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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-06612-RGK (MANx)	Date	November 25, 2008
Title	COBY RECHT v. METRO GOLDWYN MAYER STUDIO, INC., et al.		

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

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)** Order Re Defendant's Motion to Dismiss (DE 30)

I. INTRODUCTION

On April 28, 2008, Coby Recht ("Plaintiff") sued Metro Goldwyn Mayer Studio, Inc. ("MGM" or "Defendant") in the United States District Court, Western District of Wisconsin. On October 8, 2008, the action was transferred to this Court.

In his Complaint, Plaintiff asserts eight claims for copyright infringement arising out of MGM's recent exploitation, in new media, of the 1980 motion picture, *The Apple*.

Presently before the Court is Defendant's Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted. For the following reasons, the Court **GRANTS** Defendant's Motion.

II. FACTUAL BACKGROUND

Plaintiff alleges the following facts in his Complaint.

Plaintiff is a citizen and resident of Israel. (Compl. ¶ 3.) He is a distinguished composer, songwriter, and singer. (Compl. ¶ 3.)

In 1977, Plaintiff wrote a manuscript in Hebrew and composed music and lyrics for a musical stage play entitled, *The Apple* ("Hebrew Apple Content"). (Compl. ¶ 17.) In April 1979, Plaintiff met Menachem Golan ("Golan"), one of the principals of Golan Globus Productions, Ltd. ("Golan Globus"), who decided to transform Plaintiff's musical into an English language motion picture for worldwide distribution. (Compl. ¶¶ 19-20.)

On April 9, 1979, Plaintiff signed an agreement with Golan Globus assigning his rights in the Hebrew Apple Content to Golan Globus ("GGP Agreement") in connection with Golan Globus's production of the English language motion picture entitled, *The Apple*. (Compl. ¶¶ 22-28.) Specifically, under the GGP Agreement, Plaintiff sold and transferred "all the copyrights of any type and kind to the musical including but not limited to the publishing rights to the musical . . . for the purpose of producing plays and/or records and/or movies and/or production on any type of media in accordance with the foregoing musical." (Compl. ¶ Ex. A ¶ 2.)

In 1979, Plaintiff, along with Iris Recht, George Clinton, and Cannon Films, obtained a copyright registration for the words and music of the motion picture score for the English language motion picture entitled, *The Apple*. (Compl. ¶ 57, Ex. D.) In the copyright registration, Plaintiff was identified as an author and claimant along with Plaintiff's then wife, Iris Recht, and Cannon's employee, George Clinton. (Compl. ¶¶ 2, 59-60, Ex. D.) The copyright registration also identified Cannon Films as a copyright claimant. (Compl. Ex. D.)

The Apple was released in 1980 and was not a success. (Compl. ¶ 69.) Recently, however, MGM, as successor in interest to Cannon Films, released *The Apple* on DVD. (Compl. ¶ 109.)

Plaintiff contends that MGM lacks the right to reproduce *The Apple* in new media, such as DVDs. (Compl. ¶ 133.) Thus, he filed a Complaint against MGM on April 28, 2008 for copyright infringement.[1]

III. JUDICIAL STANDARD

A party may move to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). In deciding a Rule 12(b)(6) motion, the Court must assume allegations in the challenged complaint are true, and construe the complaint in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court shall not consider facts outside the complaint. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). The court may not dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. *See W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Dismissal is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

IV. DISCUSSION

Defendant contends that Plaintiff cannot state a claim for copyright infringement because it is a co-owner of the subject copyright.[2] For the following reasons, the Court agrees.

Generally, a "joint owner" of a copyright cannot sue a co-owner for infringement. *See Richmond v. Weiner*, 353 F.2d 41, 46 (9th Cir. 1965). A "joint owner" can include an employer whose employee authored the work as a "work for hire." *See id.*; *see also* 17 U.S.C. § 101, 201. In such cases, the

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[1] Plaintiff also asserts a claim for "attorney's fees."

[2] Plaintiff asserts numerous other grounds for dismissal, which the Court need not address because the Court dismisses Plaintiff's Complaint on the grounds that Defendant is a co-owner of the subject copyright.

employer is considered the author for purposes of copyright law, and unless otherwise agreed in writing, owns all of the rights comprised in the copyright. *See* 17 U.S.C. § 101, 201.

Here, assuming Plaintiff's allegations are true, Defendant is a co-owner of the subject copyright. In his Complaint, Plaintiff alleges that he and his ex-wife, Iris Recht, along with George Clinton are the sole owners of the copyright in the words and music of the motion picture score for the English language movie, *The Apple*. (Compl. ¶ 59.) Plaintiff also alleges that "George Clinton was hired by Cannon as an employee, i.e. "work for hire" to help Americanize Plaintiff and Iris' English." (Compl. ¶ 60.) Since Plaintiff admits, in his Complaint, that George Clinton was an employee and authored his contribution to the subject work as a "work for hire," Cannon is considered an author and co-owner of the work for purposes of copyright law. Further, since Defendant is the successor in interest to Cannon (Compl. ¶ 8), it is a co-owner of the subject copyright. Thus, Plaintiff cannot state a claim for copyright infringement against Defendant because it is a co-owner of the subject copyright.

The Court accordingly **GRANTS** Defendant's Motion to Dismiss.

V. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

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