UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NAZIM I. GUITY,

Plaintiff,

18-cv-10387 (PKC)

-against-

OPINION
AND ORDER

ANTHONY SANTOS, et al.,

Defendants.

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CASTEL, U.S.D.J.

Plaintiff Nazim I. Guity ("Guity") brings this action against Anthony Santos, professionally known as Romeo Santos, ("Santos"), Sony Music Entertainment, Inc., Sony Music Holdings, Inc., and Sony Corporation of America (collectively, "Sony"), Milton "Alcover" Restituyo ("Alcover"), and We Loud, LLC, doing business as We Loud Studios, LLC and formerly known as Los Mejores Studios ("We Loud"). Guity alleges that defendants recorded, released, and profited from a song by Santos that infringed Guity's copyrighted work. Santos and Sony ("Movants") move to dismiss the case under Rule 12(b)(6) for failure to state a claim. For the reasons below, Movants' motion to dismiss will be granted.

BACKGROUND

In 2011, Guity composed and authored a musical composition, entitled "Eres Mia" (the "Guity Song"). (Compl. ¶ 10). At some later point, Guity hired defendants Alcover and We Loud to assist in the creation of a master recording of the Guity Song. (Compl. ¶¶ 11–12). On March 25, 2014, Guity was granted a copyright for the Guity Song. (Compl. ¶ 18). "Contemporaneously with, and subsequent to" the recording of the Guity Song, Alcover and We Loud worked with Santos to record a song also entitled "Eres Mia" (the "Santos Song"). (Compl.

¶¶ 15–16). Following the recording of the Santo Song, Santos worked with Sony to market and commercially distribute this work. (Compl. ¶¶ 38–39). Guity alleges that the Santos Song incorporates protected elements of and is so substantially similar to the Guity Song as to constitute copyright infringement. (Compl. ¶¶ 20–21).

In the present action, Guity brings four claims: (1) copyright infringement based on a failure to obtain a mechanical license and/or pay royalties (Compl. ¶¶ 22–34); (2) copyright infringement based on defendants' creation, distribution, and claim of ownership in a work that infringed Guity's protected work (Compl. ¶¶ 35–44); (3) civil conspiracy to commit copyright infringement (Compl. ¶¶ 46–48); and (4) an accounting and constructive trust (Compl. ¶¶ 49–52).

Guity initially filed this action in the Eastern District of Pennsylvania. (Compl. at 1). On September 26, 2018, Judge Michael M. Baylson ordered the action transferred to the Southern District of New York pursuant to both 28 U.S.C. § 1404(a) and § 1406(a). (Order, Guity v. Santos, No. 17-cv-3447 (E.D. Pa. Sept. 26, 2018) (Doc. 39)). On March 7, 2019, Santos and Sony filed a motion to dismiss the complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., (Defs.' Mot. to Dismiss Pls.' Compl. Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. 53)),[1] arguing that Guity's claims fail as a matter of law because, there is no substantial similarity between the Guity Song and the Santos Song and therefore is no copyright infringement, (Mem. of Law in Supp. of Defs.' Mot. to Dismiss Pls.' Compl. at 3 (Doc. 54 at 3)).

RULE 12(b)(6) STANDARD

Rule 12(b)(6) requires a complaint to "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662,

[1] Though named as defendants in the complaint, Alcover and We Loud have not appeared in this action and there is no indication that either has even been served. The time to serve these two defendants under Rule 4(m), Fed. R. Civ. P., long ago expired.

678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In assessing the sufficiency of a pleading, a court must disregard legal conclusions, which are not entitled to the presumption of truth. Id. Instead, the Court must examine the well-pleaded factual allegations, which are accepted as true, and "determine whether they plausibly give rise to an entitlement to relief." Id. at 678–79. "Dismissal is appropriate when 'it is clear from the face of the complaint, and matters of which the court may take judicial notice, that the plaintiff's claims are barred as a matter of law.'" Parkcentral Global Hub Ltd. v. Porsche Auto. Holdings SE, 763 F.3d 198, 208–09 (2d Cir. 2014) (quoting Conopco, Inc. v. Roll Int'l, 231 F.3d 82, 86 (2d Cir. 2000)).

"[T]he purpose of Federal Rule of Civil Procedure 12(b)(6) 'is to test, in a streamlined fashion, the formal sufficiency of the plaintiff's statement of a claim for relief without resolving a contest regarding its substantive merits.'" Halebian v. Berv, 644 F.3d 122, 130 (2d Cir. 2011) (quoting Global Network Commc'ns, Inc. v. City of New York, 458 F.3d 150, 155 (2d Cir. 2006)). A court reviewing a Rule 12(b)(6) motion "does not ordinarily look beyond the complaint and attached documents in deciding a motion to dismiss brought under the rule." Id. A court may, however, "consider 'any written instrument attached to [the complaint] as an exhibit or any statements or documents incorporated in it by reference . . . and documents that the plaintiffs either possessed or knew about and upon which they relied in bringing the suit.'" Stratte-McClure v. Morgan Stanley, 776 F.3d 94, 100 (2d Cir. 2015) (first alteration in original) (quoting Rothman v. Gregor, 220 F.3d 81, 88 (2d Cir. 2000)). As such, "[i]n copyright infringement actions, 'the works themselves supersede and control contrary descriptions of them.'" Peter F. Gaito Architecture, LLC v. Simone Dev. Corp., 602 F.3d 57, 64 (2d Cir. 2010) (quoting Walker v. Time Life Films, Inc., 784 F.2d 44, 52 (2d Cir. 1986)).

DISCUSSION

In support of their motion to dismiss, Movants submitted several exhibits, including audio files of the two songs at issue, (Exs. B & E (Doc. 54 at 35, 45)), and a signed supporting declaration, (Ex. C (Doc. 54 at 37)), as well as certified Spanish-to-English written translations of the two songs, (Exs. D & F (Doc. 54 at 40, 47)). The Court considers these audio files because the two works at issue "themselves supersede and control" and were relied upon by plaintiff when crafting the complaint. Peter F. Gaito Architecture, 602 F.3d at 64; see also McDonald v. West, 138 F. Supp. 3d 448, 453 (S.D.N.Y. 2015), aff'd, 669 F. App'x 59 (2d Cir. 2016) ("Courts in this district regularly apply this rule in music copyright cases to listen to the songs at issue when evaluating a motion to dismiss."). As plaintiff does not contest the accuracy of the certified translations, the Court takes judicial notice of them. Grisales v. Forex Capital Mkts. LLC, No. 11-cv-228 (NRB), 2011 WL 6288060, at *2 n.7 (S.D.N.Y. Dec. 9, 2011) ("We note that we can also take judicial notice of this uncontested translation in proceeding under Rule 12(b)(6)." (citing Negrin v. Kalina, No. 09-cv-6234 (BSJ), 2010 WL 2816809, at *2 n.4 (S.D.N.Y. July 15, 2010)).

Plaintiff's opposition brief contains factual allegations not included in the complaint, (Mem. of Law in Supp. of Pl.'s Resp. to Defs.' Rule 12(b) Mot. to Dismiss at 4 (Doc. 60 at 4)), and attaches as exhibits a declaration, (Declaration of Nazim I. Guity (Doc. 60-2)), and two musicological reports, (Eres Mia Musicological Report (Doc. 60-3); Musicological Report Prt. 2 (Doc. 60-4)). The facts newly alleged in plaintiff's opposition brief and the attached exhibits were neither incorporated by reference into the complaint nor relied upon by plaintiff when crafting the complaint and, as such, were not considered by the Court when deciding Movants' motion to dismiss.

I. Legal Standard for a Copyright Infringement Claim.

A claim of copyright infringement requires a plaintiff to plausibly allege "(1) ownership of a valid copyright, and (2) the defendants' copying of constituent, original elements of plaintiff's copyrighted work." McDonald, 138 F. Supp. 3d at 453 (citing Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991)). A showing of copying in turn requires plaintiff to plausibly allege that "(1) the defendant has actually copied the plaintiff's work; and (2) the copying is illegal because a substantial similarity exists between the defendant's work and the protectible elements of plaintiff's." Peter F. Gaito Architecture, 602 F.3d at 63 (quoting Hamil Am. Inc. v. GFI, 193 F.3d 92, 99 (2d Cir. 1999)). For the purposes of this motion, the Court assumes, and Movants do not dispute, that plaintiff has sufficiently alleged ownership of a valid copyright and actual copying of plaintiff's work by defendants. Movants instead argue that plaintiff has failed to plausibly allege substantial similarity between the Guity Song and the Santos Song. (Doc. 54 at 5–15).

A district court may "resolve the question of substantial similarity as a matter of law on a Rule 12(b)(6) motion to dismiss." Peter F. Gaito Architecture, 602 F.3d at 65. For the substantial similarity analysis, "no discovery or fact-finding is typically necessary, because what is required is only a visual [or] [aural] comparison of the works." May v. Sony Music Entertainment, 399 F. Supp. 3d 169, 181 (2019) (second alternation in original) (quoting Peter F. Gaito Architecture, 602 F.3d at 64). "If, in making that evaluation, the district court determines that the two works are not substantially similar as a matter of law, the district court can properly conclude that the plaintiff's complaint, together with the works incorporated therein, do not plausibly give rise to an entitlement to relief." Peter F. Gaito Architecture, 602 F.3d at 64 (internal citation and quotation marks omitted). Two works are not substantially similar as a matter of law "either because the similarity between two works concerns only non-copyrightable elements of the

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