

LARRY L. LEDFORD, Plaintiff,

v.

DALLAS AUSTIN, TINA GORDON CHISM, ANTWONE FISHER, CHRIS ROBINSON, TIONNE WATKINS, WARNER BROS. ENTERTAINMENT INC., and ATLANTIC RECORDING CORPORATION, Defendants.

Civil Action No. 1:09-CV-3237-RWS.

United States District Court, N.D. Georgia, Atlanta Division.

May 11, 2011.

ORDER

RICHARD W. STORY, District Judge.

This case comes before the Court on Defendants' Motion for Summary Judgment [30]. After considering the record, the Court enters the following Order.

Background

Plaintiff's Complaint [2] asserts claims under the Copyright Act, 17 U.S.C. § 501 *et seq.*, and under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*^[1] Plaintiff's Complaint [2] alleges the film ATL infringed his copyright in a screenplay entitled Southern Hospitality. Plaintiff's screenplay involves

Geoffrey Jackson an [a]spiring artist who has dreams of breaking into the movie industry as a screenwriter. He relocates to Atlanta, Georgia and discovers new friends and the warmth of Southern Hospitality. He takes a dead end job as a four star cook at a local popular restaurant called club loo. As Geoffrey makes his transition to Atlanta, he soon meets a very well to do lady name[d] Natasha Greene, not knowing her back ground Natasha accepts Geoffrey for who, and what he is, thus becoming intimately involved in the movie.

(Dkt. [2] at 13). Plaintiff asserts that his screenplay became public in late 2004 when he entered it into a screenwriting competition associated with an independent black film festival. (Id. at 14). Plaintiff alleges that Defendant Dallas Austin's foundation had partnered with the festival in early 2005, and it was then that Austin began reworking Plaintiff's script into the script for ATL. (Id. at 14).

In 1999, Defendant Warner Bros. acquired the exclusive right to portray the life stories of Defendants Tionne Watkins and Dallas Austin and registered a copyright for that right under

the title "Jellybeans" in 2000. (Dkt. [30-3] at 21). The rights granted to Warner Bros. "relate to the general events and the period of [Austin's] life while [he was] at a roller rink in Atlanta, which is the approximately 4-year period from 1986 through 1989." (Id. at 28). Defendant Fisher delivered his first draft of the screenplay for "Jellybeans" to Warner Bros. in July 2000. (Id. at 35-149). From 2000 to 2004, the screenplay underwent multiple revisions, and Defendant Chism completed the tenth draft on April 6, 2004. (Id. at 153-271). As presented in the tenth draft of the screenplay, the story concerned

a young aspiring artist [who] comes of age in a lower-income Southwest Atlanta neighborhood; socializes at the local skating rink; struggles with family issues, crime, and early adult responsibilities; and falls in love with a girl of higher social status who sees him for the good-hearted, talented young man that he is.

(Dkt. [30-1] at 5; see also Dkt. [30-3] at 153-271). The screenplay underwent several more revisions before the final screenplay was submitted on August 16, 2005. (Id. at 151). The characters and plot of the final screenplay for ATL closely resemble those of the April 2004 draft. (Compare Id. at 153-271 and Id. at 273-387).

Discussion

I. Summary Judgment Standard

Federal Rule of Civil Procedure 56 requires that summary judgment be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "The moving party bears the initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259 (11th Cir. 2004) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (internal quotations omitted)). Where the moving party makes such a showing, the burden shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

II. Plaintiff's Copyright Infringement Claims

To establish copyright infringement, a plaintiff must prove two elements: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publ'ns., Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991) (citation omitted). Demonstrating the second of these elements,

entails proof of both factual and legal copying, that is: (1) whether the defendant, as a factual matter, copied portions of the plaintiff's work; and (2) whether, as a mixed issue of fact and law, those elements of the copyrighted work that have been copied are protected expression and of such importance to the copied work that the appropriation is actionable.

Peter Letterese and Assocs., Inc. v. World Inst. of Scientology Enters., Int'l, 533 F.3d 1287, 1300 (11th Cir. 2008) (citations and internal punctuation omitted). "In the absence of direct proof, factual copying may be inferred from circumstantial evidence, either through establishing that the works are strikingly similar; or through proof of access to the copyrighted work and probative similarity." *Id.* (internal citations and punctuation omitted). Copyright only protects original expression and does not extend to any underlying ideas, procedures, and systems. *Id.* at 1302. "For example, the idea of hunting a formidable whale at the lead of an eccentric captain is not protected by copyright law. The expression of this idea as it is encapsulated in the novel *Moby-Dick*, however, is protected by copyright." *Id.* (quoting *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 489 F.3d 1129, 1143 (11th Cir. 2007)).

Plaintiff contends that "[t]he central focus and plot of both movies are the relationships between the key actors Geoffrey Jackson and Natasha Green of *Southern Hospitality*, and Rashad and New New of the movie *ATL*." (Dkt. [2] at 14). In response to Defendants' Motion for Summary Judgment [30], Plaintiff notes that Geoffrey speaks with a New York accent in the screenplay for *Southern Hospitality*, and asserts that Defendants used Geoffrey as the basis for the character Brooklyn in *ATL*. (Dkt. [38] at 2). However, in his Complaint [2] Plaintiff appears to assert that Geoffrey was the basis for the character Rashad in *ATL*. (Dkt. [2] at 13). Plaintiff's Response [38] also notes that the character KB in *Southern Hospitality* is a poet and rapper, and served as the basis for the character Teddy in *ATL*, who speaks with a southern accent and southern dialect. (*Id.* at 2-3). However, Plaintiff previously asserted that his character KB was the basis for Brooklyn's character in *ATL*. (Dkt. [30-5] at 20). Even ignoring the inconsistency of Plaintiff's allegations of similarity, the alleged similarities between *Southern Hospitality* and *ATL* are insufficient to state a claim for copyright infringement. At best, the allegations are akin to an author of a story about an eccentric captain hunting a formidable whale—a story that is otherwise dissimilar to *Moby-Dick*—claiming that Herman Melville's work infringed upon his copyright.

The Eleventh Circuit has noted that "where the similarity between two works concerns only non-copyrightable elements of the plaintiff's work, or where no reasonable jury, properly instructed, could find that the two works are substantially similar, summary judgment is appropriate." *Peter Letterese and Assocs. Inc.*, 533 F.3d at 1302 (citation and internal quotation marks omitted). In the present action, summary judgment is appropriate as to Plaintiff's claim of copyright infringement. Plaintiff has failed to "present affirmative evidence to show that a genuine issue of material fact" exists as to whether the two works are "strikingly similar." *Anderson*, 477 U.S. at 257; *Peter Letterese and Assocs., Inc.*, 533 F.3d at 1300. Even assuming that Plaintiff could demonstrate probative similarity between *Southern Hospitality* and *ATL*, Plaintiff has failed to present any affirmative evidence that any of the Defendants actually had access to his screenplay prior to the creation of the screenplay for *ATL*. Without affirmative evidence in either regard, Plaintiff cannot

demonstrate that Defendants copied original constituent elements of Southern Hospitality. Therefore, Plaintiff's claims of copyright infringement fail to demonstrate a genuine dispute as to a material fact.

III. Plaintiff's RICO Claim

To succeed on a claim under RICO a plaintiff must prove each of the following four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Durham v. Bus. Mgmt. Assocs.*, 847 F.2d 1505, 1511 (11th Cir. 1988). It appears that Plaintiff relies upon his allegations of copyright infringement as the necessary predicate offenses of racketeering activity for the asserted RICO claims. Because Plaintiff has failed to demonstrate that copyright infringement occurred, he cannot prove a violation of RICO. Therefore, Plaintiff's RICO claims fail to demonstrate a genuine dispute as to a material fact.

Conclusion

For the aforementioned reasons, Defendants' Motion for Summary Judgment [30] is GRANTED. The Clerk is DIRECTED to close this case.

SO ORDERED.

[1] Plaintiff's Complaint also asserts a claim for the criminal violation of 17 U.S.C. § 506, which the Court previously dismissed as frivolous. (Dkt. [4]).