

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

Soberon Investments, L.L.C., d/b/a §
Restaurant La Costa Grill, and §
Restaurant Mariscos La Costa, L.L.C., §
Restaurant Mariscos La Costa, §
Plaintiff's §

V. §

CIVIL ACTION NO.

Luis Silva, Individually and d/b/a §
Don Marisco Restaurant, §
Ernesto Lozano, Individually, and d/b/a §
Don Marisco Restaurant, and §
Don Marisco L.L.C., Individually and §
d/b/a Don Marisco Restaurant §
Defendants' §

DEFENDANTS' NOTICE OF REMOVAL

Defendants Luis Silva, Individually and d/b/a Don Mariscos Restaurant, Ernesto Lozano, Individually and d/b/a Don Mariscos Restaurant, and Don Marisco L.L.C., Individually and d/b/a Don Marisco Restaurant file this Notice of Removal under 28 U.S.C. §§ 1331, 1441, and 1446, respectfully stating:

INTRODUCTION

During his deposition, Plaintiff contended for the first time that their claims involved federal copyright law, as he contended Defendants misappropriated their intellectual property and trade secrets. Federal copyright law is governed by the Copyright Act of 1976 in chapters 1 through 8, 10 through 12, and 14 through 15 of Title 17 of the United States Code. The copyright claim raised by Plaintiff through Edgar Soberon arises under federal law and this Court has original jurisdiction over it.

BACKGROUND

1. On December 28, 2018, Plaintiffs Soberon Investments, L.L.C. filed Plaintiff's Original Petition in the 93rd Judicial District Court of Hidalgo County, Texas, styled Soberon Investments L.L.C. d/b/a Restaurant La Costa Grille and Restaurant Mariscos La Costa L.L.C. Restaurant Mariscos La Costa v. Luis Silva, Individually and d/b/a Don Mariscos Restaurant, Ernesto Lozano, Individually and d/b/a Don Mariscos Restaurant, and Don Marisco L.L.C., Individually and d/b/a Don Marisco Restaurant, Cause No.C-4809-18-B (the "State Court Lawsuit"). See Exhibit A. Plaintiff's Original Petition asserted claims for, inter alia, breach of contract, misappropriation of trade secrets, breach of fiduciary duty, and tortious interference with contract, against all Defendants.
2. Luis Silva, Individually and d/b/a Don Mariscos Restaurant, timely filed his Original Answer, Verified Answer, and Affirmative Defenses to Plaintiff's Original Petition on March 11, 2019 denying Plaintiff's allegations. See Exhibit B. Ernesto Lozano filed his Original Answer on May 3, 2019. See Exhibit C
3. Plaintiff, through its authorized agent Edgar Soberon, was deposed on May 27, 2022. Plaintiff, for the first time, affirmed what his counsel, Katie Klein, had raised earlier at a May 24, 2022

hearing, namely that his claim involved the Copyright Act of 1976. At his deposition, Edgar Soberon testified as follows:

Q. I believe your counsel mentioned at --at a hearing that this may be subject to some type of copyright. Do you understand that there's any type of copyright on these recipes or processes?

Mr. Mount: Objection, form

A.No, I don't understand your question---what your question.

Q. (BY MR. PUENTE) Did these -- did this recipes are like a trade secret that are --

A. Oh, yes --

Q. -- copyright?

A. -- of course. It's a trade secret. Yes.

Q. And they're --

A. Nobody has it, and no -- nobody used to have them in the Valley.

Q. Okay. So they -- are they copyrighted? Do you -- do you think that this is violative of any type of copyright laws or anything like that?

A. Did they --

MR. MOUNT: Objection; form.

A. -- violate?

Q. (BY MR. PUENTE) Yeah.

A. If you duplicate them, yes.

Q. Yes? So they are violative of --

A. They're secrets. Uh-huh.

Q. Of copyright laws?

A. They are secrets. Uh-huh.

Exhibit D, Pl's Deposition at p.39:23-p.40:23

GROUND FOR REMOVAL

Federal Question Jurisdiction

7. Plaintiff's Original Petition includes a claim of misappropriation of trade secrets under Texas Civil Practices and Civil Remedies Code. During his deposition he clarified that the misappropriation was a violation of federal copyright law. See Copyright Act of 1976. The United States district courts have original jurisdiction over the Copyright Act of 1976 claims. 28 U.S.C. § 1338(a) ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.") See also 28 U.S.C. § 1338(b) ("The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.") Therefore, this Court has original jurisdiction over Plaintiff's copyright claim.

REMOVAL IS TIMELY

8. Under the Federal Rules, Defendant may remove a case under the following circumstance:

"If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, . . ."

See 28 U.S.C. § 1446(b) (2013). [A] transcript of the deposition testimony is "other

paper." S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489, 494 (5th Cir. 1996). "[A]

defendant may rely on a plaintiff's answers to deposition questions [as an other paper]

when the elicited responses . . . clarify insufficient factual allegations in the plaintiff's

complaint.” Herring v. Oxy Vinyls L.P., CIV.A. H-05-0719, 2005 WL 1653076, at *4 (S.D. Tex. July 8, 2005) (citing S.W.S. Erectors, 72 F.3d at 491).

9. Here, Plaintiff clarified for the first time during his deposition that his misappropriation claim is rooted in federal copyright law. Having received this “other paper” on, at the earliest, the first day of Plaintiff’s deposition—May 27, 2022—

Defendants timely removed by filing this Notice of Removal within thirty days. Luis Silva, Individually and d/b/a Don Mariscos Restaurant, Ernesto Lozano, Individually and d/b/a Don Mariscos Restaurant, and Don Marisco L.L.C., Individually and d/b/a Don Marisco Restaurant all agree to this removal to federal district court.

SUPPLEMENTAL JURISDICTION

10. To the extent Plaintiff’s remaining claims of breach of contract, breach of fiduciary duty, and tortious interference with contract and existing business relations against Defendants are viable,

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