UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-cv-81870-RUIZ

BRAINDON N. COOPER *a/k/a* MR COOPER, et al.,

Plaintiff,
v.

CHRIS BROWN ENTERTAINMENT, LLC *d/b/a* CHRISTOPHER BROWN ENTERTAINMENT, LLC., et al.

Defendants.
_____/

MOTION TO DISMISS THE COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), defendants Chris Brown ("Brown"); Chris Brown Entertainment, LLC ("CBE"); Culture Beyond Ur Experience; Sony/ATV Songs, LLC (*n/k/a* Sony Music Publishing (US) LLC) ("SMP"); Sony Music Entertainment ("SME"); Songs of Universal, Inc. ("Universal"); J-Louis Productions, LLC and Joshua Louis Huizar ("J-Louis"); Anderson Hernandez ("Hernandez") *p/k/a* Vinylz and Vinylz Music Group ("Vinylz"); Amnija, LLC *d/b/a* Songs of Amnija; and Nija Charles *p/k/a* Njia ("Nija") (collectively, "Defendants") move to dismiss the Complaint filed by plaintiffs Braindon N. Cooper *a/k/a* Mr. Cooper ("Cooper") and Timothy L. Valentine *a/k/a* Drum'N Skillz ("Valentine") (together, "Plaintiffs").

INTRODUCTION

Plaintiffs bring this baseless suit, alleging that Defendants infringed the copyright for their song, "I Love Your Dress" ("Plaintiffs' Song"). Plaintiffs speculate that Defendants – who include two of the biggest musical artists in the world, Brown and co-defendant Drake – accessed Plaintiffs' obscure song; copied certain aspects of the song; and then promptly released a "forged" song, entitled "No Guidance." By Plaintiffs' own account, "No Guidance" is an "enormous commercial

success," garnering more than "373 million" YouTube views, charting at number five on the Billboard Hot 100, and earning a Grammy nomination for "Best R&B Song."

The Complaint must be dismissed as Plaintiffs have not plausibly alleged copyright infringement, nor can they. As an initial matter, Plaintiffs have not alleged that Defendants had the requisite "access" to Plaintiffs' Song in order to copy it – either through widespread dissemination on the Internet or through a third-party intermediary. Moreover, Plaintiffs' suit is premised upon the alleged similarity between the wholly generic lyrical phrase "you got it" and the alleged similar (and unoriginal) theme of a hard-working, attractive woman. No one, including Plaintiffs, can own or monopolize the non-copyrightable phrase "you got it," and it should come as no surprise that this phrase appears in countless other works. Also, lyrical themes are simply unprotectable as a matter of law.

The Court can hear for itself that the total concept and feel of the songs is vastly different. Plaintiffs' Song is a slow, R&B love ballad about the writer's wife featuring one vocalist (Cooper) and relatively few lyrics. In sharp contrast, "No Guidance" is a faster, longer, and sexually explicit rap and R&B song about a new romantic interest. Further, "No Guidance" features two vocalists: Brown and Drake. Any average listener can readily distinguish the two recordings and conclude that Defendants did not copy "what is pleasing to the ears." Plaintiffs' copyright infringement claims are therefore inadequate as a matter of law.

Plaintiffs' state law claims are equally deficient. The claims for "common law" copyright infringement and unjust enrichment are preempted by the Copyright Act because they are based on the alleged unauthorized use of Plaintiffs' Song. Plaintiffs' accounting claim should also be dismissed because it is a remedy, not a cause of action.

No amount of discovery or re-pleading is going to change the songs or the generic, unprotectable nature of what is alleged to be similar. Accordingly, the Court can compare the songs, find non-infringement as a matter of law, and dismiss the Complaint with prejudice.

BACKGROUND

A. The Parties.

Cooper is a singer, songwriter, and producer whose musical style "combines smooth R&B vocals and lyrics with heavy hitting beats." (Compl. ¶ 9).[1] Valentine is a drummer and producer. (*Id.* ¶ 10). Together, Plaintiffs recorded Plaintiffs' Song and registered the composition with the U.S. Copyright Office on August 17, 2020. (*Id.* ¶ 11).[2]

Brown is one of the most influential and successful R&B singers of all time. Drake is a Grammy award-winning rapper and singer who is one of the world's best-selling musicians. Brown and Drake wrote "No Guidance" with Vinylz, J-Louis, and Nija, along with five other credited writers (who are separately represented) (the "No Guidance Composition"). (*Id.* ¶¶ 16, 17, 19). SME released Brown's and Drake's performance of the No Guidance Composition on June 8, 2019 (the "No Guidance Recording," collectively with the No Guidance Composition, "Defendants' Works"). (*See id.* ¶¶ 1, 14-15).

CBE registered the No Guidance Recording with the U.S. Copyright Office on June 19, 2019. (*See id.* ¶¶ 11, 13). The No Guidance Composition was registered with the U.S. Copyright Office on May 5, 2020. (*Id.* ¶¶ 14, 25, 29).

B. The Complaint's Deficient "Access" Allegations.

Plaintiffs allege that they wrote and recorded Plaintiffs' Song in 2016. (*Id.* ¶ 37). Despite claiming that they published Plaintiffs' Song on SoundCloud (an online audio distribution platform) for a "few months" in 2016, Plaintiffs conspicuously fail to allege the total number of "plays" that the song received before its removal from SoundCloud. (*See id.* ¶ 38).

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[1] For the purpose of this motion only, Defendants assume the truth of the allegations contained in the Complaint, including Plaintiffs' ownership of Plaintiffs' Song. Should Plaintiffs' Complaint survive dismissal, Defendants intend to vigorously dispute the veracity of Plaintiffs' allegations.

[2] Given Plaintiffs' belated registration of their Song, they are precluded from recovering statutory damages or attorneys' fees as a matter of law. *See MidLevelU, Inc. v. ACI Info. Group*, 989 F.3d 1205, 1219 (11th Cir. 2021).

Approximately two years later, in August 2018, Cooper allegedly performed Plaintiffs' Song at an event in Miami with "many people in attendance." (*Id.* ¶ 40). There is no allegation that any of the Defendants, much less the writers of the No Guidance Composition, attended the Miami performance. Plaintiffs further claim that, shortly after the performance, Cooper posted it on YouTube. (*Id.* ¶ 41). There is no allegation that any Defendants accessed this YouTube video, which had garnered only modest views prior to this litigation.

Cooper also allegedly published Plaintiffs' Song on streaming and downloading platforms on January 25, 2019 and published a music video on YouTube on May 7, 2019. (*Id.* ¶¶ 43-44). Once more, Plaintiffs do not identify the number of views or streams that Plaintiffs' Song received on these platforms ***before*** Defendants' Works were released on June 8, 2019. Plaintiffs nonetheless baldly assert, with no proof whatsoever, that "Defendants" had access to Plaintiffs' Song through those platforms. (*Id.* ¶ 46).

Plaintiffs also allege that they sent their Song to an individual named "Mic Tee," a purported A&R representative[3] associated with non-parties Cash Money Records ("Cash Money") and the AMAG Collective. (*Id.* ¶¶ 47, 61). Plaintiffs do not allege that Mic Tee, Cash Money or AMAG had anything to do with the creation of Defendants' Works. Nor do Plaintiffs allege that any of these non-parties provided Plaintiffs' Song to any of the creators of Defendants' Works or any specific facts that would support a theory of access through a third-party intermediatory. Rather, Plaintiffs speculate that a "Defendant" ***might*** have heard their song because the AMAG Collective "scouts" talent for Cash Money, and its founder, non-party Bryan Williams *a/k/a* "Birdman," was allegedly filming a movie with Brown at the time. (*Id.* ¶ 48 n.1). As demonstrated herein, such rank speculation is insufficient to allege access as a matter of well-established law.

Plaintiffs' allegations of similarity are centered around the two songs' lyrics. Specifically, Plaintiffs allege that their Song contains the repeated phrases, "she got it" and "you got it," while

[3] "A&R" is the department of a record label "responsible for helping the company find, sign and guide new talent." *See Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 50 (2d Cir. 2003).

"No Guidance" repeats the phrase, "you got it, girl, you got it." (*Id.* ¶¶ 5, 39, 52, 53, 74). Plaintiffs further allege that both songs involve the lyrical theme of "an attractive woman working hard." (*Id.* ¶ 57). Plaintiffs further vaguely contend that the two songs have similar "beat[s]," "beat patterns," "rhythmic structure," "metrical placement," "primary scale degrees," "melodies," and "distinctive sound effect[s]." None of these alleged similarities are articulated with any detail. (*Id.* ¶¶ 4-6, 52, 55). These allegations are defied by a cursory listen of the two songs, as the Court can hear for itself that these are two very different songs, and that any lyrical similarity consists of nothing more than generic, short phrases that are not original to Plaintiffs and not protectable as a matter of law.

Plaintiffs' Complaint impermissibly lumps all of the Defendants together and includes claims for common law copyright infringement (Count I), federal copyright infringement (Count II), vicarious copyright infringement (Count III), declaratory judgment of copyright infringement (Count IV), accounting (Count V), and unjust enrichment (Count VI). (*Id.* ¶¶ 70-124). Each of these claims fail as a matter of law.

ARGUMENT

A. Relevant Legal Standards.

A motion to dismiss under Rule 12(b)(6) tests whether the complaint "state[s] a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff must do more than solely recite the elements for a violation – he must plead facts with sufficient particularity so that his right to relief is more than mere conjecture. *See Twombly*, 550 U.S. at 561-62; *Iqbal*, 556 U.S. at 677-78 (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation").

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