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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 11-2137-VBF (JEMx)**

Dated: **July 28, 2011**

Title: Jake Mandeville-Anthony -v- The Walt Disney Company, et al.

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Joseph Remigio
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

**COURT ORDER RE DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS [DKT. #29]**

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing set for August 1, 2011 at 1:30 p.m. is vacated and the matter taken off calendar.

I. RULING

The Court has received Defendants' Motion for Judgment on the Pleadings (dkt. #29), Memorandum of Points and Authorities in Opposition to Defendants' Motion for Judgment on the Pleadings (dkt. #40), Defendants' Reply Brief in Support of Motion for Judgment on the Pleadings (dkt. #41), and related documents.

For reasons stated herein, the Court rules as follows:

- A. First Cause of Action for Copyright Infringement.** The Court **GRANTS** the Motion for Judgment on the Pleadings without leave to amend, as Defendants have sufficiently shown that the Parties' respective works are not substantially similar in their protectable elements as a matter of law.

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B. Second Cause of Action for Breach of Implied Contract. The Court **GRANTS** the Motion for Judgment on the Pleadings without leave to amend, as Defendants have sufficiently shown that the statute of limitations has expired on such claim. See Cal. Code Civ. Pro. § 339(1).

II. BACKGROUND

On March 14, 2011, Plaintiff Jake Mandeville-Anthony filed the Complaint (dkt. #1) in this Court against Defendants The Walt Disney Company, Walt Disney Pictures, Disney Enterprises, Inc., Pixar d/b/a Pixar Animation Studios, and Does 1-10. Plaintiff alleges that he is the copyright owner of two works entitled *Cookie & Co.* and *Cars/Auto-Excess/Cars Chaos*, and Defendants had access to his works when Defendants created animated films *CARS* and *CARS 2* and spin-off series *Cars Toon*. Plaintiff claims copyright infringement and breach of implied contract for alleged use of Plaintiff's copyrighted works to create derivative works. Defendants assert that their works were independently created, and that the works are not substantially similar.

III. LEGAL STANDARD

Fed. R. Civ. P. 12(c) provides that "[a]fter the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." The Motion "challenges the legal sufficiency of the opposing party's *pleadings*." Schwarzer, et al., Cal. Practice Guide: Fed. Civ. P. Before Trial, § 9:316 (The Rutter Group 2011).

"Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990).

"Rule 12(b)(6) and (c) are virtually interchangeable. Both permit challenges directed at the legal sufficiency of the parties' allegations. The same standard applies to both motions." Schwarzer, et al. § 9:319 (citations omitted). "[J]udgment on the pleadings is appropriate when, even if all material facts in the pleading under attack are true, the moving party is entitled to judgment as a matter of law." *Id.* § 9:335. "[A]ll inferences reasonably drawn from these facts must be construed in favor of the responding party." *Id.* § 9:336. (citations omitted). "As with 12(b)(6) motions, if matters outside the pleading are presented to and not excluded by the court, the motion for judgment on the pleadings

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is converted into a Rule 56 summary judgment motion." *Id.* § 9:339 (citations omitted). However, this only occurs where the Court *relies* on the extrinsic evidence in reaching its conclusions. *Id.*

"Although Rule 12(c) does not mention leave to amend, courts have discretion to grant a Rule 12(c) motion with leave to amend (and frequently do so where the motion is based on a pleading technicality)." *Id.* § 9:341.

IV. ANALYSIS

A. First Cause of Action for Copyright Infringement

For reasons set forth in the moving papers and stated herein, the Court **GRANTS** the Motion for Judgment on the Pleadings with respect to the first cause of action for copyright infringement. Defendants have sufficiently shown that the Parties' respective works are not substantially similar in their protectable elements as a matter of law, and accordingly, that Plaintiff fails to sufficiently state a claim.

The issue of substantial similarity in a copyright infringement case may be determined by the court as a matter of law at the pleading stage by examining and comparing the relevant works. *Zella v. E.W. Scripps Co.*, 529 F.Supp.2d 1124, 1130 (C.D. Cal. 2007) (citing *Christianson v. West Pub. Co.*, 149 F.2d 202, 203 (9th Cir. 1945)). "[J]udgment on the pleadings may be granted where the facts asserted by the non-moving party in its pleadings - including the attached works themselves - and all reasonable inferences from those facts, show the absence of substantial similarity." *Identity Arts v. Best Buy Ent. Svcs. Inc.*, 2007 WL 1149155, *5 (N.D. Cal. 2007).

To state a claim for copyright infringement, a plaintiff must allege, inter alia, that "the works at issue are substantially similar in their protected elements." *Zella*, 529 F.Supp.2d at 1133. "To assess substantial similarity as a matter of law, the Court must apply the objective 'extrinsic test.'" *Id.*, citing *Funky Films v. Time Warner Ent. Co.*, 462 F.3d 1072, 1077 (9th Cir. 2006). The Court must determine whether the protectable elements, standing alone, are substantially similar. *Id.* at 1133. The test focuses on "articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events." *Funky Films*, 462 F.3d at 1077 (internal quotes omitted).

In this case, Defendants have sufficiently shown that the protectable elements of such features as plot, sequence of events, pace,

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characters, theme, mood, and setting are not substantially similar as a matter of law.

1. Plot, Sequence of Events, Pace

Plaintiff states that the plots are substantially similar, as both plots revolve around anthropomorphic cars, including lead characters interacting with other cars and finding themselves in a number of situations that bring about humor and romance, with the backdrop of a race. Compl. ¶ 22.

Defendants argue that these are "basic plot ideas" that are not protected. See, e.g., *Campbell v. Walt Disney Co.*, 718 F.Supp.2d 1108, 1112-13 (N.D. Cal. 2010). Defendants argue that regardless, there is no substantial similarity between the works at all as to such factors as plot, sequence of events, and pace.

Plaintiff's work *Cookie* revolves around a single long distance road trip and the banter between two males, Mike and Brian, including their encounters with local residents and foreigners. The plot complication is finishing the race, and their gradual journey takes place over many months. Early on, it is revealed that all other racers have been disqualified. In the final scene, they win the race.

Defendants state that Plaintiff's second work *Cars Chaos* is a synopsis that proposes general ideas. The outline for a possible television episode titled "Alpine Antics" describes a car race through the Swiss Alps, the purpose of which is to win the race. The pace is rapid, lasting only a few minutes.

Defendants' *CARS* works involve multiple subplots. The first motion picture *CARS* begins and ends with a rally car race, but it is really about friendship, falling in love, and being part of a community. The second motion picture *CARS 2* involves races in Tokyo, Italy, and England, but the races and who wins are of minor consequence to the story which focuses instead on good cars triumphing over evil and a spy operation. The *CARS Toon* shorts play on the developed personalities and friendships, showing that a seemingly unsophisticated character is in fact a hero.

2. Characters

Plaintiff alleges that there are substantial similarities between the characters drawn or described in *Controlled Chaos* and the animated three-dimensional car characters from Defendants' *CARS* works. However, Defendants argue that the *idea* of animated, anthropomorphic car

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characters is unprotectable. See *Cory Van Rijn, Inc. v California Raisin Adv. Bd.*, 697 F.Supp. 1136 (E.D. Cal. 1987). For decades, cartoons have featured real-life objects that can talk and have personalities. Also, characters that flow naturally from a "basic plot idea" are "scenes a faire" and are unprotectable. *Campbell v. Walt Disney Co.*, 718 F.Supp.2d 1108, 1115 (N.D. Cal. 2010). The idea that some of the respective car characters share attributes that flow from their make and country of origin also tends against Plaintiff's claim. There is also "no property interest in stereotyped characters." *Midas Prod., Inc. v. Baer*, 437 F.Supp. 1388, 1390 (C.D. Cal. 1977). Defendants state that Plaintiff's car drawings are themselves mere copies of famous cars designed and built by others, and Defendants argue that Plaintiff does not have standing to sue for copyright of a third party car design. *Aurora World, Inc. v. Ty, Inc.*, 719 F.Supp.2d 1115, 1137 (C.D. Cal. 2009).

Defendants argue that the characters are not substantially similar in their protectable elements. Plaintiff depicts all cars with headlights as eyes, while Defendants use the entire windshield. Plaintiff's cars have arms and hands while Defendants' do not. Plaintiff's cars have hair, eyelashes, and eyebrows, while Defendants' do not.

3. Central Themes and Mood

Defendants state that there is not substantial similarity between the themes explored by Defendants' works and Plaintiff's works and the mood. Defendants identify *Cookie* as an upbeat "guy movie" including slapstick, comedy, sex, and car crashes. *Cars Chaos* has a light move including British quips for humor. Defendants' *CARS* works are comedic, romantic, sad, and full of suspense.

4. Settings

Cookie takes place in 1988, and the long-distance rally takes the characters through various international locations. The *Cars Chaos* synopsis discusses the concept of developing stories in various international settings. *CARS* takes place in the present day in an imaginary version of the United States, including a detailed depiction of the American Southwest. The setting is crucial to the storyline. *CARS 2* also displays a fictional twist on real landmarks and buildings adapted for a world inhabited by anthropomorphic cars. Defendants state that the settings are an original combination of pure fantasy and detailed realism, and not substantially similar to Plaintiff's works.

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Accordingly, for reasons stated by the moving party, the Court finds that Defendants have sufficiently shown that the protectable elements of such features as plot, sequence of events, pace, characters, theme, mood, and setting are not substantially similar as a matter of law

B. Second Cause of Action for Breach of Implied Contract

For reasons set forth in the moving papers and stated herein, the Court **GRANTS** the Motion for Judgment on the Pleadings with respect to the second cause of action for breach of implied contract. Defendants have sufficiently shown that the statute of limitations has expired on such claim.

Defendants assert that Plaintiff's second cause of action for breach of implied contract should be dismissed because it is barred by the statute of limitations. The statute of limitations for breach of implied contract is two years from the date of the alleged breach. Cal. Code Civ. Pro. § 339(1). Where, as here, a plaintiff alleges an implied promise by the defendants to pay for his idea, the limitations period begins to run on the date the defendants first began to use the plaintiff's idea. *Thompson v. California Brewing Company*, 191 Cal.App.2d 506, 507 (1961). The Ninth Circuit has held that in the context of a motion picture idea, the claim accrues no later than the date on which the motion picture is released in theaters. *Kourtis v. Cameron*, 419 F.3d 989, 1001 (9th Cir. 2005) (*abrogated on other grounds, Taylor v. Sturgel*, 533 U.S. 880 (2008)). *CARS* was released in June 2006, Compl. ¶¶ 23, 40, so the statute of limitations expired in June 2008, but Plaintiff did not bring suit until March 2011.

Accordingly, Defendants have sufficiently shown that the claim is time barred as a matter of law, and leave to amend would be futile. *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (district court may deny leave to amend when any proposed amendment would be futile because it would require Plaintiff to make allegations inconsistent with prior pleading).

C. Defendants' Objections to and Request to Strike Hunter Declaration and Portions of Plaintiff's Opposition Brief [Dkt. #42]

Defendants state, inter alia, that Plaintiff's 36-page Opposition exceeds the 25-page limit under L.R. 11-6 and this Court's Standing Order, and as such, pages 26-36 should be stricken, or the Opposition should be stricken in its entirety. The Court notes that, without the Court's permission, Plaintiff improperly submitted an Opposition

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exceeding the 25-page limit. Despite that defect, the Court read and considered the Opposition in its entirety, and the Court's conclusion on this Motion remains the same.

Accordingly, the Motion for Judgment on the Pleadings is **GRANTED** in favor of Defendants and against Plaintiff. This case is **DISMISSED** and the matter **CLOSED**.

IT IS SO ORDERED.

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