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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNIVERSAL CITY STUDIOS
PRODUCTIONS, LLLP, a Delaware
limited liability limited partnership,

Plaintiff,

v.

SHAWN HOGAN,

Defendant.

CASE NO. 06-CV-545 W (WMC)

ORDER DENYING MOTION
TO DISMISS

On March 14, 2006, Plaintiff Universal City Studios Productions, LLLP (“Universal”) filed a copyright-infringement action. Universal alleged that Defendant Shawn Hogan put Universal’s movie *Meet the Fockers* online and made it available for download. After some discovery, Hogan filed a motion to dismiss arguing that the court lacks subject matter jurisdiction because Universal’s federal copyright registration was invalid, or because Universal lacks standing. The Court **DENIES** the motion.

1 **I. Facts and Legal Standards**

2 Federal jurisdiction over copyright-infringement actions stems from the Copyright
3 Act, 17 U.S.C. § 101 *et seq.* To file in federal court, a plaintiff must have a federally
4 registered copyright. See 17 U.S.C. § 411 (2000). Possession of a copyright creates a
5 rebuttable presumption of validity in favor of the copyright owner. 17 U.S.C. § 410
6 (2000). Without a valid federal registration, a case presents no federal question or
7 copyright claim. Thus, if the defendant rebuts the presumption of validity, the court
8 must dismiss for lack of subject-matter jurisdiction. Chi. Bd. of Educ. v. Substance, Inc.,
9 354 F.3d 624, 631 (7th Cir. 2003).

10 On a motion to dismiss, the court usually construes the complaint liberally, and
11 takes all reasonable inferences in the plaintiff's favor. But Universal suggests that a
12 summary-judgment standard applies instead. See L.A. News Serv. v. Conus
13 Communications Co., 969 F. Supp. 579, 582 (C.D. Cal. 1997). “[W]hen a statute
14 provides the basis for both the subject matter jurisdiction of the federal court and the
15 plaintiff[’s] substantive claim for relief, a motion to dismiss for lack of subject matter
16 jurisdiction rather than for failure to state a claim is proper only when the allegations
17 of the complaint are frivolous.” Thornhill Pub. Co. v. Gen. Tel. & Elec. Corp., 594 F.2d
18 730, 734 (9th Cir. 1979). Thornhill was a Sherman Act case that required the allegedly
19 unfair competition to have a substantial connection to interstate commerce to sustain
20 jurisdiction under 28 U.S.C. § 1337. Like Thornhill, this Copyright Act case requires
21 a validly registered copyright to sustain jurisdiction under 28 U.S.C. § 1338. There, as
22 here, the jurisdictional facts were intertwined with the merits. Thus, the Court agrees
23 that the summary-judgment standard applies to Hogan’s motion.

24 Universal attached to its complaint a copyright registration dated January 25,
25 2005. (Compl. Ex. A.) Hogan argues that the registration is invalid because the
26 copyright registration lists Universal City Studios, LLLP, not the Plaintiff (Universal
27 City Studios *Productions*, LLLP); and Universal City Studios, LLLP assigned its rights in
28 the movie on November 29, 2004, so it had nothing to register on January 25, 2005.

1 Universal responds that an inadvertent mistake does not invalidate a copyright
2 registration, and thus does not strip the court of jurisdiction. Further, Universal filed
3 a supplementary registration naming itself as the rightful copyright owner effective
4 October 20, 2006, which it believes corrected any jurisdictional defect. For Hogan to
5 prevail, he must show that no genuine issue as to any material jurisdictional fact remains
6 for trial. As the Court will explain, he has failed to do so.

7
8 **II. Discussion**

9 **A. Hogan has not shown fraud or prejudice from Universal's registration error.**

10 Courts take a liberal approach to errors in copyright registrations. Serious
11 errors—even in the claimant's name—do not invalidate copyright registrations in the
12 absence of fraud before the Copyright Office or prejudice to the alleged infringer.
13 Urantia Found. v. Maaherra, 114 F.3d 955, 963 (9th Cir. 1997). Otherwise, the
14 infringer would get a “free pass” to infringe, essentially because of a technicality. See id.
15 Also, invalidating unintentionally erroneous registrations would undermine the
16 provision of the Copyright Act permitting supplemental registrations to correct
17 misidentified claimants or authors. See 17 U.S.C. § 408(d).

18 Hogan presents evidence that Universal City Studios, LLLP had no rights in the
19 movie when it applied for copyright registration. On that factual point, he is
20 correct—but his legal argument is fatally flawed. Hogan has not even suggested that
21 either Universal entity defrauded the Copyright Office, nor has he shown prejudice due
22 to the error. Instead, he seeks to avoid addressing the merits of the copyright-
23 infringement claim by pointing out an error in the registration. Fortunately (for authors,
24 claimants, and the general public), the Copyright Act does not require such rigid
25 adherence to formalities. See Urantia Found., 114 F.3d at 963 (“These cases generally
26 do not require perfection, but instead base their analyses on principles of fair and
27 non-formalistic administration of the copyright laws.”)

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1 At summary judgment, though, the moving party need not present evidence on
2 an issue on which it does not bear the burden of proof at trial. So, even though a
3 copyright registration is prima facie evidence of validity, Hogan correctly points out that
4 Universal would still bear a burden to show that it owns the copyright. (Def.'s Mem. in
5 Reply at 5.) Consequently, at this stage in the litigation, Universal cannot rest merely
6 on the allegations in the complaint to establish that it owns the copyright.

7 But Universal responded to the motion to dismiss with a sworn declaration from
8 Patricia Villalobos, Director of Copyright for NBC Universal, Inc., owner of both
9 Universal and Universal City Studios, LLLP. She states that Universal City Studios,
10 LLLP—the producer of *Meet the Fockers*—assigned its common-law copyright by an
11 agreement dated November 29, 2004. (Villalobos Decl. ¶ 5.) She was not aware of
12 the transfer when she applied for the copyright registration in January 2005. (*Id.* ¶ 6.)
13 Further, she corrected the mistake, naming Universal City Studios Productions, LLLP
14 as the claimant, through a supplemental registration that the Copyright Office accepted
15 in October 2006. (*Id.* ¶¶ 7–8.)

16 Consequently, Universal has met its burden to show through admissible evidence
17 that it owns a valid copyright in the movie. Villalobos's declaration shows that the error
18 was unintentional, not fraudulent. Hogan has not responded with even a scintilla of
19 evidence to explain why the copyright would nonetheless be invalid. Instead, Hogan
20 claims that a clerical error or inadvertent mistake would require Villalobos to have
21 known about the assignment agreement. (Def.'s Mem. in Reply at 6.) But failure to
22 disclose known facts is a hallmark of *fraud*, not of a clerical error. Moreover, the *same*
23 *human being* had actual and apparent authority to submit copyright registrations for both
24 Universal entities, rendering Hogan's attempt to distinguish between acts of the two
25 companies inapposite. (*Id.*) This is not a case where an entirely unrelated third party
26 seeks a copyright registration, somehow without defrauding the copyright office. Rather,
27 this is the odd case where the third party is also a former owner, and the former owner
28 and the present owner use the same agent to register copyrights.

1 Most important, Hogan has not cited a case that directly supports his position.
2 Thus, in keeping with “fair and non-formalistic administration of the copyright laws,”
3 see Urantia Found., 114 F.3d at 963, the Court declines to fashion new case law
4 invalidating a copyright simply because an uninformed corporate agent misidentified the
5 claimant. While Universal’s failure to notify Villalobos of the assignment was more
6 serious than a simple typographical error, it does not rise to the level of fraud or make
7 the registration “fatally defective.” It does not appear, then, that the Court lacks
8 subject-matter jurisdiction, so it **DENIES** the motion.

9
10 **B. Universal does not lack standing.**

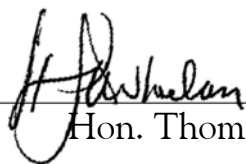
11 Hogan also argues that Universal lacks standing to bring the infringement action.
12 He effectively rehashes the inverse of his first argument: (1) Universal must prove that
13 it owns the copyright; (2) Universal cannot rely on the November 2004 assignment
14 agreement, because if it does, the registration dated January 25, 2005 would be invalid;
15 and (3) Universal has not alleged any other means of acquiring the copyright. Again,
16 Hogan misapprehends the law. The Court has already explained that a registration does
17 not become invalid simply because of a mistake. So Universal may rely on the
18 assignment agreement. Thus, the Court **DENIES** the motion on this basis as well.

19
20 **III. Conclusion**

21 For the foregoing reasons, the Court hereby **DENIES** Defendant’s motion to
22 dismiss.

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24 **IT IS SO ORDERED.**

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26 DATED: Dec 11, 2006

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Hon. Thomas J. Whelan

United States District Judge

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