

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NICO TRINKHAUS,

Plaintiff,

v.

ANABON SECURITY LLC,

Defendant.

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Civil Case No: 8:22-cv-02286-JMC

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MEMORANDUM OPINION¹

Plaintiff Nico Trinkhaus filed this copyright infringement action against Defendant Anabon Security LLC on September 9, 2022. (ECF No. 1). Presently before the Court are two Motions: (1) Plaintiff's Motion for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference (ECF No. 5) ("Plaintiff's Motion") and (2) Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment (ECF No. 10) ("Defendant's Motion").² In addition to these Motions, the Court has considered Plaintiff's Opposition to Defendant's Motion (ECF No. 12) and Defendant's Reply in further support of Defendant's Motion (ECF No. 14). The Court finds that no hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2021). For the reasons explained below, Defendant's Motion, treated as a motion to dismiss, is DENIED without prejudice as to Defendant's ability to again move for summary judgment at a time which the Court will determine in the forthcoming scheduling order. Furthermore, Plaintiff's Motion is DENIED as moot.

¹ Originally, this case was assigned to Judge Hazel. However, on February 23, 2023, this case was reassigned to the undersigned for all further proceedings, pending the unanimous consent of the parties. (ECF No. 15). On March 1, 2023, both parties consented to the undersigned's jurisdiction.

² Additionally, the parties filed a Consent Motion for Extension (ECF No. 11) on December 7, 2022. Therein, the parties requested additional time to file an opposition and reply regarding Defendant's Motion. As the parties have already fully briefed Defendant's Motion in accordance with their requested schedule, the Court will GRANT the parties' Consent Motion for Extension (ECF No. 11).

I. BACKGROUND

“At the motion to dismiss stage, the Court takes the allegations of the complaint as true, . . . and [it] construes any disputed allegations in the light most favorable to the plaintiff” *Krell v. Queen Anne’s Cnty.*, No. JKB-18-637, 2018 WL 6523883, at *2 (D. Md. Dec. 12, 2018) (other citations omitted).

Plaintiff is a professional photographer, and he is the legal and rightful owner of photographs which he licenses to online and print publications. (ECF No. 1 at p. 2, ¶ 10).³ At sunrise on August 20, 2016, Plaintiff authored an aerial photograph (“the Photograph”) of the Singapore Marina in the Republic of Singapore. *Id.* at p. 3, ¶ 23. On March 20, 2018, Plaintiff registered the Photograph with the United States Copyright Office (“USCO”) under Registration No. VA 2-104-395. *Id.* at p. 3, ¶ 24. On March 16, 2021, Plaintiff discovered the Photograph on a website owned and operated by Defendant.⁴ *Id.* at p. 3, ¶ 25. Defendant utilized an exact copy of the vast majority of the Photograph on Defendant’s website. *Id.* at p. 4, ¶ 31. Defendant’s use of the Photograph was unaccompanied by a license or permission from Plaintiff. *Id.* at p. 4, ¶ 29. Regarding the website, Defendant takes an active and pervasive role in the content posted thereon. *Id.* at p. 4, ¶ 32. Defendant’s website involvement includes—but is not limited to—copying and posting images on the website. *Id.*

On April 28, 2022, Plaintiff notified Defendant of Plaintiff’s concern regarding Defendant’s use of the Photograph. *Id.* at p. 4, ¶ 34. On June 21, 2022, Plaintiff again notified Defendant of Plaintiff’s concern. *Id.* at p. 4, ¶ 35. Despite these notifications, Defendant continued

³ When the Court cites to a specific page number, the Court is referring to the page numbers provided in the electronic filing stamps located at the top of every electronically filed document.

⁴ The website is located at the following Uniform Resource Locator (“URL”) : <https://www.anabon.com/>. *Id.* at p. 4, ¶ 26. Plaintiff alleges that the Photograph was stored at URL: <https://www.anabon.com/wp-content/uploads/2020/11/TIANDY-Panarromic-technology.jpg>. *Id.* at p. 4, ¶ 27.

to store and display the Photograph on the website. *Id.* at p. 4, ¶ 36. During the period relevant to the case *sub judice*, Defendant possessed complete control over—and actively reviewed and monitored the content on—the website. *Id.* at p. 5, ¶ 40. As a result of Defendant’s use of the Photograph, Defendant has enjoyed an increase in traffic to the website, which has further resulted in Defendant experiencing an increase in its merchandise sales. *Id.* at p. 5, ¶ 44.

II. STANDARD OF REVIEW

A. Rule 12(b)(6) Failure to State a Claim

“Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain a ‘short and plain statement of the claim showing that the pleader is entitled to relief.’” *Love v. Rumgay*, No. RDB-13-1402, 2016 WL 1028001, at *4 (D. Md. Mar. 15, 2016) (quoting Fed. R. Civ. P. 8(a)(2)). “Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the dismissal of a complaint if it fails to state a claim upon which relief can be granted.” *Love*, 2016 WL 1028001, at *4. The purpose of Rule 12(b)(6) is “to test the sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006).

The Supreme Court of the United States’ opinions in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 544 (2007), “require that complaints in civil actions be alleged with greater specificity than previously required.” *Walters v. McMahan*, 684 F.3d 435, 439 (4th Cir. 2012) (other citation omitted). When ruling on a Rule 12(b)(6) motion to dismiss, a court must apply “[t]wo working principles . . .” *Iqbal*, 556 U.S. at 678. First, although a court must accept as true all the factual allegations contained in a complaint, any legal conclusions that are drawn from those facts are not afforded such deference. *Id.* (stating that “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice[.]” to

plead a claim). Second, a complaint shall be dismissed if it does not allege a “plausible claim for relief” *Id.* at 679. “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 663 (other citation omitted). In determining whether a plaintiff has stated a plausible claim for relief, a court must “draw on its judicial experience and common sense.” *Id.* at 679 (other citation omitted).

“As a general rule, the court does not consider extrinsic evidence at the motion to dismiss stage” *Reamer v. State Auto. Mut. Ins. Co.*, 556 F. Supp. 3d 544, 549 (D. Md. 2021) (other citation omitted). However, “the court may consider, without converting the motion to dismiss into one for summary judgment, documents attached to the complaint as exhibits, and documents attached to a motion to dismiss if the document is ‘integral to the complaint and there is no dispute about the document’s authenticity.’” *Id.* (quoting *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016)). “A document is ‘integral’ to the complaint if its ‘very existence, and not the mere information it contains, gives rise to the legal rights asserted.’” *Reamer*, 556 F. Supp. 3d at 59 (citing *Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602, 611 (D. Md. 2011)).

Defendant styles its Motion as a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment under Fed. R. Civ. P. 56. “A motion styled in this manner implicates the court’s discretion under Rule 12(d) of the Federal Rules of Civil Procedure.” *Pevia v. Hogan*, 443 F. Supp. 3d 612, 625 (D. Md. 2020). The Court has “complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.” *Id.* at 626 (other citation omitted). “Ordinarily, summary

judgment is inappropriate where the parties have not had an opportunity for reasonable discovery.” *Id.* (other citations and internal quotation marks omitted). “To raise adequately the issue that discovery is needed, the nonmovant typically must file an affidavit or declaration pursuant to Rule 56(d) . . . explaining why, for specified reasons, it cannot present facts essential to justify its opposition, without needed discovery.” *Id.* (other citations and internal quotation marks omitted).

Based on the fact-intensive nature of Plaintiff’s claims, and Plaintiff’s affidavit asserting the need for discovery (ECF No. 13)⁵, the Court will decline to consider any evidence outside of Plaintiff’s Complaint when determining the 12(b)(6) portion of Defendant’s Motion.

III. Analysis

A. Defendant’s Rule 12(b)(6) Motion to Dismiss

Plaintiff is entitled to pursue discovery to identify the owner of the website at issue. Defendant’s sole argument is that Defendant “does not . . . own the Website, nor does it administer, maintain, or operate the Website, nor is it responsible for the content included on the Website.” (ECF No. 10 at p. 2, ¶ 3 (citing ECF No. 10-1)). Rather, Defendant asserts that Anabon Security Inc. (“Anabon Inc.”), “is responsible for the content on the Website.” (ECF No. 10 at p. 2, ¶ 4 (citing ECF No. 10-2)). Defendant’s Motion relies on two declarations: (1) the Declaration of Defendant’s President, Mahdi Nahavandian (ECF No. 10-1), and (2) the Declaration of Anabon Inc.’s President, Alireza Ghandchi (ECF No. 10-2). However, as stated above, the Court will not consider extrinsic evidence outside the pleadings and convert Defendant’s Motion into one for summary judgment. Therefore, because Plaintiff has adequately alleged that Defendant owns the website, Defendant’s argument must fail.

⁵ Plaintiff’s counsel, Mr. Craig B. Sanders, sets forth Plaintiff’s understanding regarding ownership of the website. Specifically, as will be further elaborated upon in this Memorandum Opinion, Mr. Sanders indicates that the registrant information for the website has changed since the filing of Plaintiff’s lawsuit. (ECF No. 13 at p. 2, ¶ 4). Mr. Sanders asserts that information regarding the identity of the website owner is essential to Plaintiff’s case. *See id.* at p. 2, ¶ 7.

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