

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PAUL CHARBONNET

CIVIL ACTION

v.

NO. 15-799-JWD-RLB

CHESTER CHARLES MALVEAUX

RULING AND ORDER

This matter comes before the Court on the Motion to Dismiss (Doc. 31) filed by Defendant Chester Charles Malveaux. In a previous order (Doc. 32), the Court exercised its discretion to convert Defendant's Motion to Dismiss into a Motion for Summary Judgment. Subsequently, *pro se* Plaintiff Paul Charbonnet opposed the motion. (Doc. 47.) Oral argument is not necessary.

Plaintiff brings a claim for copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.* (Doc. 1 at 1, 5.) Plaintiff claims that Defendant is "us[ing], reproduc[ing], and publish[ing]" Plaintiff's copyrighted work in violation of Plaintiff's copyright. (Doc. 1 at 5.) According to Plaintiff, he has not "authorized, licensed, permitted, or otherwise approved [Defendant's] use, reproduction or publishing of" his copyrighted work. (Doc. 1 at 5.) As a result, Plaintiff seeks "permanent injunctive relief to restrain and enjoin [Defendant] from continuing the infringing conduct, pursuant to 17 U.S.C. § 502." (Doc. 1 at 6.) Lastly, Plaintiff also submits several state law claims for improper management and breach of fiduciary duty, conversion, and unfair trade practices.

In the instant motion, Defendant contends that he has a co-ownership interest in the copyrighted material at issue. As a result, Defendant argues, he cannot be an infringer of a copyright he owns.

Having carefully reviewed the law, the facts in the record, and the arguments and submissions of the parties, the Court finds that Defendant's motion should be denied. Defendant has failed to support his claim of co-ownership beyond conclusory statements. Conversely, Plaintiff has provided a Certificate of Registration issued by the U.S. Copyright Office; this certificate serves as *prima facie* evidence that he is the sole owner of the copyright. Moreover, even if the certificate is invalid, Plaintiff directly rebuts Defendants claim of co-ownership. As a result, there is a genuine issue of material fact regarding ownership of the copyrighted material, and summary judgment is not warranted.

I. Factual Background

A. Preliminary Procedural Issue

Preliminarily, most of the following factual background is taken from the complaint (Doc. 1). Ordinarily, this is not proper summary judgment evidence. *See* Fed. R. Civ. P. 56(c).

However, the Plaintiff's complaint is verified. (Doc. 1 at 16.) In *Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc.*, the Fifth Circuit stated: "We have previously held that 'verified pleadings may in some circumstances be treated as affidavits in support of a motion for summary judgment.' *Id.*, 831 F.2d 77, 80 (5th Cir. 1987) (citing *Fowler v. S. Bell Tel. & Tel. Co.*, 343 F.2d 150, 154 (5th Cir. 1965); *Gordon v. Watson*, 622 F.2d 120, 122 (5th Cir. 1980)). Nonetheless, pleadings, like summary judgment affidavits, must meet Rule 56(e)'s requirement that statements "shall be made on personal knowledge, shall set forth such facts as would be admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *Id.* (citing Fed. R. Civ. P. 56(e)); *see also Sheinkopf v. Stone*, 927 F.2d 1259, 1262 (1st Cir. 1991) (stating that a verified complaint should be treated as the functional equivalent of an affidavit as long as it satisfies the requirements of Rule 56(e)); *Fowler*, 343 F.2d at 154 ("summary judgment

is not warranted unless the verified pleadings meet the standards for affidavits laid down by Rule 56(e) . . . verification must be on personal knowledge alone . . . [not] verified only on ‘knowledge, information, and belief.’). Accordingly, the Court will treat Plaintiff’s allegations as an affidavit opposing summary judgment, provided that they are based on personal knowledge and are otherwise admissible.

B. Formation of Atmosphere Aerial, LLC

Plaintiff Paul Charbonnet is a resident of Baton Rouge, LA. Chester Charles Malveaux is also a resident of Baton Rouge, LA. (Doc. 1 at 2.)

Together, Plaintiff and Defendant formed “Atmosphere Aerial, LLC” (“AA I”), a Louisiana Limited Liability Company, registered with the Louisiana Secretary of State on August 12, 2014. (Doc. 1 at 2; Doc. 38-1 at 1.) According to Plaintiff’s complaint, AA I was engaged in the business of aerial photography and videography. (Doc. 1 at 3.) Although Plaintiff was listed as a member and Defendant was listed as the manager in AA I’s Initial Report, it was the parties’ intention that Defendant be a member of AA I as well. (Doc. 1 at 2–3.) Defendant was treated as such. (*Id.*) Plaintiff asserts that Plaintiff and Defendant were the only two members of AA I and each owned a 50% interest in the company. (Doc. 1 at 3.) However, Defendant asserts that Plaintiff’s interest in AA I was “no more than 50%,” while Defendant had the remaining interest. (Doc. 38-1 at 1.) AA I did not have an operating agreement. (Doc. 1 at 3.)

Plaintiff stated that both Plaintiff and Defendant, in their individual capacities, “purchased equipment used by [AA I] and paid LLC expenses as capital contributions . . . with the intent that their capital accounts would be returned by [AA I] in full.” (Doc. 1 at 3.) Defendant asserts in his affidavit that “he contributed all of the funds for its operations, and [his] . . . ability to pilot the

drones used” while Plaintiff “only contributed his ability as a cameraman and his familiarity with website art software.” (Doc. 31-3.)

AA I was dissolved by an Affidavit to Dissolve on July 9, 2015. (Doc. 1 at 3; Doc. 38-1 at 1; Doc. 1-3.) After AA I was dissolved, Plaintiff “registered a new entity also named Atmosphere Aerial, LLC [AA II] with the Louisiana Secretary of State on July 9, 2015 . . . [Plaintiff] is the sole member of [(“AA II”)]. (Doc. 1 at 4; Doc. 31-1 at 2.) Further, Plaintiff “registered the Logo as a trademark, service mark, and trade name with the Louisiana Secretary of State under the name of [AA II].” (Doc. 1 at 5.) After the dissolution of AA I, Defendant formed Atmosphere Aerial Media, LLC (“AA Media”). (Doc. 1 at 5.)

C. Creation and registration of the logo

Plaintiff declares in his complaint that he created a logo containing the name “Atmosphere Aerial” (the “Logo”) on March 28, 2014. (Doc. 1 at 4; Doc. 47 at 1; Doc. 47-1.)



The Logo was registered by Plaintiff in his own name on July 13, 2015. (Doc. 31-2; Doc. 47-2.)

The registration lists Plaintiff as sole author, copyright claimant, and the only person with rights and permissions to the logo. (Doc. 47-2.)

Defendant, through his affidavit, asserts that Plaintiff and Defendant jointly designed the Logo. (Doc. 31-3.) Defendant also asserts that the Logo was created *for* AA I. (Doc. 38-1 at 1.) The Logo was not used before AA I's creation. (Doc. 31-3.) Additionally, Defendant also states in his affidavit that "[o]nce [AA I] was in business the Logo was regularly used in commerce" by AA I. (Doc. 38-1 at 1.) Defendant also provided a newspaper article from *The Advocate* and images of T-shirts containing the Logo as evidence that the Logo was created for AA I. (Doc. 38 at 2-3; Doc. 38-1 at 1-8.)

II. Relevant Standards

A. Rule 56 Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the mover bears his burden of showing that there is no genuine issue of fact, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . [T]he nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (internal citations omitted). The non-mover's burden is not satisfied by "conclusory allegations, by unsubstantiated assertions, or by only a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (citations and internal quotations omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. Further:

In resolving the motion, the court may not undertake to evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury drawing all inferences in favor

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