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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

REX REGINALD,

Plaintiff and Appellant,

v.

NEW LINE CINEMA CORPORATION
et al.,

Defendants and Respondents.

B190025

(Los Angeles County
Super. Ct. No. SC082446)

APPEAL from a judgment of the Superior Court of Los Angeles County, Valerie Lynn Baker, Judge. Affirmed.

Richard G. Sherman, Robert E. Young and Armand Arabian for Plaintiff and Appellant.

White O'Connor Curry, Michael J. O'Connor, Edward E. Weiman and Allison S. Rohrer for Defendants and Respondents New Line Cinema Corporation and Robert Shaye.

Freedman & Taitelman, Bryan J. Freedman, Bradley H. Kreshek and Matthew E. Voss for Defendants and Respondents United Talent Agency, Inc. and Nick Stevens.

INTRODUCTION

Plaintiff Rex Reginald appeals from a judgment granted against him after motions for summary judgment were granted to defendants New Line Cinema Corporation and Robert Shaye and to defendants United Talent Agency, Inc. and Nick Stevens. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff has a history, dating from the 1970s, of “crashing” celebrity parties, awards shows, movie premieres, weddings and other events in Los Angeles and other locales. Over the years, plaintiff wrote an unpublished work he called “The Party Crasher’s Handbook” (Handbook), setting forth party crashing techniques and anecdotes from his personal experiences as a party crasher.¹ In 1999, plaintiff showed the Handbook to his friend, Robert Kerns (Kerns), and told him of his plans to try to submit the Handbook to movie producers as the treatment for the movie comedy about party crashing which plaintiff had talked about with Kerns over the past months. Kerns suggested that plaintiff add a traditional synopsis to the Handbook before submitting it. A few days later, plaintiff gave Kerns a handwritten synopsis entitled “Party Crashers,” which consisted of three scenes with two buddies, one being a party crashing mentor to the other, crashing a charity party, a wedding party and an Oscar party, and picking up women. Kerns typed it up for plaintiff to add at the end of the Handbook.

In April 2002, plaintiff joined with his acquaintance Neil Portman (Portman), a retired William Morris talent agent, in a written agreement giving the two of them exclusive rights to use their best efforts to get plaintiff’s “party crasher movie” concept

¹ Plaintiff asserts that he registered a rough outline of the Handbook with the United States Copyright Office in 1980, but otherwise had not registered or publicly disclosed the Handbook at the time of the events at issue herein.

and ideas including the Handbook² produced by a major motion picture studio, production company and/or major motion picture star. They agreed to initially focus on Jim Carrey and one other studio or actors' ensemble agreed to by the parties. In May 2002, Portman telephoned defendant Nick Stevens (Stevens), who was Jim Carrey's agent and was associated with defendant United Talent Agency, Inc. (UTA). Portman pitched plaintiff's concept to him, and followed up by sending a letter to him proposing plaintiff's concept for review for Jim Carrey, his production company and UTA. Along with the letter, Portman sent a copy of the Handbook. Communications about plaintiff's concept continued, with the result that in October 2002, UTA informed plaintiff and Portman they had decided not to buy the concept or proceed with the project.

In June 2002, plaintiff crashed a film-related event, where he told defendant Robert Shaye (Shaye) about his idea for a motion picture. Plaintiff was aware that Shaye was one of the producers of a major motion picture, which was released and distributed by defendant New Line Cinema Corporation (New Line). The next day, plaintiff told Portman about his conversation with Shaye. On or about July 2, 2002, Portman telephoned Marcus Kim (Kim), a New Line executive. He told Kim about plaintiff's concept. The following day, Portman sent Kim a letter together with a copy of the Handbook. A few days later, Kim sent Portman a written reply stating that New Line was not interested in the project.

In May 2004, plaintiff learned that a motion picture called *Wedding Crashers* was in production, financed and to be distributed by New Line and starring Owen Wilson (Wilson) and Vince Vaughn (Vaughn), who were represented by UTA. He learned that the producers of *Wedding Crashers* were Peter Abrams, Robert L. Levy and Andrew Panay, who had previously worked on films with Shaye and New Line. Also, the screenwriters were Steve Faber and Bob Fisher. Plaintiff noticed the similarity to his party crashing movie concept in that, in the film, Wilson is a seasoned wedding crasher

² Hereinafter, the term "plaintiff's concept" refers to plaintiff's "party crasher" movie concept and ideas included in the Handbook.

and serves as a mentor to his buddy Vaughn in crashing weddings, and their purpose is to meet and date beautiful and wealthy women.

On August 2, 2004, plaintiff filed suit against New Line, Shaye, UTA and Stevens for breach of implied contract, breach of confidence and unjust enrichment based on plaintiff's belief that *Wedding Crashers* was based on his concept, ideas and Handbook. He filed the first amended complaint on December 27, 2004, and it is the operative complaint in this case.

Following time for discovery, in July 2005, New Line and Shaye (collectively hereinafter referred to as New Line) filed a motion for summary judgment, or, in the alternative, summary adjudication on the bases that there were substantial dissimilarities between plaintiff's concept and *Wedding Crashers* and that *Wedding Crashers* was independently created. In September 2005, UTA and Stevens (collectively hereinafter referred to as UTA) filed a motion for summary judgment or, in the alternative, summary adjudication on the grounds, as to the first cause of action, that *Wedding Crashers* was independently created and not substantially similar to plaintiff's concept; as to the second cause of action, that plaintiff could not establish that UTA used or disclosed plaintiff's concepts; and as to the third cause of action, that plaintiff could not establish that UTA was enriched at his expense by UTA's purported use or disclosure of plaintiff's concepts.

At the hearing on New Line's summary judgment motion in December 2005, the trial court granted the motion on the basis that, as a matter of law, there was no substantial similarity between *Wedding Crashers* and plaintiff's concept. At plaintiff's request, the trial court continued the hearing on UTA's motion to allow plaintiff more opportunities to develop his case that *Wedding Crashers* was not independently created, but rather was based upon plaintiff's concept. After the continued hearing held in January 2006, the trial court granted UTA's motion for summary judgment on the same

basis as it granted New Line's motion – there was no substantial similarity between *Wedding Crashers* and plaintiff's concept.³

DISCUSSION

The trial court granted defendants' motions for summary judgment on the basis that, as a matter of law, there is no substantial similarity between plaintiff's submission and *Wedding Crashers* in light of the holding in *Klekas v. EMI Films, Inc.* (1984) 150 Cal.App.3d 1102 and other case law.

Plaintiff's primary contention on appeal is that sufficient similarities exist between *Wedding Crashers* and plaintiff's concept to raise a triable issue of material fact as to whether defendants used plaintiff's concept. Plaintiff also contends that the trial court applied the wrong standards of similarity, those required for proof of copyright infringement or plagiarism as set forth in *Klekas v. EMI Films, Inc.*, *supra*, 150 Cal.App.3d 1102, to plaintiff's implied-in-fact contract cause of action in an idea

³ Plaintiff represents that the trial court denied the summary judgment motion by UTA on the ground of independent creation. Review of the reporter's transcripts for various proceedings held on the New Line and UTA motions for summary judgment reveals that the trial court expressed that, having reached a ruling on the ground of no substantial similarity, it need not address the ground of independent creation. The trial court indicated that it would take the issues regarding its ruling as to the ground of independent creation under submission. The trial court's order granting New Line's motion, as well as its order granting UTA's motion, refers only to the court's finding of no substantial similarity.

As we explain more fully *infra*, on appeal, we review de novo a judgment issued pursuant to the grant of a motion for summary judgment and are not bound by the trial court's rationale. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) Accordingly, we granted the motions by defendants to allow supplemental briefing on an appellate opinion decided after this appeal was filed and which dealt with the independent creation standard, *Hollywood Screentest of America, Inc. v. NBC Universal, Inc.* (2007) 151 Cal.App.4th 631. Having decided this appeal on the basis of the substantial similarity standard as explained more fully *infra* herein, it was unnecessary for us to discuss the independent creation standard and we declined to do so.

submission context. Further, plaintiff contends that the trial court erred in denying plaintiff's application to continue the hearing on New Line's motion for summary judgment and in treating as admitted certain facts in defendants' motions for summary judgment that plaintiff had actually denied.

We first consider the issue of substantial similarity. As we discuss more fully below, we conclude that summary judgment was properly granted on the basis that there is no actionable substantial similarity between plaintiff's concept and *Wedding Crashers*. Our conclusion rests solely on our independent comparison of the Handbook and the script. Accordingly, the other contentions plaintiff raises would not alter our conclusion and we will forego addressing them.

We review the trial court's entry of summary judgment de novo and independently determine if summary judgment is merited based on the record before us. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) We review the trial court's ruling, not its rationale. (*Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 843.)

Pursuant to Code of Civil Procedure section 437c, any party—plaintiff or defendant—may bring a motion for the court to grant summary judgment in his favor. (Code Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 843.) A plaintiff may contend that there is no defense to the action, while a defendant may contend that the action has no merit. (*Ibid.*) Code of Civil Procedure section 437c, subdivision (c), requires the trial court to grant summary judgment in the action if the papers submitted on the motion show that no triable issue exists as to a material fact and the moving party is entitled to judgment as a matter of law, "that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law." (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 843.)

In reviewing a summary judgment, we construe the prevailing party's papers strictly and the losing party's papers liberally. (*Mammoth Mountain Ski Area v. Graham* (2006) 135 Cal.App.4th 1367, 1370.) We accept as true the facts supported by the losing party's evidence and the reasonable inferences from them (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 148), resolving evidentiary ambiguities or doubts in favor of the losing party (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768). ““There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” [Citation.]” (*Mammoth Mountain Ski Area, supra*, at p. 1371.)

Plaintiff's primary cause of action was for breach of an implied contract: if plaintiff submitted his concept for a movie to defendants, they would not use the concept in a motion picture without plaintiff's consent or without crediting and compensating plaintiff for such use. In the idea submission context, in order to prove the essential element of breach of the alleged contract, a plaintiff must demonstrate that the defendant used plaintiff's idea without compensating plaintiff. (*Mann v. Columbia Pictures, Inc.* (1982) 128 Cal.App.3d 628, 634.)

Where, as in the instant case, there is no express agreement for credit and compensation, a plaintiff who is an idea purveyor must show the defendant's implied promise to pay for the alleged use of his ideas. More specifically, the idea purveyor must show that (1) he conditioned his offer to disclose the idea to the defendant on the defendant's express promise to pay for the idea if the defendant used it, (2) the defendant, knowing the condition before the idea was disclosed to him, voluntarily accepted its disclosure and (3) the defendant found the idea valuable *and used it*. (*Desny v. Wilder* (1956) 46 Cal.2d 715, 738-739; accord, *Mann v. Columbia Pictures, Inc., supra*, 128 Cal.App.3d at pp. 646-647 and fn. 6.)

Two elements are required to raise the inference of use: the defendant had access to the plaintiff's idea and copied it. (*Sutton v. Walt Disney Productions* (1953) 118 Cal.App.2d 598, 603.) If a plaintiff makes a sufficiently strong showing that a defendant

copied his idea, access may require only a meager showing.⁴ (*Golding v. R.K.O. Pictures, Inc.* (1950) 35 Cal.2d 690, 695.) Where, as in the instant case, there is no direct evidence showing that a defendant used a plaintiff's idea, the plaintiff must show that the defendant's work is substantially similar to plaintiff's idea in order to raise an inference that the defendant *used* plaintiff's idea, i.e., had access to and copied the idea. (*Sutton, supra*, at p. 603.)

There is no dispute as to the content of plaintiff's concept, embodied in his Handbook, and the production script of *Wedding Crashers*. The way to determine whether there are substantial similarities between them is to compare the two of them, viewing each "as a whole, 'without dissection and without expert or elaborate analysis,'" and using as the standard of judgment, "the common knowledge of the average reader [or] observer" (*Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d at p. 1111; accord, *Golding v. R.K.O. Pictures, Inc., supra*, 35 Cal.2d at pp. 699-700.)

Plaintiff claims there is "no bright line rule" as to the degree of similarity required in order to infer use, courts have used two standards—"similarity" and "substantial similarity"—and accordingly, the result of assessing similarity "will often hinge on the judge's instinct and 'gut' feeling about the material."⁵ Plaintiff further claims that where,

⁴ As to the element of access to plaintiff's concept, New Line conceded access, but only for the purposes of its motion for summary judgment. New Line pointed out, however, that plaintiff's promoter, Portman, testified that he gave only the first 31 pages of the Handbook to New Line, and there is no direct evidence that New Line ever received pages 32 through 37, which purport to be "story ideas," one of which is crashing a wedding. UTA asserts that it has no record that UTA ever received the Handbook, and even if it had, there is no evidence that UTA ever disclosed plaintiff's concept to New Line or any other third party. UTA also claims plaintiff and Portman admitted that Handbook pages 32 through 37 and their included "story idea" of two friends crashing a wedding were never submitted to UTA.

⁵ Plaintiff contends that the trial court erred in applying the standards of similarity required for proof of copyright infringement, or plagiarism, as set forth in *Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d 1102 to plaintiff's implied-in-fact contract cause of action in an idea submission context. As previously stated, we do not base our review of

as in the instant case, evidence of access is great, “the law requires less similarity.”⁶ Defendants’ discussion of plaintiff’s authorities, however, puts plaintiff’s claims in proper perspective and cites criteria used by courts in determining whether, in the idea submission context, substantial similarity exists and supports a plaintiff’s claim for recovery on the basis of breach of an implied contract.

While there may be no precise formula established by law, the cases upon which plaintiff relies show that the degree of similarity required to meet the substantial similarity standard is high in the idea submission context. They illustrate the types of factors generally considered and that several specific similarities in relation to the comparison factors is required.

a summary judgment on the trial court’s analysis; we conduct an independent review. (*Continental Ins. Co. v. Columbus Line, Inc.*, *supra*, 107 Cal.App.4th at p. 1196.)

Contrary to plaintiff’s contention, however, the *Klekas* court stated that the proof necessary to recover upon the theory of an implied-in-law contract is the same as that required by the tort action for plagiarism. (*Klekas v. EMI Films, Inc.*, *supra*, 150 Cal.App.3d at p. 1111; see also *Weitzenkorn v. Lesser* (1953) 40 Cal.2d 778, 795.) Thus, as for the tort of plagiarism, in order to prevail on a cause of action for an implied-in-law contract, “there must be some substantial similarity between the screenplay and the *protectible* portions of plaintiff’s work.” (*Klekas*, *supra*, at p. 1111, italics added.) The difference in proof required for an implied-in-fact contract is that there is no requirement that the similar portion of plaintiff’s work be, by law, protectible. (*Weitzenkorn*, *supra*, 40 Cal.2d at pp. 791-792.)

⁶ Plaintiff’s statement is correct insofar as it mirrors language in the cited cases. “Where there is strong evidence of access, less proof of similarity may suffice. Conversely, if the evidence of access is uncertain, strong proof of similarity should be shown before the inference of copying may be indulged.” (*Golding v. R.K.O. Pictures* *supra*, 35 Cal.2d at p. 695.) “[T]here is ample similarity, given the unlimited access pleaded, to take the case beyond the demurrer stage with respect to such an initial inquiry. Less similarity is required where access is strong. [Citations.]” (*Fink v. Goodson-Todman Enterprises, Ltd.* (1970) 9 Cal.App.3d 996, 1007, fn. 14.) Both cases, however, affirm that *substantial* similarity, e.g., to a material element or qualitatively important part, remains a requirement. (*Golding*, *supra*, at pp. 698-699; *Fink*, *supra*, at p. 1008 and fn. 15.)

In *Weitzenkorn v. Lesser*, *supra*, 40 Cal.2d 778, in its analysis of causes of action for plagiarism, as well as breach of an express (or implied-in-fact) contract, the Supreme Court considered whether there was similarity between plaintiff's work and defendant's motion picture based on several factors: form and manner of expression, basic dramatic core, similar moral message, the combination of characters, locale, use of a myth as an element, whether such items as the combination of characters, locale or mythical element are used for the same purpose, and divergence in characterizations, description, and events. (*Id.* at pp. 791-792, 794.) The court reversed an order sustaining a demurrer on the basis that comparison of the two works at issue, particularly in regard to the combination of characters, locale and myth, indicated that a breach of contract cause of action had been stated. (*Id.* at p. 792.)

Similarly, in *Desny v. Wilder*, *supra*, 46 Cal.2d 715, the Supreme Court considered a lengthy list of various types of similarities in order to determine that there was sufficient similarity to present a triable issue of fact, which precluded the grant of summary judgment. (*Id.* at pp. 748-749.) There were close similarities in, for example, the content, settings and sequence of events in both stories, the types and attributes of key characters, and the causes of crises at various points in the stories. The court stated that defendants' photoplay "obviously does bear a remarkable similarity to plaintiff's story both in respect to the historical data and the fictional material originated by plaintiff." (*Id.* at p. 749.)

In regard to the submission of 12 episode outlines and a screenplay for a television series involving underwater adventure, an appellate court reversed a judgment notwithstanding the verdict for a defendant, stating, *inter alia*, that "[t]he list of differences is shorter than that of the similarities." (*Donahue v. Ziv Television Programs, Inc.* (1966) 245 Cal.App.2d 593, 600.) The court declined to set down in detail all the similarities between the submission and the television series *Sea Hunt*, because of the number of them, but it gave examples of similarities in basic dramatic core, basic theme, and dramatic "gimmicks" and situations between the outlines and specific episodes of *Sea Hunt*. (*Id.* at p. 601 and fn. 4.) In *Minniear v. Tors* (1968) 266 Cal.App.2d 495, the

appellate court concluded there were enough similarities in the basic plot ideas, themes, sequences and dramatic “gimmicks” between plaintiff’s submission and the television series at issue, *Sea Hunt*, to reverse a judgment for nonsuit and remand for a jury trial on the issue of use. (*Id.* at p. 505.)

By contrast, courts have concluded no substantial similarity existed when the similarities were few. In *Henried v. Four Star Television* (1968) 266 Cal.App.2d 435, the reviewing court affirmed an order sustaining a demurrer to the plaintiff’s cause of action for breach of an implied-in-fact contract when, after comparing plaintiff’s seven-page submission to the television series *Burke’s Law* as to plot, motivation, subject matter, milieu and characterization, it determined that the only similarity was that both heroes traveled in chauffeur-driven Rolls Royces. (*Id.* at pp. 436-437.) In *Sutton v. Walt Disney Productions, supra*, 118 Cal.App.2d 598, the reviewing court affirmed an order sustaining a demurrer to the plaintiff’s contract cause of action when, after comparing plaintiff’s book to the motion picture as to characters, theme, and storyline, the court determined that the only similarity was that both works related to animals. (*Id.* at pp. 603-604.)

As the above cases illustrate, the points of comparison used in determining similarities are material features of the works, not merely words and phrases or the same basic idea. The court in *Fink v. Goodson-Todman Enterprises, Ltd., supra*, 9 Cal.App.3d 996 acknowledged that principle, stating that “[i]t is entirely immaterial that in many respects plaintiff’s and defendant’s works are dissimilar if in other respects similarity as to a substantial element of plaintiff’s work can be shown.” (*Id.* at p. 1011.) Plaintiff asserts that, under *Fink*, differences which defendants point out such as in the geographic settings, character names, and parties distinguished from weddings, do not constitute substantial elements of his work and thus, are not appropriate for use in determining substantial similarity.

Plaintiff claims that *Wedding Crashers* was “based upon” his Handbook and that the *Fink* court noted that “[b]ased upon’ does seem to be something a little different than having substantial similarity to a material element or qualitatively important part. The

varying level of creation is clearly recognized. Probably the similarities would not have to be as pronounced” (*Fink v. Goodson-Todman Enterprises, Ltd., supra*, 9 Cal.App.3d at p. 1008.) Even so, the *Fink* court expressly sets forth the test of whether a plaintiff has pleaded an express or implied contract in an idea submission context as being “whether, as a matter of law, it cannot be said that defendants have based their series on a *material* element of plaintiff’s program.” (*Id.* at p. 1007, italics added.)

Plaintiff provides a chart setting forth 14 items which he contends establish sufficient substantial similarities between his concept embodied in the Handbook and the *Wedding Crashers* script to raise a triable issue of fact as to whether defendants used his concept in the *Wedding Crashers*. The items include the following features of his concept embodied in the Handbook:

- (1) Title—“Party Crashers”;
- (2) Comedic movie;
- (3) Basic storyline of crashing parties, including weddings;
- (4) Two male buddies, one a mentor to the other in party crashing;
- (5) Reason to crash parties being to pick up beautiful women, eat gourmet food and drink, have fun;
- (6) Techniques used to crash a party;
- (7) Rules of party crashing;
- (8) Taking advantage of the vulnerability of women arising from the “Valentine effect”;
- (9) Mentor’s annoyance when his buddy gets emotionally attached to a woman, as described in one of the three brief scenarios depicted as “story ideas”;
- (10) Reference to the ultimate party to be crashed as the “Party Crashers Super Bowl”;
- (11) Published monikers such as “King of Hollywood Party Crashers” by the *Globe Magazine* and “The Real Wedding Crasher” by the television show *Current Affair*;

(12) Mention of funeral crashing to Shaye by plaintiff in conversation at event plaintiff crashed;

(13) Rules of party crashing which plaintiff authored; and

(14) Slogan “Life is a party and Everyone wants to crash it” on Handbook cover.

Most of the alleged similarities can be readily dismissed, in that they are not material elements in defendants’ motion picture. That is, they do not play a material role in specific elements of the works at issue, such as characters, character motivation, settings, basic dramatic core and themes, storylines, plot ideas, the dramatic sequence, and dramatic gimmicks. (See, *e.g.*, *Desny v. Wilder*, *supra*, 46 Cal.2d at pp. 748-749; *Weitzenkorn v. Lesser*, *supra*, 40 Cal.2d at pp. 791-792, 794; *Minniear v. Tors*, *supra*, 266 Cal.App.2d at p. 505; *Henried v. Four Star Television*, *supra*, 266 Cal.App.2d at pp. 436-437; *Donahue v. Ziv Television Programs, Inc.*, *supra*, 245 Cal.App.2d at p. 601 and fn. 4.)

In evaluating plaintiff’s list of 14 similarities as to whether there is a triable issue as to substantial similarity required to establish use, we find the court’s analysis in *Klekas v. EMI Films, Inc.*, *supra*, 150 Cal.App.3d 1102 particularly helpful. There, the plaintiff claimed that the defendant was liable to him for using his unpublished novel to develop the screenplay for the motion picture entitled *The Deer Hunter*. The *Klekas* court listed 23 items which the plaintiff deemed to establish substantial similarity between the works. For example, “the protagonist is a meditative man who is returning home from military service. . . . [He] becomes romantically involved with a woman he knew prior to his military service and that romance is the subject of the subplot. . . . The setting . . . is a contemporary American mill town located at the base of a mountain range. . . . [T]he protagonist and his friends go deer hunting; there is a ritualistic symbolism to the hunt In one work, a loaded gun is passed from the protagonist to another character; in the other, the protagonist plays Russian roulette The neighborhood bar in each work is the setting for a poignant scene in which the protagonist and his friends spontaneously sing “God Bless America.”. . . Each work includes combat scenes, including the ruthless . . . slaughter of innocent Vietnamese civilians [T]he

protagonist is pursued by the experience of war. . . . [T]he protagonist drives a used Cadillac.” (*Id.* at p. 1113, fn. 7.)

The *Klekas* court determined, however, that “[w]hen analyzed as a whole, the screenplay of *The Deer Hunter*, is, as a matter of law, substantially dissimilar to plaintiff’s novel.” (*Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d at p. 1114.) The court indicated that the numerous similarities plaintiff listed “are either strained or devoid of any legal significance . . . [or] necessarily flow from a common theme, [i.e.,] elements that are common in any story about soldiers returning home from war.” (*Id.* at p. 1113.)

In regard to the presence of common ideas or themes, the *Klekas* court quoted the California Supreme Court in *Desny*: “It has been said . . . that “There are only thirty-six fundamental dramatic situations, various facets of which form the basis of all human drama.” . . . It is manifest that authors must work with and from ideas or themes which basically are in the public domain.” (*Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d at p. 1113, quoting *Desny v. Wilder, supra*, 46 Cal.2d at p. 741.)⁷

In the instant case, most of the similarities plaintiff points out are ideas or situations that would be common to any two works that included a wedding crashing sequence. (*Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d at p. 1113.) Plaintiff’s concept and *Wedding Crashers*, however, are different with regard to material elements. Plaintiff’s main characters include himself, a man in his mid-fifties who media sources purportedly have described as “The King of Party Crashers,” and his mentor, Eddie

⁷ The *Klekas* court upheld the summary judgment on plaintiff’s complaint for plagiarism, quasi-contract, breach of implied-in-fact contract, breach of a confidential relationship, and the imposition of a constructive trust. The defendants’ claim on summary judgment was that the screenplay was not substantially similar to any protectible material or expression in plaintiff’s novel. Most of the discussion in *Klekas* was analysis of substantial similarity of matter that was deemed legally protectible under copyright law. As we noted previously, the analysis of similarity is essentially the same for breach of an implied contract in the idea submission context, the main difference being that in the contract context, similarity is not limited to only material which is legally protectible under copyright law.

Schuyler, “a short, balding man with a thick Eastern European accent.” The main characters in *Wedding Crashers* are John and Jeremy, divorce mediators in their early thirties. Having been given some pointers on event crashing by an acquaintance, John has taken up wedding crashing in order to meet women, and he takes on the role of mentor to Jeremy in the process.

The Handbook cover proclaims: “It takes a special breed of person to be a party crasher.” Its theme is how to be a party crasher and thereby create excitement in one’s life and reap such benefits as meeting beautiful, interesting women and wealthy influential people who could potentially be of help in achieving one’s business and financial goals. Its storyline is autobiographical, in that it includes tales of plaintiff’s party-crashing experiences over the decades he has successfully engaged in the practice.

Wedding Crashers, by contrast, is a romantic comedy. The theme is the experiences of John and Jeremy as the result of crashing one particular wedding and developing romantic attachments to and relationships with two sisters, Claire and Gloria Cleary, the daughters of the Secretary of the Treasury. Its storyline is primarily the difficulties in the developing romantic relationships caused by the efforts of John and Jeremy to maintain their fake identities, which were part of their elaborate ruse in crashing the wedding, and how the truth finally surfaces, the difficulties are ultimately resolved and the relationships are successfully preserved.

The “spine” of plaintiff’s concept is autobiographical accounts of experiences at various parties or events plaintiff crashed and the “how-to” rules and techniques he developed over the years through the experiences and being mentored by a more seasoned party-crashing friend. Only about the first third of *Wedding Crashers* shows the main characters utilizing wedding-crashing techniques, and it is primarily in a montage format, rather than telling the story of event after event. It is not presented in the manner of a “how-to” for wedding crashing. It is the vehicle for launching the primary theme—development of romantic relationships between the main characters and the two sisters, creating friendships with the sisters’ family members, all of whom they meet at the

wedding, and the tension between and consequences of living a lie, so to speak, and telling the truth.

In other words, the Handbook is about how to crash parties and examples of the types of fun a crasher can have and other benefits the crasher can enjoy by doing that. From a structural standpoint, plaintiff's concept does not include a dramatic sequence, an unfolding story. The events described are inserted simply as illustrations for the "how-to" of party crashing. *Wedding Crashers* is about relationships between people, some of whom are caught in a lie, and crashing the wedding is only the vehicle that gives rise to the relationships and the lie that creates the conflict which the rest of the motion picture focuses on resolving. It is structured as a story unfolding in a dramatic sequence which bears no resemblance to the illustrative vignette format of plaintiff's concept.

On the basis of our comparison of plaintiff's concept with *Wedding Crashers*, we conclude the only similarity is that both include crashing a wedding and elements common to such an event. In plaintiff's concept, wedding crashing is presented as an end in itself and as only one in a series of different types of parties and events the main character crashes. In *Wedding Crashers*, the wedding crashing activities serve as a device to set the stage for the primary story—a romantic comedy about the development of relationships between the main characters and the two women they meet at the wedding.

We conclude that when the concept and the film are each viewed as a whole, as a matter of law, there is no substantial similarity between plaintiff's concept and *Wedding Crashers* that gives rise to a triable issue of material fact regarding whether defendants used plaintiff's concept in breach of any implied contract for credit and compensation between the parties. (*Desny v. Wilder, supra*, 46 Cal.2d at pp. 738-739; accord, *Klekas v. EMI Films, Inc., supra*, 150 Cal.App.3d at p. 1111; *Mann v. Columbia Pictures, Inc., supra*, 128 Cal.App.3d at pp. 646-647 and fn. 6.) In the absence of a triable issue of material fact as to the required element of use, the grant of defendants' motions for summary judgment was proper. (See *Mann, supra*, at pp. 646-647 and fn. 6.) Having

decided the matter on this basis, it is unnecessary to consider plaintiff's other contentions, and we decline to do so.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

JACKSON, J.*

We concur:

VOGEL, Acting P. J.

ROTHSCHILD, J.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.