

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LIMECORAL, LTD.,)	
)	
Plaintiff,)	
)	
v.)	No. 15 C 7484
)	
CAREERBUILDER, LLC,)	
)	
Defendant.)	

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Plaintiff LimeCoral, Ltd.’s (LimeCoral) partial motion for summary judgment, and on Defendant CareerBuilder, LLC’s (CareerBuilder) motion for summary judgment. For the reasons stated below, CareerBuilder’s motion for summary judgment is granted, and LimeCoral’s partial motion for summary judgment is denied.

BACKGROUND

In 2008, CareerBuilder allegedly contracted with LimeCoral to have LimeCoral create media files in exchange for CareerBuilder providing LimeCoral with a portion of CareerBuilder’s online design service orders. After the end of the formal agreement, CareerBuilder allegedly continued to seek such services from

LimeCoral. In 2014, CareerBuilder allegedly reduced the volume of online design service orders and LimeCoral notified CareerBuilder that the license for use of LimeCoral's works had been revoked. LimeCoral contends that CareerBuilder has continued to use LimeCoral's products without permission and has exceeded the scope of the alleged licences. LimeCoral includes in its complaint a breach of contract claim (Count I), a copyright infringement claim (Count II), and an unjust enrichment claim (Count III). LimeCoral moves for summary judgment on the issue of the ownership of the works at issue. CareerBuilder moves for summary judgment on all claims.

LEGAL STANDARD

Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Smith v. Hope School*, 560 F.3d 694, 699 (7th Cir. 2009). A "genuine issue" in the context of a motion for summary judgment is not simply a "metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Insolia v. Phillip Morris, Inc.*, 216 F.3d 596, 599 (7th Cir. 2000). In ruling

on a motion for summary judgment, the court must consider the record as a whole, in a light most favorable to the non-moving party, and draw all reasonable inferences in favor of the non-moving party. *Anderson*, 477 U.S. at 255; *Bay v. Cassens Transport Co.*, 212 F.3d 969, 972 (7th Cir. 2000). When there are cross motions for summary judgment, the court should “construe the evidence and all reasonable inferences in favor of the party against whom the motion under consideration is made.” *Premcor USA, Inc. v. American Home Assurance Co.*, 400 F.3d 523, 526-27 (7th Cir. 2005).

DISCUSSION

I. Copyright Infringement Claim (Count II)

LimeCoral contends in its partial motion for summary judgment that it has ownership over the works in question. CareerBuilder has not disputed LimeCoral’s ownership of the works. (R LSF Par. 16). CareerBuilder argues, however, that during the years of its relationship with LimeCoral, LimeCoral failed to assert its ownership interest over the works, and that CareerBuilder acquired an implied nonexclusive license over LimeCoral’s works. The owner of a copyright possesses the “exclusive rights to copy or distribute copies of the work,” but the “[t]he copyright owner may authorize another person to do so through an exclusive written license, . . . or a nonexclusive oral or implied license.” *Muhammad-Ali v. Final*

Call, Inc., 832 F.3d 755, 762 (7th Cir. 2016). The creator of a work may grant implied nonexclusive license by “permit[ting] the use of a copyrighted work in a particular manner.” *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th Cir. 1996). Unlike with an exclusive license, “a nonexclusive license may be granted orally, or may even be implied from conduct.” *Id.* (internal quotations omitted)(quoting *Melville B. Nimmer & David Nimmer*, 3 *Nimmer* § 10.03[A] at 10-40.1); *see also Beasley v. Commonwealth Edison Co.*, 2013 WL 4564857, at *7 (N.D. Ill. 2013)(stating that “consent given in the form of mere permission or lack of objection is also equivalent to a nonexclusive license and is not required to be in writing”). A work-for-hire arrangement may give rise to an implied nonexclusive license. *Kennedy v. Nat’l Juvenile Det. Ass’n*, 187 F.3d 690, 694 (7th Cir. 1999). An implied nonexclusive license is deemed to have been extended when: “(1) the licensee requests the creation of a work; (2) the licensor creates the work and delivers it to the licensee who asked for it; and (3) the licensor intends that the licensee copy and distribute the work.” *Id.* The assertion of an implied nonexclusive license in response to a copyright infringement claim is an affirmative defense and the burden is on the defendant to establish the defense. *Muhammad-Ali*, 832 F.3d at 761; *Shaver*, 74 F.3d at 775.

It is undisputed that the parties entered into a written agreement in 2008 (2008 Agreement) under which CareerBuilder hired LimeCoral for the creation of works. (R CSF Par. 8-12). It is undisputed that LimeCoral did in fact deliver the works to

CareerBuilder and that LimeCoral understood that CareerBuilder was going to use the works in its business. (R CSF Par. 8-12). It is undisputed that the 2008 Agreement even enabled CareerBuilder to create derivative works. (R CSF Par. 9). LimeCoral does not dispute that after the 2008 Agreement ended, LimeCoral agreed to continue its relationship with CareerBuilder, “regardless of any contract or not.” (R CSF Par. 14). It is further undisputed that LimeCoral continued its relationship with CareerBuilder until 2014 and provided works to CareerBuilder for its use. (R CSF Par. 19, 28). Based on the totality of the undisputed evidence, it is clear that CareerBuilder acquired an implied nonexclusive license to use the works provided by LimeCoral.

LimeCoral argues vehemently that it never agreed to transfer its ownership interest in the works to CareerBuilder. (Resp. CSJ 2, 6-7). LimeCoral points out that it rejected a proposed agreement in 2012 under which LimeCoral would transfer ownership of the works to CareerBuilder. (LSAF Par. 20). LimeCoral also points to evidence that it contends shows that on certain occasions it asserted that it was the owner of its works. (Resp. CSJ 2, 9). Even if LimeCoral could prove such facts, they do not negate the fact that an implied license existed. Under a license, the copyright owner merely authorizes another party to use the work. *Muhammad-Ali*, 832 F.3d at 762. The Seventh Circuit has clearly stated that “an implied nonexclusive license . . . does not transfer ownership of the copyright to the licensee,” and that “[i]t simply permits the use of a copyrighted work in a particular

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