MANDATE

Appendix A

17-1101-cv
Wright v. Carter

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of February, two thousand eighteen.

PRESENT:

JOHN M. WALKER, JR.,
PETER W. HALL,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

Willie Frank Wright, Jr.,

Plaintiff-Appellant,

v. **17-1101**

Shawn Carter, AKA Jay-Z, Roc Nation LLC,

Defendants-Appellees.[1]

FOR PLAINTIFF-APPELLANT: Willie Frank Wright, Jr., *pro se*, Pelham, GA.

FOR DEFENDANTS-APPELLEES: Eleanor M. Lackman, Cowan, DeBaets, Abrahams & Sheppard LLP, New York, NY.

[1] The Clerk of the Court is directed to amend the caption as above.

MANDATE ISSUED ON 03/30/2018

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Appeal from a judgment of the United States District Court for the Southern District of New York (Broderick, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Willie Frank Wright, Jr., proceeding *pro se*, appeals from a judgment in favor of Shawn Carter ("Jay-Z") and Roc Nation LLC ("Roc Nation"). Wright alleged that Kanye West, acting as Jay-Z's agent, gave him permission to use Jay-Z's material in a "mixed video" that Wright subsequently uploaded to the internet. Later, however, Roc Nation blocked the video. The district court dismissed for failure to state a claim, and this appeal followed. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

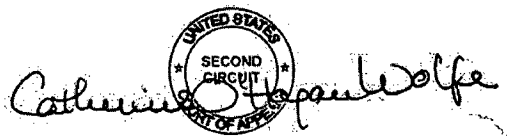
We review *de novo* the dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), accepting all factual allegations as true and drawing all reasonable inferences in plaintiff's favor. *See Biro v. Conde Nast*, 807 F.3d 541, 544 (2d Cir. 2015). The complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although a court must accept as true all the factual allegations in the complaint, that requirement is "inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678.

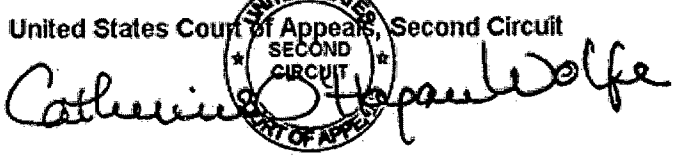
On appeal, Wright contends that the district court impermissibly relied on material outside the pleadings when ruling on the defendants' motion to dismiss. Specifically, the district court cited a biography of Kanye West on Rolling Stone's website. This argument is frivolous. The

district court relied on the biography for general background. But this played no part in the district court's analysis of the viability of Wright's claim. The district court assumed the truth of Wright's "highly improbable if not unbelievable" allegations and properly concluded that he still failed to state a claim. Op. at 3. Wright's claim that he acted pursuant to an irrevocable license received from Jay-Z's agent, Kanye West, is essentially a claim for breach of contract. However, Wright did not plead consideration, and so no enforceable contract was formed. *See, e.g.*, *Holt v. Feigenbaum*, 419 N.E.2d 332, 336 (N.Y. 1981) (noting that the "notion of consideration" has "become an integral part of our modern approach to the enforceability of contracts"). Although he conclusorily asserts on appeal that consideration was present, even now he gives no details as to what benefit was to accrue to Jay-Z or Roc Nation or what detriment to himself. *See id.* The district court properly dismissed Wright's complaint.

We have considered Wright's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court





UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIE FRANK WRIGHT, JR.,

Plaintiff,

-v-

SEAN CARTER, JAY-Z, and ROCK NATION,

Defendants.

14-CV-633 (VSB)

MEMORANDUM & ORDER

Appearances:

Wiley Frank Wright, Jr.
Pelham, Georgia
Pro se Plaintiff

Brittany L. Kaplan
Eleanor M. Lackman
Cowan, DeBaets, Abrahams & Sheppard LLP
New York, New York
Counsel for Defendants

VERNON S. BRODERICK, United States District Judge:

Pro se Plaintiff Willie Frank Wright, Jr. brought this action against Defendants Shawn Carter and Roc Nation[1] for copyright infringement and for the illegal blocking of Plaintiff's allegedly legally uploaded mixed video. In a Memorandum and Order issued on March 24, 2016, I dismissed Plaintiff's copyright claims, but allowed Plaintiff to amend his complaint as to his video blocking claim.[2] (Doc. 63.) Familiarity with the prior opinion is assumed, including

The Caption was Corrected a year ago

[1] As explained in my prior opinion, Plaintiff's submissions incorrectly identify Defendant Shawn Carter as "Sean Carter," and Defendant Roc Nation as "Rock Nation." Jay Z is Shawn Carter's stage name. The caption reflects these errors. (*See* Doc. 63 at n.1, n.2.)

the factual and procedural background and applicable law contained therein.

As to the remaining claim, Plaintiff alleged that, at some point in 2009, he sent an "agent" of Defendant Carter an email containing a "demo . . . along with a request to make a mixed video." (Pl.'s 2nd Am. Compl. 1.)[3] The agent purportedly agreed to Plaintiff's request to use "Jay Z's content" in the mixed video. (*Id.*) Plaintiff alleged that despite Defendant Carter's previous approval of the use of this content, Defendant Carter subsequently had the website or websites on which Plaintiff had uploaded the mixed video take the mixed video down—contending that the use of the licensed content was unauthorized—at some point in 2011. (*Id.*; Pl.'s Am. Compl. 3.)[4]

I denied Defendants' motion to dismiss Plaintiff's claim regarding the removing of his mixed video on the grounds that (1) Defendants failed to address the claim in their memorandum of law, and (2) that it appeared that Plaintiff was alleging that he sought and received permission to use Defendant Carter's copyrighted work in his own video, and then Defendant Carter had the video taken down in violation of that agreement. I concluded that Plaintiff had failed to allege sufficient facts in support of this claim, but allowed Plaintiff to file a third amended complaint focused on this claim and instructed him to specify, among other things, who gave him permission as well as the precise content of their agreement. (*See* Doc. 63 at 10-11.)

Plaintiff has since filed his third amended complaint. (Pl.'s 3rd Am. Compl.)[5] In it, he specifies he "contacted Kanye West at Roc[] Nation in 2009," who told him "it would be no problem to post mixed videos with Jay Z's content as long [as] it was like a mixed tape." (*Id.*) West also allegedly "advised [Plaintiff] that he was an authorized agent for Jay Z and Roc[]

[3] "Pl.'s 2nd Am. Compl." refers to the Amended Complaint filed on October 28, 2014. (Doc. 28.)

[4] "Pl.'s Am. Compl." refers to Plaintiff's Amended Complaint filed on April 8, 2014. (Doc. 13.)

[5] "Pl.'s 3rd Am. Compl." refers to Plaintiff's Third Amended Complaint filed on May 13, 2016. (Doc. 66.)

Nation." (*Id.*)

These allegations fail to remedy the factual and legal deficiencies identified in my prior order. Even if Plaintiff had in fact communicated by email with Kanye West, and in that email exchange West described himself as "an authorized agent" for Defendants and told Plaintiff that incorporating Carter's work into a YouTube mixtape would be "no problem"—allegations that I find highly improbable if not unbelievable given West's status as a "well-known producer and Grammy Award-winning rap artist" during the relevant time period, (Defs.' Br. at 2)[6]—Plaintiff's claim still fails. First, the allegations in the Third Amended Complaint do not suggest a reasonable basis to believe that West had authority to Defendant Carter's copyrighted works, or even assuming such authority, that Wright understood what the scope of that authority was and that West was acting within the scope of that authority. *See Jackson v. Odenat*, 9 F. Supp. 3d 342, 363 (S.D.N.Y. 2014) (finding no apparent authority in part because it was unreasonable to believe that "sometime DJ, collaborator, and distributor of mixtapes" had authority "carte blanche to license away" intellectual property belonging to famous hip-hop artist); *Aries Ventures Ltd. v. Axa Fin., S.A.*, 729 F. Supp. 289, 300 (S.D.N.Y. 1990) ("Essential to a finding of apparent authority is that the third party's belief that the agent had authority to act is a reasonable one."). Even if West had such authority, based upon the allegations in the Third Amended Complaint, West conveyed, at most, an implied, non-exclusive license, which Defendants were free to revoke at any time. *See Ortiz v. Guitian Music Bros., Inc.*, No. 07 Civ. 3897, 2009 WL 2252107, at *3 (S.D.N.Y. July 28, 2009) ("[A]bsent consideration, nonexclusive licenses are revocable."); *Pavlica v. Behr*, 397 F. Supp. 2d 519, 527 (S.D.N.Y. 2005) ("An implied license is

[6] "Defs.' Br." refers to Defendants' Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's Third Amended Complaint. (Doc. 68.) I take judicial notice of West's celebrity status at all relevant times. *See* Rolling Stone, *Kanye West Biography*, http://www.rollingstone.com/music/artists/kanye-west/biography.

freely revocable absent consideration."); *Keane Dealer Servs., Inc. v. Harts*, 968 F. Supp. 944, 947 (S.D.N.Y. 1997) ("An implied license is revocable . . . where no consideration has been given for the license."). Finally, there are no facts to suggest that Plaintiff suffered damages as a result of Defendants' revocation. *See Frye v. Lagerstrom*, No. 15 Civ. 5348 (NRM), 2016 WL 3023324, at *4 (S.D.N.Y. May 24, 2016) (explaining that New York contract law requires damages as a result of a breach of contract). For these reasons, I also find that the nature of Plaintiff's allegations render further amendment futile. *See Cuoco v. Mortisugu*, 222 F.3d 99, 112 (2d Cir. 2000) (repleading should be denied when problem with cause of action is substantive and repleading would be futile).

For the foregoing reasons, Defendants' motion to dismiss, (Doc. 67), is GRANTED and the case is DISMISSED with prejudice. The Clerk if Court is respectfully directed to mail a copy of this Order to the pro se Plaintiff and close the case.

SO ORDERED.

Dated: March 28, 2017
New York, New York

Vernon S. Broderick
United States District Judge