

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

NICHOLAS MCELROY, ET AL

Plaintiffs,

v.

COURTNEY AJINÇA EVENTS LLC,  
*et al.*

Defendants,

Civil Action No.  
1:19-cv-05094-SDG

**OPINION AND ORDER**

This matter is before the Court on cross-motions for summary judgment [ECF 30 and ECF 38]. After careful consideration of the parties' briefing, and with the benefit of oral argument, the Court **DENIES** Plaintiffs' motion for summary judgment on their claims of copyright infringement; **GRANTS** Defendants' cross-motion for summary judgment on Plaintiffs' claims of copyright infringement; and **GRANTS IN PART** and **DENIES IN PART** as **moot** Plaintiffs' motion for summary judgment on Defendants' counterclaims.

**I. BACKGROUND**

The material facts in this case are largely undisputed. Plaintiffs Nicholas McElroy and Bryan Flores are independent contractor photographers based in

Atlanta, Georgia.<sup>1</sup> Plaintiffs have worked together a handful of times, twice as independent contractors for Night Owl Post Productions (Night Owl).<sup>2</sup> Defendant Courtney Ajinça is the founder and owner of Defendant Courtney Ajinça Events, LLC (CAE), a North Carolina LLC that specializes in designing luxury events primarily catered to celebrities.<sup>3</sup>

In June 2019, CAE, acting through Ajinça, hired McElroy to photograph the Frost Bistro Grand Opening event (the Frost Bistro event).<sup>4</sup> CAE and McElroy never entered into a written agreement for this photo shoot.<sup>5</sup> After the Frost Bistro event, McElroy sent Defendants the photographs he took and CAE forwarded those photographs to its publicist, Danika Berry.<sup>6</sup> The photographs taken by McElroy of the Frost Bistro event were published in Star Magazine.<sup>7</sup>

---

<sup>1</sup> ECF 36, ¶ 1.

<sup>2</sup> *Id.* ¶¶ 2-3.

<sup>3</sup> *Id.* ¶ 4.

<sup>4</sup> *Id.* ¶ 5.

<sup>5</sup> *Id.* ¶ 29.

<sup>6</sup> *Id.* ¶ 9.

Although Berry was initially a defendant in this case, she was later dropped as a party. ECF 5.

<sup>7</sup> ECF 36, at ¶ 9.

Pleased with McElroy's services, Ajiñca reached out to McElroy via text message on July 24, 2019, to hire him for a second photography job on July 26, 2019.<sup>8</sup> The text message read:

I had such a great experience with you last time and wanted to see if I could book you for an event on Friday. This one is for real housewives and these pics will be everywhere!! Will be the same as before décor shots and shots of important people and moments.<sup>9</sup>

The event to be photographed was a wedding engagement between a Real Housewives of Atlanta television star and a Fox Sports Broadcaster (the engagement shoot), which CAE planned.<sup>10</sup> McElroy agreed to the engagement shoot and also agreed to bring a "three team crew" to assist with putting together a 1 minute "social media vid" of the event.<sup>11</sup> McElroy brought Flores and two videographers from Night Owl to assist.<sup>12</sup> Defendants did not know that Flores was going to be photographing the engagement shoot along with McElroy.<sup>13</sup>

---

<sup>8</sup> *Id.* ¶¶ 11-12.

<sup>9</sup> ECF 41, ¶ 5.

<sup>10</sup> *Id.* ¶ 4.

<sup>11</sup> *Id.* ¶ 6.

<sup>12</sup> ECF 36, ¶ 19.

<sup>13</sup> *Id.* ¶ 18.

Immediately after the wedding proposal during the engagement shoot, Ajinça and two producers from the Real House Wives of Atlanta requested photographs of the event.<sup>14</sup> McElroy handed Ajinça a sim card containing the photographs and Flores transferred his photographs to Defendants via air drop and a link to a webpage.<sup>15</sup> Several hours after the event, McElroy texted Ajinça instructions on how to credit the photographs.<sup>16</sup> Ajinça informed McElroy: “K I’m trying to get it changed. They put night owl,” and McElroy responded, “No it’s totally fine if it’s already posted. Where can we see it?”<sup>17</sup> CAE later notified McElroy that People.com published some of the photographs McElroy and Flores had taken of the engagement, which credited “Night Owl Post Productions Nick McElroy and Courtney Ajinça Events.”<sup>18</sup> Four of the nine photographs published by People were taken by McElroy and the other five were taken by Flores, who was not credited.<sup>19</sup>

---

<sup>14</sup> *Id.* ¶ 24.

<sup>15</sup> *Id.* ¶¶ 27-29.

<sup>16</sup> ECF 41-3, at 3.

<sup>17</sup> *Id.*

<sup>18</sup> ECF 36, ¶ 31.

<sup>19</sup> *Id.* ¶ 33.

Shortly after being notified that the photographs were published on People.com, McElroy exchanged texts with CAE's publicist, Danika Berry, regarding the photographs.<sup>20</sup> Berry requested photographs of different parts of the engagement shoot, and McElroy complied by texting links to the photographs in a Google Drive folder.<sup>21</sup> After receiving the photographs, Berry reached out again to see if there were additional photographs because "[a] lot of really good pics of her and him with the ring are blurry . . . I can't use these for the other outlets."<sup>22</sup> McElroy apologized and then asked Flores for additional photographs of the event.<sup>23</sup>

The last conversation between McElroy and CAE regarding the engagement shoot was on July 28, 2019.<sup>24</sup> McElroy emailed CAE and Berry a Google Drive link containing a video of the evening, stating, "Let us know if we can make any other changes for you! Thank you again for this incredible opportunity. We look forward to working with you more in the future!"<sup>25</sup> The same day, McElroy texted

---

<sup>20</sup> ECF 41, ¶ 18.

<sup>21</sup> *Id.* ¶ 19–20.

<sup>22</sup> *Id.* ¶ 21.

<sup>23</sup> *Id.* ¶ 24.

<sup>24</sup> *Id.* ¶ 25.

<sup>25</sup> *Id.*

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.