

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

LAURA A. MILLER,)	
)	
Plaintiff,)	No. 1:18-cv-04738
)	
v.)	
)	Judge Edmond E. Chang
THE FRENCH PASTRY SCHOOL LLC and)	
THE BUTTER BOOK LLC,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

This case demonstrates how a failure to hammer out the legal details of a business relationship in advance is a recipe for a lawsuit. Based on the murky dealings, Laura Miller brought this copyright-infringement lawsuit against The French Pastry School, LLC and The Butter Book, LLC (for convenience’s sake, this Opinion will refer to the Defendants collectively as Butter Book).¹ Miller asserts both federal and state law claims arising out of Butter Book’s use of Miller’s allegedly proprietary literary works, which Miller had originally provided to Butter Book. In turn, Butter Book has levelled counterclaims against Miller, challenging Miller’s ownership of the works. The parties now cross-move for summary judgment. For the reasons discussed in this Opinion, Miller’s motion is denied and Butter Book’s motion is granted in part and denied in part.

¹This Court has subject matter jurisdiction over the case via federal-question jurisdiction, 28 U.S.C. § 1331, as well as supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. Citations to the docket are indicated by “R.” followed by the docket entry.

I. Background

In deciding cross-motions for summary judgment, the Court views the facts in the light most favorable to the respective non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). So, when the Court evaluates Butter Book’s motion, Miller gets the benefit of reasonable inferences; conversely, when evaluating Miller’s cross-motion, the Court gives Butter Book the benefit of the doubt.

A. Miller-Butter Book Relationship

The French Pastry School is a Chicago-based culinary school offering classes in pastry, baking, and the confectionary arts. DSOF ¶ 7.² It founded the Butter Book in 2015 to provide guidance and resources to confectionary arts enthusiasts through an online website with various course descriptions, demonstration videos, employee biographies, and articles. *Id.* ¶¶ 10–19.

In 2016, Butter Book entered into an agreement with Miller to prepare content for the website. DSOF ¶ 27. As part of the agreement, the parties signed a Confidentiality Agreement under which Miller was to return “[i]mmediately upon request” all confidential information to Butter Book and remove any digitally stored confidential information from any storage devices in her possession or control. *Id.* ¶ 32; R. 222-12,

²Citations to the parties’ Local Rule 56.1 Statements of Fact are identified as follows: “DSOF” for Butter Book’s (Defendants’) Statement of Undisputed Facts (R. 221); “PSOAF” for Miller’s (Plaintiff’s) Statement of Additional Facts (R. 233); “PSOF” for Miller’s Statement of Undisputed Facts (R. 234); “Pl.’s Resp. DSOF” for Miller’s Response to the DSOF (R. 233); and “Defs.’ Resp. PSOF” for Butter Book’s response to Miller’s Statement of Additional and Undisputed Facts (R. 253).

Defs.' Exh. 11, Confidentiality Agreement ¶ 2. The parties dispute whether, under the agreement, Miller would begin by independently writing—or instead merely editing—a set of sample glossary terms for Butter Book. Pl.'s Resp. DSOF ¶ 31; Defs.' Resp. PSOF ¶¶ 8–9. Miller contends that she provided the “voice” for Butter Book’s ideas and any edits that Butter Book gave to her were just technical in nature. PSOF ¶¶ 11–21. Butter Book denies this contention and instead asserts they gave Miller more thorough feedback and supervision throughout the project. Defs.' Resp. PSOF ¶¶ 8, 17, 20, 23, 34. In any event, Butter Book paid Miller for her work product. DSOF ¶ 37.

In August 2016, the parties agreed to additional contract terms in which Miller would work on additional content for the website. DSOF ¶¶ 38–39. The new projects assigned to Miller included a new glossary of terms, “learn pages” (that is, food-science instructional pages), course and series descriptions, employee biographies, and blog entries (collectively designated as the “Works”). DSOF ¶¶ 40, 42–52. The parties dispute whether Miller independently completed these Works. Defs.' Resp. PSOF ¶¶ 8, 9, 66, 67.

The parties also dispute how the Works related—if at all—to Miller’s future employment with Butter Book. For example, Miller alleges that she agreed to the rate of \$15.00 per glossary term because Butter Book had told her that the company was considering her for a long-term position that would provide her with “financial freedom.” Pl.'s Resp. DSOF ¶¶ 39, 40. She argues that she was designated by Butter Book as “Lead Writer and Editor” during the duration and the future of the project. PSOF

¶¶ 50–55. In contrast, Butter Book asserts that it never offered or promised Miller employment. DSOF ¶ 69. The company argues that Miller’s understanding of her employment status was premised solely “on statements by Defendants’ representatives asking for Miller to deliver samples of her work to Defendants, and if Defendants’ liked the samples, Defendants would give Miller more work.” DSOF ¶ 61. The defense says that, to the extent that Miller was identified as the lead writer and editor, she was in fact not the lead writer and editor *during* her completion of the Works, and any correspondence discussing the title actually was just “set[ting] the parameters for what *future* post-launch roles hoped to be.” Defs.’ Resp. PSOF ¶ 50 (emphasis added).

As Miller continued to work, from October 2016 to February 2018, Butter Book paid Miller \$45,166.45. DSOF ¶ 56. In February 2018, Butter Book informed Miller that it would pay her an additional \$7,000. *Id.* ¶ 83. But the parties dispute the reason for this payment. For its part, Butter Book contends that this payment was made in response to an email from Miller, sent back in November 2017, in which she asked to renegotiate her compensation. *Id.* ¶¶ 79, 83. In contrast, Miller argues that Butter Book paid the \$7,000 as “back pay.” Pl.’s Resp. DSOF ¶ 83.

Moving forward two more months, on April 20, 2018, Butter Book requested that Miller turn over all of the Works they had sent her, as well as all of the edits that she had completed or was in the process of completing. DSOF ¶ 85; Pl.’s Resp. DSOF ¶ 85. Miller did not do so. Instead, she eventually sent Butter Book copyright license agreements to cover her edits. PSOF ¶ 4; Pl.’s Resp. DSOF ¶ 85. But Butter

Book refused to sign the agreements, DSOF ¶ 92, so Miller filed applications for registration of copyrights with the U.S. Copyright Office for the disputed edits. PSOF ¶¶ 5, 68–72. On July 5, 2018, Miller offered to provide Butter Book with the Works if Butter Book agreed that Miller owns the Works, or at least agreed not to reproduce, distribute, publicly display, or otherwise use the Works edited by Miller. PSOF ¶ 7; Defs.’ Resp. PSOF ¶ 7. Butter Book refused the proposal. PSOF ¶ 7.

B. Procedural Background

With those facts (and disputed facts) as the backdrop, the litigation too reflects the contentious relationship between the parties. As pertinent for the here and now, Miller eventually filed a Third Amended Complaint against the Defendants, seeking declarations that (1) Miller owns copyrights to the Works; (2) Miller did not grant an implied license to the Defendants to use the Works; and (3) unauthorized use by the Defendants of the Works constitutes copyright infringement. R. 179, Third Am. Compl. ¶ 4. Miller further asserted claims for fraudulent inducement, fraudulent concealment, and promissory estoppel under Illinois law. *Id.* ¶ 5. The Defendants responded with counterclaims, alleging breach of contract, breach of a confidentiality agreement, copyright ownership over the Works, conversion, and a request for a declaration that the Defendants own an implied license to use the disputed Works. R. 141, Defs.’ Am. Counterclaim.

Both parties now cross-move for summary judgment on the implied license and copyright infringement claims. Miller moves for summary judgment on copyright

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