]opyright law balances an author's '[r]ight to their original expression,' while still 'encourage[ing] others to build freely upon the ideas and information conveyed by the work.'" *Feist*, 499 U.S. at 349-350, 111 S.Ct. 1282." *Id.*, at 1336.

Similar to no copyright to the statue, in *Leigh v. Warner Brothers, Inc.*, 212 F.3d 1210, 1214 (11th Cir. 2000), the court held that "Leigh's copyright does not cover the appearance of the statue itself or of Bonaventure Cemetery, for Leigh has no rights in the statue or its setting."

A comparison of Doe 360's enlarged image with the copyrighted V 1-153-915 ("915 Copyright") is as follows:



Figure 2: Comparison of Doe 360's Images Alleged and Plaintiff's Copyright V 1-153-915.¹

From the comparison above, we are able to tell many different details, among the others:

1. In Doe 360's see bass portion, the mouth is less wide than that in 915 Copyright;
2. The lower jaw of the bass in 915 Copyright is more protruding than that in Doe 360;
3. The tail of the fish in 915 Copyright twisted more than that in Doe 360;

¹ See DE 009-009, p. 203. See V 1-153-915 at DE 1-1, p. 3.

4. The upper part of the tail in Doe 360 is bigger than that in 915 Copyright;
5. The see waves under the fish are different;
6. The see bass in Doe 360 is attempting to eat a small fish, which 915 Copyright does not have it;
7. There is another small see bass swimming around the big one in Doe 360 and no in 915 Copyright;

Plaintiff's 915 Copyright is based on realistic see bass fish image and in the nature, all sea bass fish looks similar. For example:



Figure 5: A Wall Eye Fish Picture via a Random Search of "See Bass" on Google.



Figure 6: A See Bass Fish Picture via a Random Search of "See Bass Fish" on Google.

In addition, in the instant case, Mr. Wright used the mere picture of an isolated fish to claim copyright, however, in Figure 1, Doe 360 inserted the images of a see bass in the holisitc picture with a man in the background and the wording of "CAN'T WORK TODAY" and "MY

ARM IS IN A CAST,” combined with the word “WILLIAM” on the other side of the mug, engendering a new complete different expression of a fisherman’s sentiment, rather than a depiction of a wild life.

Plaintiffs’ above copyright did not convey a clear particular expression of an idea. If yes, it was about a jumping sea bass. It was the simple conversion of realistic pictures of sea bass fish into a realistic print or painting.

“It is an axiom of copyright law that the protection granted to a copyrightable work extends only to the particular expression of an idea and never to the idea itself.”” *Morford v. Cattelan*, Civil Action 21-20039-Civ-Scola, at *7 (S.D. Fla. June 9, 2023), citing *Herzog*, [193 F.3d at 1248](#).

In the instant case, Doe 360 used the ingredient of sea bass to create an expression of idea of fisherman’s “can’t do it today.”

Thus, Plaintiffs’ likelihood of success against Doe 360 is not high.

B. The Relief Sought Serves the Public Interest.

Plaintiffs filed multiple copyright lawsuits in the federal courts of various states. By googling “Jon Q. Wright copyright infringement,” it is easy to find so many copyright lawsuits filed by Jon. Q. Wright and his agents, the plaintiffs in the instant case. Converting a wild natural fish into a realistic painting and print, is no more than a stock scene with certain different settings. There are no particular expression of ideas expressed in such works. By filing such lawsuits will not only the burden of the judiciary system, but also the litigating costs of all defendants, such as the instant case, with 730 defendants involved. It does not serve any public interest at all.

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