JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-01982-JLS-MAA Date: August 11, 2022
Title: Brian Wilson v Marilyn Wilson Rutherford

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

V.R. Vallery	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING MOTION TO REMAND TO CALIFORNIA FAMILY COURT PURSUANT TO 28 U.S.C. § 1447(c) (Doc. 21)

Before the Court is a Motion to Remand to California Family Court Pursuant to 28 U.S.C. § 1447(c) filed by Respondent Marilyn Wilson-Rutherford. (Mot., Doc. 21.) Petitioner Brian Wilson opposed, and Respondent replied. (Opp., Docs. 25-1; Reply, Doc. 26.) Having considered the pleadings, the parties' briefs, and for the reasons stated below, the Court GRANTS the Motion.

I. BACKGROUND

In 1979, a petition to dissolve the marriage between Marilyn and Brian[1] was filed in the Family Law division of the Los Angeles Superior Court. (Ex. B, Doc. 22-2.) The Court permitted the parties to dissolve the marriage and issued a forty-two-page judgment that allocated the parties' property holdings (the "1981 Judgment"). (Ex. C (1981 Judgment), Doc. 22-3.) As relevant here, the 1981 Judgment provided, among other things, that the 170 musical compositions Brian had written during his marriage with

[1] The Court intends no disrespect by using first names; the intent is to allow the reader to readily distinguish the parties.

Marilyn as a member of *The Beach Boys* constituted community property (hereinafter, the "Community Works"). (*Id.* ¶ 6.) Pursuant to the Los Angeles Superior Court's ruling, Marilyn and Brian would each hold a 50% interest in the Community Works as tenants-in-common. (*Id.* ¶ 7.) While the 1981 Judgment provided that Brian had the sole right "to administer and exploit all rights" in the Community Works, he was required to "transmit" to Marilyn her share of any monetary receipts arising from that exploitation. (*Id.* ¶¶ 8-9.) The 1981 Judgment provided that the Los Angeles Superior Court retained jurisdiction to oversee disputes related to the Community Works and to fashion whatever appropriate relief necessary to effectuate the Judgment. (*Id.* ¶¶ 9; Ex. C at PDF Page 2, Doc. 22-3.)

As relevant to this dispute, Brian purportedly transferred the rights to the music he wrote, including the Community Works at issue here, to Sea of Tunes, Inc. (Declaration of Eric Custer ("Custer Decl.") ¶ 3, Doc. 24-3.) In return, Sea of Tunes "promised to pay Brian songwriter royalties" while it "retained the other 50% of revenues as the copyright owner." (*Id.*) Later on, Sea of Tunes' rights in those works were transferred to Universal Music Publishing. (*Id.*) Pursuant to the 1981 Judgment, Marilyn allegedly acquired a 50% community interest in the contractual revenues generated. (*See*, *e.g.*, Opp. at 2, Doc. 24.)

Beginning in 2011, Brian began terminating the copyright grants in the Community Works he had issued to entities such as Universal Music Publishing (hereinafter referred to as the "Reverted Rights"). (Custer Decl. ¶ 5, Doc. 24-3.) Brian terminated the grants pursuant to 17 U.S.C. 304(c) of the Copyright Act, which permits an author of a copyrighted work to terminate a grant of a copyright "at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later." 17 U.S.C. § 304(c)(3); Mot. at 12, Doc. 21; Opp. at 3, Doc. 24. In December 2021, Brian sold the Reverted Rights along with other surviving rights in the Community Works (the "Extant

Rights") to a third-party. (Custer Decl. ¶ 6, Doc. 24-3.) Marilyn contends that Brian purported to pay "her 50% tenant-in-common interest for his sale of the Extant Rights" but "paid her nothing of the proceeds allocated to the Reverted Rights." (Mot. at 13, Doc. 21.)

On February 18, 2022, Marilyn filed a Request for Order ("RFO") in the Family Law division of the Los Angeles Superior Court against Brian. (Ex. 1 (RFO), Doc. 1-1.) In the RFO, Marilyn sought an accounting and payment of all funds that Brian owed her "as a result of her interest" in the Community Works awarded to her under the 1981 Judgment. (*Id.* at PDF Page 6.) Marilyn requested that the Los Angeles Superior Court award her "a minimum of $6,704,879.64 for the sale of 50% of the community property reversion rights, or such other amount as may be determined by the Court, and an additional amount for producers' royalties." (*Id.*) As to accounting, the RFO provided that the accounting, at a minimum, should include: (1) "a computation of Marilyn's copyright reversion rights"; (2) "a complete computation of Marilyn's rights to 50% of Brian's producer royalties"; and (3) "a complete computation of Marilyn's rights to 50% of all sums generated from synchronization licenses, mechanical royalties, public performance royalties, . . . and royalties based on Brian's performance of the songs." (*Id.*) The RFO also requested that the Superior Court find any omitted assets from the 1981 Judgment be declared an omitted asset under California Family Code Section 2556. (*Id.*) Lastly, the RFO requested that attorneys' fees and costs be awarded in connection with her RFO. (*See*, *e.g.*, *id.* at PDF Page 15.)

On March 25, 2022, Brian removed the action to this Court based on Marilyn's request that sought an accounting and computation of her copyright reversion rights. (Notice of Removal, Doc. 1.) In the Notice of Removal, Brian notes that he was served with the RFO wherein Marilyn claims "she is entitled to half of the proceeds from Brian's December 2021 disposition of his copyright termination interests in certain musical compositions Brian composed or co-composed before 1970." (*Id.* at 2.) Brian

asserts that federal-question jurisdiction exists because the "copyright termination interests were created by 17 U.S.C. § 304, and § 304 must be applied to determine whether Marilyn has any interest in them." (*Id.*) As support for his argument, Brian argues that although the parties were married from 1964 to 1978, the Reverted Rights he sold in the Community Works cannot be community property because pursuant to Section 304(c) the termination rights did not first vest until 2011. (*Id.* at 10.) Brian also argues, among other things, that the Reverted Rights are not community property because "Marilyn could never own termination rights . . . under 17 U.S.C. § 304(c), because she is not in the class of persons to whom the Copyright Act gives standing to own or exercise such rights." (*Id.*)

Marilyn now seeks to remand this case back to the Family Law division of the Los Angeles Superior Court. (Mot., Doc. 21.) Marilyn argues that remand is proper here because she "makes no claim grounded in the Copyright Right—she does not allege any infringement, copying or similar claims protected by the Copyright Act." (*Id.* at 9.) She also argues that "[s]he does not even dispute that Brian has the right to control the use of the copyrights in his musical compositions." (*Id.*) Marilyn notes that she simply argues that "under the 1981 Judgment and California Family Code . . . she has a 50% community property interest in the copyrights and any referred thereof, and Brian must account to her for those interests." (*Id.*)

II. LEGAL STANDARD

"A defendant may remove an action originally filed in state court only if the case originally could have been filed in federal court." *In re NOS Commc'ns, MDL No. 1357*, 495 F.3d 1052, 1057 (9th Cir. 2007) (citing 28 U.S.C. § 1441(a)). There is a "strong presumption" against removal jurisdiction, and the defendant seeking removal bears the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th

Cir. 1992). "[R]emoval statutes are strictly construed against removal." *Luther v. Countrywide Home Loans Serv., LP*, 533 F.3d 1031, 1034 (9th Cir. 2008).

For removal to be proper based on federal question jurisdiction, a federal question must appear on the face of the complaint. *See Chesler/Perlmutter Prods. v. Fireworks Entm't, Inc.*, 177 F. Supp. 2d 1050, 1055 (C.D. Cal. 2001). "The plaintiff is the master of the complaint," and ordinarily, a plaintiff "may avoid federal jurisdiction by exclusive reliance on state law. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Moreover, a defendant "cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law." *Id.* at 399.

The rare exception to the plaintiff's mastery of the complaint rule is the complete preemption doctrine. *See Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir. 2000). Some federal statutes have such a strong preemptive force that they "completely preempt" an area of state law, and even state law claims in such areas are treated as if they are federal claims, and therefore, they may be removed to federal court. *See id.* "Because complete preemption often applies to complaints drawn to evade federal jurisdiction, a federal court may look beyond the face of the complaint to determine whether the claims alleged as state law causes of action in fact are necessarily federal claims." *Parrino v. FHP, Inc.*, 146 F.3d 699, 704 (9th Cir. 1998), *overruled by statute on other grounds*.

III. DISCUSSION

There is no real dispute that the RFO does not, on its face, allege a claim arising under the Copyright Act. The RFO requests an accounting and payment of funds owed to

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