

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FREDDIE ROSS, JR.

CIVIL ACTION

VERSUS

NO. 18-11277

WILBERTO DEJARNETTI

SECTION: "G"(4)

ORDER AND REASONS

Plaintiff Freddie Ross, Jr. ("Plaintiff") brings this action against Defendant Wilberto Dejarnetti ("Defendant") pursuant to the United States Copyright Act, 17 U.S.C. § 101, to declare Plaintiff's rights in connection with specific sound recordings, musical compositions, and choreographic works.¹ Before the Court is Defendant's "Motion to Dismiss under Rule 12."² Considering the motion, the memorandum in support and in opposition, the record, and the applicable law, the Court denies the motion.

I. Background

A. Factual Background

According to the Complaint, Plaintiff is a recording actor, author, and performer known as "Big Freedia."³ Plaintiff and Defendant allegedly worked together on various aspects of Plaintiff's entertainment career.⁴ Specifically, the parties allegedly collaborated to create stage

¹ Rec. Doc 1 at 1.

² Rec. Doc. 16.

³ Rec. Doc. 1 at 1.

⁴ *Id.* at 2.

choreography for Plaintiff's songs, including "Just Be Free Intro," "NO Bounce," "Explode," "Shake Session Medley," "Dangerous," "Best Beeleevah," and "Drop" (collectively, the "Choreographic Works").⁵ Plaintiff also allegedly allowed Defendant to direct and film a number of music videos (collectively, the "Music Videos").⁶ Plaintiff asserts that he paid thousands of dollars for Defendant's services in connection with the Choreographic Works and the Music Videos.⁷

Furthermore, Plaintiff asserts that Defendant sought to involve himself in Plaintiff's songwriting sessions.⁸ According to Plaintiff, Defendant would typically arrive at the recording studio uninvited and offer unsolicited opinions concerning Plaintiff's music.⁹ Defendant's behavior allegedly resulted in Plaintiff terminating the parties' working relationship.¹⁰ When Defendant learned that Plaintiff intended to terminate the parties' relationship, Defendant supposedly started making "outlandish claims and demands" to Plaintiff—including receiving credit as a co-author and producer of certain songs, namely "Training Day," "Best Beeleevah," "You Already Know," and "\$100 Bills" (collectively, the "Musical Works").¹¹

Yet, according to Plaintiff, Defendant "contributed nothing to the Musical Works that

⁵ *Id.*

⁶ *Id.* at 3, 6.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3–4.

would come close to copyrightable subject matter.”¹² Plaintiff seeks a declaratory judgment concerning his ownership rights in the Choreographic Works and Musical Works.¹³ Plaintiff also seeks to recover damages resulting from Defendant’s alleged breach of contract in connection with the Music Videos.¹⁴

B. Procedural Background

On November 20, 2018, Plaintiff filed a complaint against Defendant in this Court.¹⁵ Yet Plaintiff encountered difficulty serving the Complaint upon Defendant. On December 10, 2018, a summons was issued as to Defendant.¹⁶ On February 19, 2019, Plaintiff filed an *ex parte* motion for an additional sixty days to effect service on Defendant.¹⁷ In that motion, Plaintiff stated that a copy of the summons and complaint were mailed via certified mail to Defendant’s address in Studio City, California, but the United States Post Office’s tracking information did not indicate the mailing was delivered.¹⁸ On February 20, 2019, this Court held that Plaintiff had demonstrated good cause for failure to timely serve Defendant and granted Plaintiff an additional sixty days to serve Defendant.¹⁹

On April 19, 2019, Plaintiff filed a second *ex parte* motion for an additional sixty days to

¹² *Id.*

¹³ *Id.* at 4–5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 1.

¹⁶ Rec. Doc. 4.

¹⁷ Rec. Doc. 6.

¹⁸ Rec. Doc. 6-1 at 1–2.

¹⁹ Rec. Doc. 7.

effect service on Defendant.²⁰ In that motion, Plaintiff stated he diligently pursued serving Defendant by hiring a licensed private investigator.²¹ Plaintiff further stated that Defendant's address in Studio City, California, was not a studio apartment.²² Instead, that address was for a private postal box that had been closed in 2018.²³ Plaintiff represented that the private investigator sent requests to the Office of Motor Vehicles in California and Louisiana seeking Defendant's address.²⁴ On April 22, 2019, this Court again found that Plaintiff had demonstrated good cause for failure to timely serve Defendant and granted Plaintiff an additional sixty days to serve Defendant.²⁵

On June 7, 2019, Plaintiff filed an *ex parte* "Motion to Effect Service Through Alternative Means" seeking an order permitting service of process on Defendant through digital means in accordance with Federal Rule of Civil Procedure Rule 4(e)(1) and Section 413.30 of the California Code of Civil Procedure.²⁶ On August 23, 2019, the Court granted Plaintiff's "Motion to Effect Service Through Alternative Means."²⁷ On September 5, 2019, a summons issued to Defendant was returned as executed.²⁸

²⁰ Rec. Doc. 8.

²¹ Rec. Doc. 8-1 at 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Rec. Doc. 9.

²⁶ Rec. Doc. 10.

²⁷ Rec. Doc. 11.

²⁸ Rec. Doc. 12.

On October 16, 2019, Defendant filed the instant motion to dismiss.²⁹ On October 29, 2019, Plaintiff filed an opposition to the instant motion.³⁰

II. Parties' Arguments

A. Defendant's Arguments in Support of the Motion to Dismiss

Defendant makes three principal arguments in support of the instant motion.³¹ First, Defendant argues that this Court lacks subject matter jurisdiction over this case because no claim raised in the Complaint arises under federal copyright law.³² Specifically, Defendant argues that the Complaint neither mentions copyright infringement nor alleges that Defendant threatened any action under copyright law.³³ Further, Defendant contends that the Complaint does not allege that either party has applied for or obtained any copyright registration for the Musical Works and Choreographic Works.³⁴ Instead, according to Defendant, the dispute between the parties concerns merely a breach of contract claim under state law, which is insufficient to establish federal question jurisdiction.³⁵

Second, Defendant argues that Plaintiff's declaratory judgment claims are not justiciable because no "actual controversy" exists between the parties.³⁶ Defendant states that the "works"

²⁹ Rec. Doc. 16.

³⁰ Rec. Doc. 20.

³¹ Rec. Doc. 16-1.

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 3.

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