UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

EVA A. WEBB WRIGHT,	)	
	)	Case No. 1:18-cv-38
Plaintiff,	)	
	)	Judge Travis R. McDonough
v.	)	
	)	Magistrate Judge Susan K. Lee
PENGUIN RANDOM HOUSE,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Before the Court are: (1) Defendant Penguin Random House's ("PRH") motion to dismiss for failure to state a claim (Doc. 17); (2) Plaintiff's "Motion: Memorandum for Denying Dismissal of Defendants" (Doc. 23); and (3) Plaintiff's "Motion to deny defendant's motion to dismiss" (Doc. 26). For the following reasons, Defendant's motion to dismiss (Doc. 17) will be **GRANTED**. Plaintiff's motions (Docs. 23, 26) will be **DENIED AS MOOT**.

I. BACKGROUND

According to Plaintiff, she uploaded her personal memoir to a website years before the novel *Fifty Shades of Grey* was published. (Doc. 1, at 4–5.) Plaintiff alleges that Amanda Hayward[1] emailed Plaintiff on March 30, 2005, asking her if her story was real or fiction. Plaintiff alleges that, some time later, but before the publication of *Fifty Shades of Grey* in any format, her memoir "was contracted to third party publishing companies of Lulu and Amazon,"

[1] Plaintiff filed a related action, *Wright v. The Writer's Coffee Shop, LLC et al.*, No. 1:17-CV-00355 (E.D. Tenn. filed Dec. 27, 2017), against Amanda Hayward, one of the publishers of the print-on-demand and e-book versions of *Fifty Shades of Grey*, by E.L. James, whose legal name is Erika Mitchell Leonard. The other defendants include The Writers Coffee Shop, LLC, Ms. Leonard, Jennifer Lyn Pedroza, and Crista Beebe.

and Plaintiff had sold one copy, earning royalties of $3.75. (*Id.* at 4.) Plaintiff alleges that when she contacted PRH about the "piracy" of her memoir, PRH "proceeded to argue it was impossible and their client had never been to [Plaintiff's] site before." (*Id.* at 5.) Plaintiff seeks damages to compensate her for her lost royalties and physical and emotional harm, as well as an injunction against further sales of the *Fifty Shades of Grey* trilogy. (*Id.*)

On February 27, 2018, Plaintiff filed her pro se complaint against PRH in this Court, asserting various state-law claims arising from Defendant's publication of the *Fifty Shades* trilogy,[2] which she believes infringes upon her rights in her memoir. Plaintiff seeks to enjoin PRH from selling the *Fifty Shades* series; she also seeks "full and proper credit . . . for pirated story" and money damages for lost profits and "physical and emotional harm" suffered by Plaintiff and her family. (Doc. 1, at 5.) On July 23, 2018, PRH filed a motion to dismiss Plaintiff's complaint. (Doc. 17.) Plaintiff filed responses in opposition to Defendant's motion to dismiss (Docs. 23, 26) on August 9, 2018, and August 29, 2018. Defendant replied on August 16, 2018 (Doc. 25). Defendant's motion (Doc. 17) is now ripe for review.

II. STANDARD OF LAW

Rule 8 of the Federal Rules of Civil Procedure requires a plaintiff's 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). Though the statement need not contain detailed factual allegations, it must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*

[2] The Court takes judicial notice, under Federal Rule of Evidence 201(b), that PRH published the *Fifty Shades* trilogy on the following dates: *Fifty Shades of Grey* was published on May 25, 2011; *Fifty Shades Darker* on September 13, 2011; and *Fifty Shades Freed* on January 17, 2012. *See* United States Copyright Office, Public Catalog, https://cocatalog.loc.gov (last visited Nov. 1, 2018).

A defendant may obtain dismissal of a claim that fails to satisfy Rule 8 by filing a motion pursuant to Rule 12(b)(6). On a Rule 12(b)(6) motion, the Court considers not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer "more than the mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. For purposes of this determination, "all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *Tucker v. Middleburg-Legacy Place*, 539 F.3d 545, 549 (6th Cir. 2008) (quoting *JPMorgan Chase Bank, N.A. v. Winget,* 510 F.3d 577, 581 (6th Cir. 2007)). This assumption of veracity, however, does not extend to bare assertions of legal conclusions, *Iqbal*, 556 U.S. at 679, nor is the Court "bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

The Court notes that Plaintiff is proceeding in this action *pro se*. The Court is mindful that *pro se* complaints are liberally construed and are held to less stringent standards than the formal pleadings prepared by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Bridge v. Ocwen Fed. Bank*, 681 F.3d 355, 358 (6th Cir. 2012). The Court is "not, [however,] require[d] to either guess the nature of or create a litigant's claim." *See, e.g.*, *Leeds v. City of Muldraugh*, 174 F. App'x 251, 255 (6th Cir. 2006). Likewise, "liberal treatment of *pro se* pleadings does not require lenient treatment of substantive law," and ultimately, those who proceed without counsel must still comply with the procedural rules that govern civil cases, including the pleading standards set forth in Rule 8(a) of the Federal Rules of Civil Procedure. *Durante v. Fairlane Town Ctr.*, 201 F. App'x 338, 344 (6th Cir. 2006); *Whitson v. Union Boiler Co.*, 47 F. App'x

757, 759 (6th Cir. 2002); *Kafele v. Lerner, Sampson, Rothfuss, L.P.A.*, 161 F. App'x 487, 491 (6th Cir. 2005) ("[*P*]*ro se* litigants are not relieved of the duty to develop claims with an appropriate degree of specificity."). Thus, although the standard of review for *pro se* litigants is liberal, it requires more than the bare assertion of legal conclusions. *Lillard v. Shelby Cty. Bd. of Educ.*, 76 F.3d 716, 726 (6th Cir. 1996).

After sorting the factual allegations from the legal conclusions, the Court next considers whether the factual allegations, if true, would support a claim entitling the plaintiff to relief. *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 859 (6th Cir. 2007). This factual matter must "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. ANALYSIS

Defendant seeks to dismiss all of Plaintiff's claims, arguing that they are preempted by the United States Copyright Act and, even if not preempted, they fail to state a claim against Defendant. (Doc. 17.) Defendant interprets Plaintiff's complaint as "assert[ing] state-law claims alleging violation of her statutory right of publicity, tortious interference with contractual relations and prospective business relations, negligent and intentional infliction of emotional distress, and harassment." (Doc. 17, at 1.)

A. Claims Arising from PRH's Alleged Use of Plaintiff's Memoir

To the extent that Plaintiff asserts state-law causes of action arising from PRH's alleged use of her memoir without her permission and without compensating her, these claims are preempted by the United States Copyright Act. The Copyright Act preempts "all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright . . . ." 17 U.S.C. § 301(a). The U.S. Court of Appeals for the Sixth Circuit has explained that the Copyright Act "is unusually broad in its assertion of federal authority [in that it] converts all state common or statutory law 'within the general scope of copyright' into federal law . . . ." *Ritchie v. Williams*, 395 F.3d 283, 286 (6th Cir. 2005).

Courts apply the "functional test" requirements of "subject matter" and equivalency to determine if a state-law claim is preempted by the Copyright Act. *See, e.g.*, *Stanford v. Caesars Entm't, Inc.*, 430 F. Supp. 2d 749, 757–59 (W.D. Tenn. 2006). For example, in *Wells v. Chattanooga Bakery, Inc.*, the Tennessee Court of Appeals held that all claims based on defendant's advertisement using Plaintiff's image without compensation were preempted by the Copyright Act because there was "no distinction between the rights [asserted in the plaintiff's state-law claim] and the exclusive rights granted under the Copyright Act because his claim . . . depend[ed] solely on [the defendants'] purported failure to compensate him for the allegedly unauthorized reproduction." 448 S.W.3d 381, 389, 391–92 (Tenn. Ct. App. 2014).

Because Plaintiff's claims of violation of her statutory right of publicity, tortious interference with economic advantage, and/or commercial misappropriation "depend[ ] solely" on Defendant's alleged use of her original work without permission or compensation, *id.*, these state-law claims are preempted by the Copyright Act. *See Stromback v. New Line Cinema*, 384 F.3d 283, 306 (6th Cir. 2004).

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