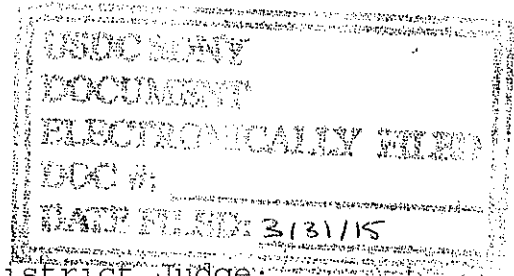


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID ADJMI, : 14 Civ. 568 (LAP)
   
:
   
Plaintiff, :
   
:
   
v. :
   
:
   
DLT ENTERTAINMENT LTD., :
   
:
   
Defendants. :
   
-----X

OPINION & ORDER



LORETTA A. PRESKA, Chief United States District Judge:

This is an action for declaratory judgment brought by David Adjmi ("Adjmi") against DLT Entertainment LTD ("DLT"). Adjmi is a playwright who authored 3C, a play based on the 1970's television comedy series Three's Company. The play was produced for a limited run Off Broadway in 2012 by Rattlestick Products, Inc., Rising Phoenix Repertory, Inc., and Piece By Piece Productions, Inc. (the "Production Companies"). DLT, the copyright holder of Three's Company, sought to halt all performances of 3C and claims that the play infringes DLT's copyright in Three's Company. Adjmi wishes to authorize publication of 3C and licensing of the play for further production and therefore brings this action seeking a declaration that 3C does not infringe DLT's copyright in Three's Company. Adjmi's motion [dkt. no. 34] is GRANTED for the following reasons.

I. BACKGROUND AND PROCEDURAL HISTORY<sup>1</sup>

On June 6, 2012, 3C began a run Off Broadway at Rattlestick Playwrights Theater ("Rattlestick"), located in New York City. (FAC ¶ 60, Ex. C; Answer ¶ 61.) Shortly thereafter, on or about June 14, 2012, lawyers representing DLT sent a "cease-and-desist" letter to Rattlestick, among other parties, asserting that 3C infringed DLT's copyright in Three's Company and demanding that Rattlestick "cease further performances of [3C]; provide ... an accounting of all revenues derived from 3C to date; and furnish DLT with ... written assurance that [Rattlestick and others] will fully comply with these demands." (FAC ¶ 61; Answer ¶ 61.) Although 3C's production ended in July 2012 (FAC ¶ 61), DLT's "cease-and-desist" letter resulted in a back-and-forth between Adjmi's counsel and lawyers for DLT. (FAC ¶¶ 62-66; Answer ¶¶ 62-66.)

The reason for the continued correspondence, and for the present action, is because Adjmi claims he has received an offer to publish 3C and to license its performance.<sup>2</sup> (FAC ¶ 67.)

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<sup>1</sup> See Complaint, dated Jan. 30, 2014 [dkt. no. 1] ("Complaint"); First Amended Complaint, dated Feb. 25, 2014 [dkt. no. 6] ("FAC"); Answer and Counterclaims, dated Mar. 24, 2014 [dkt. no. 10] (respectively, "Answer" and "CC"); Answer to Counterclaim, dated Apr. 17, 2014 [dkt. no. 11] ("Answer to CC").

<sup>2</sup> Adjmi claims that "Theatre Communications Group ("TCG") has proposed publishing 3C in book form as part of a volume of Adjmi's works. In addition, Samuel French, Inc. has proposed

DLT, for its part, has refused to reconsider its initial position and continues to assert that 3C infringes upon its copyright in Three's Company. (FAC ¶ 68; Answer ¶ 68.) This position presents a de facto roadblock to future publication or production of 3C, which Adjmi now seeks to remove.

To that end, on January 30, 2014, Adjmi filed the Complaint against DLT, seeking a declaratory judgment that 3C does not infringe upon DLT's copyright in Three's Company. Thereafter, Adjmi filed the First Amended Complaint, and DLT filed its Answer. DLT's Answer asserts counterclaims (the "Counterclaims") on behalf of DLT and Three's Company (together, the "Joint Venture") for copyright infringement against Adjmi and the Production Companies.<sup>3</sup> Adjmi, in turn, denies those claims in his Answer to the Counterclaims.

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publishing the acting edition of the play, publishing the play as an e-book, and handling stock and amateur licensing for English-language productions of the play worldwide." (FAC ¶ 67.) DLT is "without knowledge or information sufficient to form a belief as to the truth of [those] allegations ... and therefore denies" them. (Answer ¶ 67.) Given that 3C's Off Broadway run is over, the Court assumes there would be no live controversy if not for the potential future publication and production of 3C.

<sup>3</sup> The Production Companies were served on or about June 9, 2014 (see [dkt. no. 25]) and answered the Counterclaims, denying liability, on July 17, 2014 (see Answer of [Production Companies], dated July 17, 2014 [dkt. no. 30]).

On August 24, 2014, Adjmi moved for judgment on the pleadings. (Motion for Judgment on the Pleadings, dated Aug. 25, 2014 [dkt. no. 34] (the "Motion").) A few days later, on August 28, 2014, Adjmi also moved for a stay of discovery pending the disposition of the earlier Motion. (Motion to Stay Discovery, dated Aug. 28, 2014 [dkt. no. 38] ("Discovery Motion").)<sup>4</sup> Following briefing and oral argument, United States District Judge Thomas P. Griesa GRANTED Adjmi's Discovery Motion. (See Order, dated Oct. 2, 2014 [dkt. no. 47].) Accordingly, DLT<sup>5</sup> and Adjmi<sup>6</sup> then proceeded to complete briefing the present Motion.

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<sup>4</sup> See also Plaintiff/Counter-Defendants' Memorandum of Law in Support of Motion for Judgment on the Pleadings, dated Aug. 25, 2014 [dkt. no. 35] ("Pl.'s Memo").

<sup>5</sup> See Memorandum of Law in Opposition to Plaintiff/Counter-Defendants' Motion for Judgment on the Pleadings, dated Oct. 28, 2014 [dkt. no. 53] ("Defs.' Memo"); Declaration of Michael E. Sander, dated Oct. 28, 2014 [dkt. no. 54] ("Sander Decl."); Declaration of Michelle Mancino March, dated Oct. 28, 2014 [dkt. no. 55] ("Marsh Decl.").

<sup>6</sup> Reply Memorandum of Law, dated Nov. 14, 2014 [dkt. no. 58], and Amended Reply Memorandum of Law, dated Nov. 19, 2014 [dkt. no. 61] (together with Reply Memorandum of Law, "Pl.'s Reply").

## II. THE PLEADINGS

The Court's recitation of the facts and allegations is drawn from the pleadings and the exhibits incorporated therein. As described in detail below, the standard of review for a 12(c) motion requires that all pleadings be taken to be true, but that any inconsistencies between the allegations in the pleadings be resolved in favor of the non-moving party, here DLT. However, this does not require the court to accept legal conclusions or characterizations in DLT's pleadings. (See infra III.A.)

The pleadings—specifically the Complaint, Answer, Counterclaims, and Answer to the Counterclaims—present different conceptions of Three's Company and 3C. Rather than classify each claim and counterclaim as either a legal conclusion or characterization or, in the alternative, a non-conclusory statement with basis in fact, the Court relies on the underlying source material: nine seasons of Three's Company and the screenplay (and certain reviews) of 3C, each incorporated by reference in the pleadings.<sup>7</sup> II.A and II.B supply brief backgrounds of Three's Company and 3C, respectively, before presenting a more detailed account of the two works.

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<sup>7</sup> See Declaration of Camille Calman, dated Aug. 25, 2014 [dkt. no. 36] ("Calman Decl." or "DVDs"); FAC Ex. A ("3C" or "the Screenplay").

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