

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:18-cv-00307-SVW-JPR

Date August 7, 2018

Title *Deanna Brown-Thomas et al v. Tommie Rae Hynie et al*

JS-6

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER DENYING DEFENDANTS’ MOTIONS TO DISMISS [21][23][28]

I. Introduction

On January 12, 2018, Plaintiffs Deanna Brown-Thomas; Yamma Brown; Venisha Brown; Michael D. Brown; Nicole C. Brown; Jeanette Mitchell Bellinger; Sarah Latony Fegan; Ciara Pettit; and Cherquarius Williams (collectively, “Plaintiffs”) filed this action against individual defendants Tommie Rae Hynie; James J. Brown II; and Estate Defendants Russell L. Bauknight as the personal representative of the Estate of James Brown (“Estate”) and trustee of the James Brown “I Feel Good” Trust (“Trust”) and David C. Sojourner, Jr., as the limited Special Administrator (“LSA”) of the Estate and Trust (collectively, “Estate Defendants”). The Court GRANTS the Motion to Transfer the case to the District of South Carolina after considering preliminary jurisdictional matters. The Court declines to address the rest of the issues as they are more appropriate for the South Carolina District Court.

II. Background

Legal Background

The Copyright Act’s termination provisions in §§ 203(a)(5) and 304(c)(5) “allow[] an author, if he is living, or his widow and children, if he is not, to recapture . . . the rights that had previously been transferred to third parties.” *Classic Media, Inc. v. Mewborn*, 532 F.3d 978, 983 (9th Cir. 2008). “Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant.” 17 U.S.C. § 203(a)(3). This termination

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right is inalienable because, under the statute, “[t]ermination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.” *Id.* (citing § 304(c)(5)).

If an author is survived by a spouse and children, the surviving spouse is deemed to own fifty-percent of the termination interest, and the author’s surviving children, and the grandchildren of any deceased child, own collectively the other fifty-percent of the termination interest on a per stirpes basis. A previous spouse is not entitled to termination interests. The termination right can only be exercised by those persons that collectively own more than one-half of the termination interest. §§ 304(c)(2)(A)-(C), 203(a)(2)(A)-(C). Statutory heirs co-own the copyright interests in a work recaptured via statutory termination in the same proportion as their share of the termination interests. These co-ownership interests vest upon the service of the applicable notice of termination. §§ 304(c)(6)(B), 203(b)(2).

Factual Allegations

This case involves the termination rights to songs of the legendary singer-songwriter James Joseph Brown, publicly known as James Brown (“Brown”). (Compl. ¶ 7). Brown died on December 25, 2006, and left a will, disposing of his personal assets, and a trust, disposing of his music, commercial, and real estate assets. (*Id.* ¶ 41). In January of 2007, Brown’s Will was submitted for informal probate in the probate court in Aiken County, South Carolina. (*Id.* ¶ 42). Neither Defendant Hynie, James Brown’s second wife, nor Defendant James J. Brown II, James Brown’s son from that second marriage, were named as beneficiaries of the Will or Trust. (*Id.* ¶ 43). In December 2007, Defendant Hynie filed a petition to set aside Brown’s Will and Trust alleging undue influence and fraud; the probate court transferred the matter to the South Carolina Court of Common Pleas, where the parties disputed whether Hynie’s valid to James Brown was valid. (*Id.*) This case involves what happened to the termination rights in James Brown’s music while the parties awaited the resolution of that matter.

The Separate WCM Agreements

Although these agreements are not directly relevant to the case before the Court, they help put into perspective the issues at stake and may provide circumstantial evidence of Plaintiffs’ allegations.

In 2013, prior to any decision in the South Carolina Court of Common Pleas, Defendant Hynie, on behalf of herself and her son, Defendant James J. Brown II, exercised Brown’s termination rights to approximately 138 compositions. She served notices of termination on Warner Chappell Music, Inc.

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(“WCM”), the successor music-publisher to the original grantees of the compositions. (*Id.* ¶ 50). Plaintiffs allege that Peter Afterman, the *Estate’s* music consultant, assisted Defendant Hynie with her notices of termination, intimating a possible conflict of interest and collusion between Defendant Hynie and the Estate Defendants. (*Id.*) Defendant Hynie did not disclose the 2013 notices of termination to Plaintiffs and did not publicly record the notices of termination with the Copyright Office until 2015. (*Id.* ¶ 51).

Unbeknownst to Plaintiffs, around August 1, 2015, Defendants Hynie and James J. Brown II entered into an agreement in California to transfer five of the recaptured compositions for \$1,875,000 back to WCM (the “WCM Agreement”). (*Id.* ¶ 52). Plaintiffs allege that Peter Afterman, working on behalf of the Estate, participated in the negotiation of the WCM Agreement. (*Id.*) Plaintiffs allege that by leaving intact the Estate’s approximately fifty-percent royalty interest in the compositions, the WCM Agreement demonstrated the undisclosed involvement of the Estate Defendants in the transaction. (*Id.*) Those agreements are not the agreements central to this matter. The Plaintiffs refer to the WCM agreement to show possible collusion between the individual Defendants and the Trust and Estate.

Defendant Hynie initially concealed the WCM Agreement from Plaintiffs and their copyright counsel and allegedly failed to pay Plaintiffs their allocated share of the proceeds from that agreement. (*Id.* ¶ 53). Plaintiffs further allege that the individuals Defendants have made an undisclosed side-deal whereby Defendant Hynie is to be paid additional sums out of the Estate’s royalties. (*Id.*) A side-deal such as this would permit Defendants to convert a substantial portion of the revenues from the compositions that would otherwise be divided among Plaintiffs. (*Id.*)

From September to December 2015, Defendant Hynie, through counsel, allegedly withheld the proceeds from the WCM Agreement to force Plaintiffs to forego their termination interests in the compositions. (*Id.* ¶ 54). Defendant Hynie further attempted to coerce Plaintiffs by threatening that she would unilaterally enter into a private agreement with the Estate to receive royalties if the Plaintiffs would not forego their termination interests. (*Id.* ¶ 55). Such an agreement would block Plaintiffs, as Brown’s statutory heirs, from receiving their share of the proceeds from termination rights in the hundreds of compositions for which notices of termination had not yet been served by Defendants Hynie and James J. Brown II. (*Id.*)

Additionally, Defendant Hynie’s counsel allegedly initiated back-channel communications with Plaintiffs’ contingency lawyers in the South Carolina probate proceedings and offered these attorneys a way to collect fees on Plaintiffs’ termination interests if they induced Plaintiffs to fire their copyright

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counsel. (*Id.* ¶ 56). After the attempts to fire their copyright counsel failed, counsel learned of the WCM Agreement.¹ (*Id.* ¶ 57). Defendant Hynie claims that she owes no duty of disclosure to Plaintiffs.

The Agreements at Issue Here

Around November 2015, the South Carolina trial court found that Defendant Hynie was the surviving spouse of Brown. (*Id.* ¶ 44). The limited Special Administrator (LSA) and Plaintiffs appealed the spousal order in the South Carolina Court of Appeals. (*Id.*) On March 8, 2017, however, the Estate Defendants entered into a written settlement agreement with Defendant Hynie. (*Id.*) Under the settlement agreement, Hynie agreed to dismiss her claims against the Estate and Trust, and the LSA agreed to withdraw its appeal of the spousal order. The settlement required Hynie to transfer sixty-five percent of all proceeds from her copyright termination rights to the Trust. (*Id.*) In moving to dismiss Hynie's claims and the LSA's appeal, the parties attached a copy of the settlement agreement to their motion papers. (*Id.* ¶ 45).

Plaintiffs requested that the Estate Defendants disclose any undisclosed terms and agreements with Defendant Hynie, but their requests were ignored. (*Id.*) In June 2017, Plaintiffs filed a motion to compel the Estate Defendants to disclose the complete terms of all agreements between Defendant Hynie and the Estate Defendants. (*Id.* ¶ 46). At an October 31, 2017 hearing of Plaintiffs' motion to compel disclosure, the Estate Defendants indicated that there were undisclosed terms. (*Id.*) The South Carolina trial court eventually denied Plaintiffs' motion to compel disclosure. (*Id.*) Those undisclosed terms are the core of this case.

Plaintiffs allege that, by not revealing the undisclosed terms, Defendants have conspired to unlawfully deprive Plaintiffs of their valuable termination interests in Brown's compositions in violation of the Copyright Act and state common law. (*Id.* ¶ 47). Plaintiffs allege that Defendant Hynie's conduct was carried out as part of a conspiracy with the Estate Defendants to circumvent Plaintiffs' termination interests and convert Plaintiffs' share of the proceeds from the compositions. Based on these allegations, Plaintiffs allege seven causes of action: declaratory and injunctive relief under the Copyright Act, 17 U.S.C. § 101 et seq. and under the Declaratory Judgment Act, 28 U.S.C. § 2201; accounting for

¹ This was allegedly the second attempt by Defendants to convince Plaintiffs to fire their copyright counsel. Around September 2013, Peter Afterman, a music consultant on the payroll of the Estate or Trust, allegedly acting in concert with Defendants, approached Plaintiffs, absent their copyright counsel, to sign away their copyright termination interests. (*Id.* ¶ 48). These attempts ultimately failed when Plaintiffs' copyright counsel discovered Peter Afterman's alleged actions. (*Id.*)

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compensation owed under the Copyright Act; conversion of Plaintiffs termination interests; unjust enrichment; intentional interference with prospective economic advantage; negligent interference with prospective economic advantage; and unfair competition under Cal. Bus. & Prof. Code § 17200 et seq. (Dkt. 1).

Plaintiffs do not seek to litigate any interest or rulings that are subject to the South Carolina probate or spousal proceedings. (*Id.* ¶ 65). Rather, the focus of this action is Plaintiffs’ termination rights under the Copyright Act. (*Id.*) Defendants conceded in their settlement agreement that the copyright terminations rights and interest are “outside of the probate estate” and are not directly subject to Defendant Hynie’s undue influence and spousal claims against Brown’s Estate. (*Id.*)

III. Analysis

Before the Court are Defendants’ separate motions to dismiss Plaintiff’s complaint. Defendants Hynie and James J. Brown II, a minor, by and through his Guardian Ad Litem, move to dismiss for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1); lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2); failure to state a claim under Fed. Civ. P. 12(b)(6); and ineffective service of process under Fed. R. Civ. P. 12(b)(5). (Dkt. 28). The Estate Defendants, required to file separate motions, similarly move to dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction and failure to state a claim. (Dkt. 21, 23). All Defendants request this Court transfer this action to the District of South Carolina.

“A federal court has leeway to choose among threshold grounds for denying an audience to a case on the merits.” *Sinochem Int’l Co. v. Malay. Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007). The Court can decide a motion to transfer before a motion to dismiss for lack of jurisdiction. For the following reasons, the Court GRANT Defendants’ request to transfer the case.

When considering whether to transfer or dismiss an action for improper venue, courts analyze “private interest” and “public interest” factors. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002). In *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000), the court articulated factors to consider when analyzing a motion to transfer venue: (1) the location where the relevant agreements were negotiated and executed or the relevant events occurred, (2) the state that is most familiar with the governing law, (3) plaintiff’s choice of forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel

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attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof. *Id.*

Plaintiffs allege three subsets of claims: copyright claims, tort claims, and what seem to be contract claims. The nexus of the claims, however, are the tort claims: conversion of Plaintiffs termination interests; unjust enrichment; intentional interference with prospective economic advantage; negligent interference with prospective economic advantage; and unfair competition. Those claims are against the individual Defendants, as well as the trust and estate. The contract claims, which are a part of the copyright termination issue, relate back to the tort claims and conversion of plaintiffs' interests. The tort claims allege an unjust relationship between the individual Defendants and the trust and estate, located in South Carolina. The agreements between the Defendants allegedly occurred in South Carolina.

Other than this lawsuit, all events relating to the administration of the estate of James Brown are centered in South Carolina. Defendants Bauknight and Sojourner are residents of South Carolina. Although Mrs. Brown and her son now reside in London, her principal legal and financial advisers are located in South Carolina. Two of the plaintiffs, Deanna Brown Thomas and Venisha Brown, are residents of South Carolina. Three other plaintiffs, Yamma Brown, Jeanette Mitchell Bellinger and Sarah Latonya Fegan, are residents of nearby Georgia. Almost all of the agreements and settlements related to the estate and the trust were negotiated and executed in South Carolina. Accordingly, the following factors are in favor of transfer: (1) the location where the relevant agreements were negotiated and executed, (4) the respective parties' contacts with the forum, (5) the contacts relating to plaintiff's cause of action in the chosen forum, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

While the Plaintiffs' choice of forum—factor 3—is typically give deference, "[i]f the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration." *Pacific Car & Foundry Co.*, 403 F.2d 949, 954 (9th Cir. 1968). As noted above, many of the operative facts occurred in South Carolina and not in California. Although the effect may be felt by one Plaintiff in California, which gives the Court the necessary jurisdiction over at least part of this case, that does not decide the matter of venue before this Court. Furthermore, all except one of Plaintiffs' claims are claims that a federal court in South Carolina would find familiar, neutralizing factor 2. And there is no dispute that litigating in the Central District of California is far more expensive than South Carolina, which makes factor 6 lean in favor of transfer.

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Plaintiff claims that “transfer would merely shift rather than eliminate the inconvenience,” militating in favor of the Plaintiff’s choice of venue. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). But the shift is significant. Only one Plaintiff resides in California while multiple Plaintiffs and Defendants are in South Carolina. Importantly, the Trust and Estate Defendants are all in South Carolina and they are the core of this case. The Court finds that private interest factors and the public interest factors weight heavily in favor of transfer.

IV. **Conclusion**

The Court GRANTS Defendants’ Motion to Transfer this case to the District of South Carolina. Accordingly, the Court declines to address the remaining issues in Defendants’ motions to dismiss.

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