United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Judge Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 2215	**DATE**	July 11, 2007
CASE TITLE	DJ PHOTOGRAPHY v. WILBERT, INC., *et al.*		

DOCKET ENTRY TEXT:

Defendants' Motion for Summary Judgment [35] is granted.

STATEMENT

I. BACKGROUND

In the underlying case, Plaintiff DJ Photography, Ltd. ("DJ Photography" or "Plaintiff") has brought a multi-count complaint against a number of Defendants. Immediately before me is defendants' Kirlin-Egan & Butler Funeral Home, P.C.; San-Tiedemann & Company, Inc.; and Trimble, Inc. (collectively "Defendants" or the "Funeral Homes") Motion for Summary Judgment on Counts IV and VI. Count IV is Plaintiff's copyright infringement claim and Count VI alleges a quantum meruit claim.

The dispute in this case involves the use of two photographs that Plaintiff claims are being reproduced and used improperly. One of the photographs is of a concrete burial vault referred to as the "Cameo Rose." The second is of a graveside service (the "Mourners"). Defendants—in their Local Rule 56.1 Statement of Undisputed Facts—assert that "[Donald C.] Johnson (and not DJ Photography) obtained Copyright Registration Number VA 1-322-538 for a burial vault photograph titled ''Cameo Rose' Funeral Vault,' and Copyright Registration Number VA 1-258-173 and VAu649-484 for images of graveside services titled 'Wilbert Funeral Scenes.'" Plaintiff does not dispute the veracity of that statement.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R.CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In determining whether any genuine issue of material fact exists, all facts must be construed in the light most favorable to the non-moving party and all reasonable and justifiable

inferences drawn in its favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A material fact is genuinely in dispute when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. at 248.

B. Copyright Claim

Plaintiff cannot maintain its infringement claim because it does not own the registrations in question. The Seventh Circuit explains that "to make out a prima facie claim of direct infringement, [DJ Photography] must show (1) that it owned a valid copyright in the advertisement and (2) that [Defendants] copied constituent elements of the work that were original." *Harbor Motor Co., Inc. v. Arnell Chevrolet-Geo, Inc.*, 265 F.3d 638, 643-44 (7th Cir. 2001) (*citing Wildlife Express Corp. v. Carol Wright Sales, Inc.*, 18 F.3d 502, 507 (7th Cir. 1994)). Plaintiff concedes that Donald Johnson, and not DJ Photography, owns the registrations. Because the plaintiff in this matter is DJ Photography, Plaintiff cannot maintain this claim.

Besides being unable to satisfy the first element of the *Harbor Motor* test, Plaintiff also lacks standing to bring this claim. 17 U.S.C. § 501(b) ("The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it."). Courts construing § 501 have explained that "only the legal or beneficial owner of an exclusive right under a copyright is entitled to bring an infringement suit." *Huthwaite, Inc. v. Randstad General Partner*, No. 06 C 1548, 2006 WL 3065470, at *8 (N.D. Ill. Oct. 24, 2006) (Lefkow, J.) (*citing Moran v. London Records, Ltd.*, 827 F.2d 180, 182 (7th Cir. 1987)); *accord Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 91 (2d Cir. 1998) (noting that only the legal or beneficial owner of an exclusive right has standing to assert an infringement claim). As noted, Plaintiff does not dispute the fact that it is not the owner of the exclusive rights at issue here.

Plaintiff's arguments on this point are unavailing. Plaintiff cites several cases in support of the proposition that immaterial, inadvertent, and minor errors on copyright registration applications do not jeopardize the validity of a registration. Here, Defendants are not contesting the validity of any registrations. Rather, they are arguing simply that Plaintiff is not the owner of the registrations in question, and thus has no standing to bring this infringement claim. At bottom, none of the cases Plaintiff cites stands for the proposition that an entity other than the owner of the exclusive rights may bring an infringement action. Accordingly, the authority on which Plaintiff relies is inapposite. Because Plaintiff is not the owner of the exclusive rights upon which it claims Defendants infringed, summary judgment is proper on Count IV. This resolution obviates the need to consider the remainder of Defendants' arguments regarding this Count.

C. Quantum Meruit Claim

Defendants argue that the Copyright Act preempts Plaintiff's quantum meruit claim. Plaintiff, in its response to Defendants' motion for summary judgment, concedes the preemption argument. I find that the Copyright Act does preempt Plaintiff's unjust enrichment claim. *See Ingram v. Page*, No. 98 C 8337, 2000 WL 263707, at *4 (N.D. Ill. Feb. 28, 2000). Defendants' motion with respect to Count VI is granted.

III. CONCLUSION

For the preceding reasons, Defendants' Motion for Summary Judgment on Counts IV and VI is GRANTED.