

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JULIÁN OLIVARES,

Plaintiff,

v.

UNIVERSITY OF CHICAGO,
UNIVERSITY OF CHICAGO PRESS,
MARGARET R. GREER, and
ELIZABETH RHODES,

Defendants.

1:15-cv-713

MEMORANDUM OPINION AND ORDER

LORETTA C. BIGGS, District Judge.

Julián Olivares (“Olivares”) initiated this copyright infringement action in the United States District Court for the Eastern District of Texas in October 2014. The case was subsequently transferred to this Court. Before the Court are several motions filed by Defendants, including a motion for summary judgment, various motions to dismiss, and a motion to strike Olivares’ request for statutory damages and attorney’s fees. Also before the Court are Olivares’ requests for hearings on all pending motions. For the reasons below, Defendants’ Motion for Summary Judgment as to Olivares’ copyright infringement claim is denied; Defendants’ motions to dismiss claim two regarding infringing acts abroad and the Texas state-law tort claims are granted; Defendants’ motion to strike Olivares’ requests for statutory damages and attorney’s fees is granted; and Defendants’ motion to dismiss or transfer

for lack of jurisdiction and venue is denied as moot. In addition, Olivares' requests for hearings are denied.¹

I. BACKGROUND

In 1637, Spanish writer María de Zayas y Sotomayor (“Zayas”) published a collection of ten stories titled *Novelas amorosas y ejemplares* (“*Novelas amorosas*”). (See Rhodes Decl. ¶ 7, ECF No. 34-2; Greer Decl. ¶ 13, ECF No. 34-3.) In 2000, Olivares created an edition of the *Novelas amorosas*, also in Spanish. (Olivares Decl. ¶ 3, ECF No. 44-28.) Olivares' edition contains the entire text of the *Novelas amorosas*, as well as several sections written by Olivares.² (See Olivares Ed., ECF No. 1-2.) In 2009, Defendant University of Chicago published an English translation of selected stories by Zayas, including four stories from the *Novelas amorosas*. (See Rhodes Decl. ¶ 7, ECF No. 34-2; Greer Decl. ¶ 13, ECF No. 34-3.) The stories were edited and translated by Defendants Margaret R. Greer (“Greer”) and Elizabeth Rhodes

¹ Also before the Court is a motion that Defendants filed in the Eastern District of Texas and moved to reinstate in this Court. The motion challenges personal jurisdiction and venue in the Eastern District of Texas. The Court will not address this motion as to these issues, which became moot when the Eastern District of Texas transferred the case on convenience grounds. See 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1352 (3d ed.) (“The transfer of the case [pursuant to § 1404(a)] will render moot any Rule 12(b)(3) motion to dismiss for improper venue.”). Contrary to Defendants' argument, the propriety of jurisdiction and venue in the Eastern District of Texas has no bearing on whether this Court must apply Fourth Circuit or Fifth Circuit law. “[F]ederal courts comprise a single system applying a single body of law, and no litigant has a right to have the interpretation of one federal court rather than that of another determine his case.” *Desiano v. Warner-Lambert & Co.*, 467 F.3d 85, 91 (2d Cir. 2006) (quoting *Menowitz v. Brown*, 991 F.2d 36, 40 (2d Cir. 1993)) *aff'd sub nom. Warner-Lambert Co., LLC v. Kent*, 128 S. Ct. 1168 (2008). This Court will accordingly proceed under the precedent of the Fourth Circuit. See *Lanfear v. Home Depot, Inc.*, 536 F.3d 1217, 1223 (11th Cir. 2008); *Newton v. Thomason*, 22 F.3d 1455, 1460 (9th Cir. 1994); *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992).

² Sections by Olivares include an introduction, note on his edition, bibliography, glossary, index of names, and index of poems. (See Olivares Ed. 7–8, ECF No. 1-2 (table of contents).) These sections of the Olivares edition do not appear to be at issue in this case.

(“Rhodes”). (See Greer & Rhodes Translation, ECF No. 109-7 (book cover).) When translating stories from the *Novelas amorosas*, Greer and Rhodes used Olivares’ edition of Zayas’ work. (Id. at 41 (note on the translations).) Their use of Olivares’ edition forms the basis of the parties’ dispute.

Olivares asserts four claims: (1) copyright infringement under federal and foreign law, (2) violations of the Universal Copyright Convention, (3) unjust enrichment, and (4) money had and received. While this case was before the Eastern District of Texas, Defendants moved to dismiss each claim except Olivares’ copyright infringement claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. They also moved to strike Olivares’ requests for statutory damages and attorney’s fees. After the case was transferred to this Court, those motions were reinstated, and Defendants filed a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure as to all claims.

Though Defendants seek summary judgment on all of Olivares’ claims, they devote the majority of their summary judgment brief to the copyright infringement claim. For the remaining claims, Defendants direct the court to the parties’ earlier briefing related to their motions to dismiss. (See Defs.’ Mot. 19–20, ECF No. 109.) Because the parties’ earlier briefing does not present matters outside the pleadings and all of the parties’ arguments on these issues are made in the Rule 12(b)(6) context, the Court will evaluate Olivares’ claims for violations of the Universal Copyright Convention, unjust enrichment, and money had and received pursuant to Rule 12(b)(6) for failure to state a claim. The Court will evaluate Olivares’ claim for copyright infringement under a Rule 56 summary judgment standard.

II. MOTIONS TO DISMISS

Defendants move to dismiss Olivares' claims for unjust enrichment, money had and received, and violations of the Universal Copyright Convention. A motion to dismiss under Rule 12(b)(6) "challenges the legal sufficiency of a complaint," including whether it meets the pleading standard of Rule 8(a)(2). Francis v. Giacomelli, 588 F.3d 186, 192 (4th Cir. 2009). Rule 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Mere "labels and conclusions" and "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. Instead, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). A claim is plausible when the complaint alleges facts that "raise a right to relief above the speculative level," Twombly, 550 U.S. at 555, and allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged," Iqbal, 556 U.S. at 678. Where the facts are "merely consistent with" the defendant's liability or allow the court to infer only "the mere possibility of misconduct," the complaint "stops short of the line between possibility and plausibility" and must be dismissed. Id. at 678–79; see Twombly, 550 U.S. at 557.

A. Violations of the Universal Copyright Convention

In his claim for violations of the Universal Copyright Convention, Olivares alleges that Defendants infringed his international copyrights by distributing and selling their translation outside the United States. (Third Am. Compl. ¶¶ 38–39, ECF No. 27.) The Universal Copyright Convention is a treaty that “mandate[s] a policy of national treatment in which copyright holders are afforded the same protection in foreign nations that those nations provide their own authors.” Creative Tech., Ltd. v. Aztech Sys. Pte., Ltd., 61 F.3d 696, 700 (9th Cir. 1995); see Universal Copyright Convention art. II, reprinted in 9 Melville B. Nimmer & David Nimmer, Nimmer on Copyright App. 24.

Defendants argue that the Universal Copyright Convention is not self-executing and does not give rise to a private cause of action. The Court agrees. “International treaties are not presumed to create rights that are privately enforceable.” Goldstar (Panama) S.A. v. United States, 967 F.2d 965, 968 (4th Cir. 1992). Rather, “[t]o determine whether a treaty creates a cause of action, we look to its text.” McKesson Corp. v. Islamic Republic of Iran, 539 F.3d 485, 488 (D.C. Cir. 2008). Olivares does not identify specific text in the Universal Copyright Convention which creates a private cause of action, and the Court finds no such language. Accordingly, the Court dismisses Olivares’ claim for violations of the Universal Copyright Convention pursuant to Rule 12(b)(6), for failure to state a claim upon which relief can be granted.

B. State Law Claims

Olivares also asserts two state law claims, *i.e.*, unjust enrichment and money had and received. In his claim for unjust enrichment, Olivares alleges Defendants have obtained

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