

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-7308-RGK (Ex) Date March 4, 2008

Title AMIR POURTEMOUR v. O.J. SIMPSON

Present: The R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE
Honorable

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Defendant Pablo Fenjves's Motion to Dismiss Complaint (DE 5)

I. FACTUAL BACKGROUND

Plaintiff Amir Pourtemour filed this action against O.J. Simpson, et al. (collectively, "Defendants") on November 6, 2007. Plaintiff is the author of the book "The Perfect Alibi: O.J. Simpson's Strategy for Murder" in which he allegedly reveals how O.J. Simpson murdered Nicole Brown Simpson and Ron Goldman. Plaintiff's book was published in February 1995.

More than 10 years later, Defendants authored and published "If I Did It: Confessions of the Killer" in which O.J. Simpson writes how he would have carried out the murders, if he, in fact, had been the killer. Plaintiff alleges that the murder strategy set forth in Defendants' book is taken from Plaintiff's book and constitutes Copyright infringement for which he is entitled to relief. In addition to the Copyright Infringement claim, Plaintiff also brings claims for Misappropriation for Use, Conversion, Conspiracy to Convert, and Breach of Implied Contract against Defendants. All claims arise out of the alleged facts that give rise to Plaintiff's Copyright Infringement claim.

Presently before the court is Defendant Pablo Fenjves's ("Fenjves") Motion to Dismiss pursuant to Fed. Rule Civ. Proc. 12(b)(6). For the reasons described below, Fenjves's Motion to Dismiss is granted.

II. JUDICIAL STANDARD

In deciding a 12(b)(6) motion, the court must assume the plaintiff's allegations to be true and construe the complaint in the light most favorable to the plaintiff. *United States v. City of Redwood City*, 640 F.2d 963, 967 (9th Cir. 1981). Therefore, a motion to dismiss pursuant to Fed. Rule Civ. Proc. 12(b)(6) will not be granted unless "it is clear that no relief could be granted under any set of facts that could be proved *consistent with the allegations.*" *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) (emphasis added).

However, the court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal statements set forth in the complaint. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Also, the court will not assume that the plaintiff can prove facts which have not been alleged in the complaint. *Associated Gen. Contractors of Cal., Inc. v. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

The court's review of a 12(b)(6) must be limited to the contents of the complaint, but the court may also review additional materials which are properly submitted as part of the complaint. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). "A copy of a written instrument that is an exhibit to a pleading is a part of a pleading *for all purposes*." Fed. Rule Civ. Proc. 10(c) (emphasis added). Moreover, the court need not accept as true allegations that contradict documents that are attached as exhibits. *Sprewell*, 266 F.3d, at 988.

III. DISCUSSION

A. Defendant's Copyright Claim Does Not State A Claim for Relief.

To successfully establish a copyright infringement claim, Plaintiff must demonstrate 1) his ownership of the copyright, 2) Defendants' access to his work, and 3) substantial similarity between his work and the allegedly infringing material. *Berkic, v. Crichton*, 761 F.2d 1289, 1291-92 (9th Cir. 1985). Here, Plaintiff has failed to plead the third element or to allege sufficient facts that would allow a finding or inference of substantial similarity between his work and that of Defendants.

The Ninth Circuit has broken the substantial similarity element into two parts: extrinsic and intrinsic. *Id.* The *extrinsic* test compares the individual feature of the two works, including "plots, themes, dialogue, mood, setting, pace, characters, and sequence of events." *Id.* The *intrinsic* test looks to whether the two works share the same form of expression, concept and feel. *Id.* In order to prevail in a copyright infringement claim, Plaintiff has to satisfy both tests, i.e., that the works are substantially similar in both *idea* and *expression*. *Id.* Here, the Plaintiff has failed to plead or allege enough facts as to either test.

1. Plaintiff's Pleadings Are not Adequate to Allow a Finding of Extrinsic Substantial Similarity Between the Two Works.

As stated above, extrinsic similarity involves the idea of the work. Here, Plaintiff has made it clear in his Complaint¹ as well as on the title page of his book, that his book attempts to reveal "[w]hat really happened the night of [the murders] and why." (Plaintiff's Exhibit "1"). Plaintiff alleges that Defendants' work, similar to his, chronicles how O.J. Simpson murdered Nicole Brown Simpson and Ron Goldman, and that both works describe events that took place before, during, and after the murders. Plaintiff alleges that both works state that: (1) the killer used a knife; (2) the killer was drenched in blood after the killings; (3) O.J. Simpson intentionally cut himself to mislead the jury; (4) O.J. Simpson "framed" the police; and (5) both works have dedicated a chapter to a transcript of O.J. Simpson's interview with the Los Angeles Police Department.² Finally, Plaintiff alleges that the "general" murder strategy is identical in both works.

¹ In his Complaint, Plaintiff states that his book is "concentrated on a factual analysis"

² Plaintiff does not allege that he owns a copyright to the interview transcript.

These allegations, taken collectively and in the light most favorably to the Plaintiff, demonstrate that both books have the same *general idea* and that certain *facts* that are *allegedly* revealed in Plaintiff's book also appear in Defendant's book.³ However, general facts are not copyrightable, and no copyright infringement claim may arise out of facts being recited in one's work simply because another work recited the same facts at a prior occasion. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 344 (1991). One may copy facts from another work as long as he does not use the exact same words as those used in the original. *Id.* at 348. *See also* 37 C.F.R. § 202.1.

Similar to facts, the general idea of a story is not protected under copyright law. *Berkic, v. Crichton*, 761 F.2d 1289, 1293-94 (9th Cir. 1985) (holding that "gruesome similarities" between two works at a general level did not suffice to create an issue of material fact for trial in copyright action). In sum, nobody may own the basic idea of a story. *Id.* at 1293. Therefore, Plaintiff has failed to adequately plead substantial extrinsic similarities between his work and that of Defendants.

2. *Plaintiff Has Failed to Plead or Supply Facts to Show Substantial Intrinsic Similarity Between the Two Works.*

Intrinsic similarity concerns the form of expression. *Id.* at 1292. Here, Plaintiff does not plead or even allege that both works are similar in their form of *expression*. Quite to the contrary, Plaintiff admits that his work is substantially dissimilar in expression compared to Defendants' book. In his Complaint, Plaintiff states that "Plaintiff's book was written in the third person, concentrated on a factual analysis, and had no character named 'Charlie.'⁴ [Defendants' book] was written in the first person, had lots of dialogue, rough language, and thought processes, and a character named 'Charlie,' . . . and lots of historical information unrelated to the murders." In the absence of any pleading or fact to show that the two works are similar in their form of expression, and in light of Plaintiff's contrary pleadings, the Court finds that Plaintiff cannot establish that the two works have substantial intrinsic similarities.

B. Plaintiff's Remaining Causes of Action Are Preempted by 17 U.S.C § 301.

In addition to the Copyright Infringement claim, Plaintiff also brings causes of action for Misappropriation for Use, Conversion, Conspiracy to Convert, and Breach of Implied Contract. 17 U.S.C. § 301 states that "all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright . . . in works of authorship . . . are governed exclusively by this title." Moreover, "no person is entitled to any such right or equivalent right in any such work under the

³ In his Motion to Dismiss, Fenjves argues that "If I Did It: Confessions of The Killer" is not a work of fiction, but an accurate depiction of the actual events that took place on the night of the murders. Therefore, he argues that the Copyright action must be dismissed. Although the title of the book ("If I did It") contradicts the Defendant's contention by creating a presumption that O.J. Simpson's writings are hypothetical, a determination regarding the truth of such allegations is not appropriate at this state of litigation, where the Court must construe all disputed facts in Plaintiff's favor. Notwithstanding such allegations, however, this Court need not decide the issue. In his book, Plaintiff claims to have revealed the facts of the murders, and that Defendants have recited those revelations in their book. As this Court must do when deciding a Motion to Dismiss, it assumes Plaintiff's version of the allegations to be true.

⁴ In Defendants' book, O.J. Simpson describes a character named Charlie who accompanied him to the murder scene and was present when the murders took place. Plaintiff's version of the events does not mention such a character. The Court need not address which version of the story is accurate or if any of them in fact took place, as any determination of facts or weighing the evidence would be improper in deciding a Motion to Dismiss.

common law or statutes of any State.” *Id.*

The Ninth Circuit has held that Section 301 creates a two step inquiry to determine whether a certain claim is preempted by the Copyright law. *Laws v. Sony Music Entertainment, Inc.*, 448 F.3d 1134, 1137-38 (9th Cir. 2006). The first step is to determine whether the subject matter of the state law claim falls within the subject matter of copyright as defined in 17 U.S.C. § 102. *Id.* Second, if the subject matter of the common law or state claim comes within the subject matter of copyright, the court must determine whether the rights granted under state law must be equivalent to any of the exclusive rights within the general scope of copyright. *Id.* Common law and state causes of action are preempted by the Copyright Statute, unless they protect “qualitatively different” rights than those protected by the Copyright Statute. *Id.* at 1145.

17 U.S.C. § 102 states that “Copyright protection subsists . . . in original works of authorship . . . including . . . literary works.” Here, all of Plaintiff’s causes of action directly arise out of Defendants’ alleged use of his book. Therefore, the first step of the case is satisfied for all of the aforementioned causes of action.

In order to address the second step of the test, the Court must determine the rights protected by each of the Plaintiff’s causes of action and whether such rights are qualitatively different from the rights protected by the Copyright Statute. In most cases, this step of the inquiry would be quite involved. However, in this case, Plaintiff does not allege any facts and does not set forth any legal theory independent from his Copyright claim. In fact, Plaintiff repeats, by reference, the exact same allegations made in his Copyright claim in every other cause of action that he has set forth. All of Plaintiffs’ causes of action allege that Defendants’ use of his literary work entitles him to damages and royalties. In this light, Plaintiff is entitled to no right other than those protected by the Copyright Statute. Therefore, the Court finds that the second prong of the preemption test is also satisfied for the aforementioned causes of action, and that the Federal Copyright Statute preempts those claims.

IV. CONCLUSION

For the reasons explained above, the Court grants Defendant Pablo Fenjves’s Motion to Dismiss based on Fed. Rule Civ. Proc. 12(b)(6).

IT IS SO ORDERED.

_____ : _____
 Initials of Preparer _____ slw