

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-6681 ODW (AGR_x) Date September 17, 2009

Title *Greg D. Crowder and Tony Freitas v. NBC Universal, Inc., et al.*

Present: The Honorable Otis D. Wright II, United States District Judge

Raymond Neal

Not Present

n/a

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): Order DENYING Plaintiffs' Application for Temporary Restraining Order

Pending before the Court is Plaintiffs Greg D. Crowder and Tony Freitas's ("Plaintiffs") Application for Temporary Restraining Order, filed September 16, 2009. After carefully considering the moving papers, supporting documents and exhibits, and Defendants' Opposition, Plaintiffs' application is DENIED for the reasons stated below.

"The standard for a temporary restraining order [] and a preliminary injunction are the same." *Frontline Medical Associates, Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009) (citing *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F.Supp. 1320, 1323 (N.D. Cal. 1995)). The movant must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. NRDC, Inc.*, --- U.S. ---, 129 S.Ct. 365, 374 (2008). "In each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Village of Gambell, AK*, 480 U.S. 531, 542 (1987).

Here, the facts of the case are straightforward. Plaintiffs allege that they wrote a screenplay in 2006 entitled *Truth*. Plaintiffs allegedly pitched their screenplay to film producers associated with Defendant NBC Universal, Inc. While individuals at NBC Universal allegedly expressed an interest in Plaintiffs' screenplay, a deal was never brokered, and Plaintiffs' screenplay was never produced.

Three years later, on August 2, 2009, Plaintiffs learned of NBC Universal's recent film entitled *Love Happens*, currently scheduled for release on September 18, 2009. Plaintiffs contend that *Love Happens* is substantially similar to their screenplay *Truth* and

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have thus filed the instant lawsuit. Plaintiffs' Complaint asserts the following five claims for relief: (1) Copyright Infringement; (2) Violation of the Lanham Act; (3) Breach of Implied Contract; (4) Preliminary and Permanent Injunction; and (5) Declaratory Relief.

A prima facie case of copyright infringement consists of two elements, both of which Plaintiff must prove: "(1) ownership of the copyright; and (2) infringement—that the defendant copied protected elements of the plaintiff's work. Absent direct evidence of copying, proof of infringement involves fact-based showings that the defendant had 'access' to the plaintiff's work and that the two works are 'substantially similar.'" *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000) (citations omitted). However, even where there is no proof of access, the copyright holder may prove copying by showing that the copyright holder's and alleged infringer's works are "strikingly similar." *Three Boys Music Corp.*, 212 F.3d at 485. By the same token, where a high degree of access is shown, a lesser showing of substantial similarity is required. *Id.*; see *Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir. 1996). Each element is addressed in turn.

Copyright "[r]egistration is generally a jurisdictional prerequisite to a suit for copyright infringement." *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1154 n.1 (9th Cir. 2007) (citing 17 U.S.C. § 411). Plaintiffs have submitted a copy of a Certificate of Registration from the U.S. Copyright Office for the screenplay *Truth* dated August 20, 2009. Thus, because it appears Plaintiffs have a valid copyright (i.e., ownership), the Court has jurisdiction over the matter and it may now proceed to a brief analysis of the second element: copying.

As noted, in proving copying, Plaintiffs are assisted by certain "inverse ratio" rules. In other words, if Plaintiffs are able to establish a high degree of access, their corresponding burden of proving substantial similarity is lessened. Conversely, if the two works are "strikingly" similar, Plaintiffs' inability to prove access is essentially immaterial. In this case, Plaintiffs have presented some evidence of access, though the admissibility of such evidence is questionable. Furthermore, Defendants have submitted equally compelling declarations, which, for purposes of injunctive relief, cast serious doubt on Plaintiffs' ability to succeed on the merits.

As to substantial similarity, the Court is of the same opinion. Indeed, upon careful examination of the competing screenplays at issue, it appears that the two are not at all similar, let alone substantially or strikingly similar. While it is true that the main character in both screenplays is a self-help guru and best-selling author, the dialogue, plots, genres, themes, and supporting characters are extremely dissimilar. Therefore, it appears that, at this stage of the litigation, Plaintiffs are not likely to succeed on the

