

Miczura v Knowles
2015 NY Slip Op 32351(U)
December 10, 2015
Supreme Court, New York County
Docket Number: 162333/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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MÓNIKA JUHÁSZ MICZURA p/k/a "MITSOU",

Plaintiff,

-against-

Index No. 162333/2014

DECISION/ORDER

BEYONCÉ KNOWLES p/k/a/ "BEYONCÉ",
PARKWOOD ENTERTAINMENT, LLC, SONY
MUSIC ENTERTAINMENT, INC., COLUMBIA
RECORDS, SHAWN CARTER p/k/a "JAY-Z",
NOEL FISHER p/k/a "DETAIL", BRIAN SOKO,
JEROME HARMON, TIMOTHY MOSLEY p/k/a
"TIMBALAND" and JORDAN ASHER p/k/a "BOOTS",

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Mónica Juhász Miczura commenced the instant action against defendants seeking money damages for the allegedly unauthorized use of her voice in defendants' song "Drunk in Love" and a permanent injunction from the continued use of her voice pursuant to New York Civil Rights Law § 51. Defendants now move for an order pursuant to CPLR § 3211(a)(1), (2) and (7) dismissing plaintiff's complaint on the grounds that "Drunk in Love" is a constitutionally protected work of art and therefore is outside the scope of Civil Rights Law § 51 and that plaintiff's claim is preempted by federal copyright law pursuant to 17 U.S.C. § 301(a). For the reasons set forth below, defendants' motion to dismiss is granted.

Plaintiff's complaint alleges as follows. Plaintiff is a Hungarian Roma singer. From 1994 to 2000, plaintiff was a member of the Roma band Ando Drom. In 1995, plaintiff recorded an a cappella version of the Roma song "Bajba, Bajba Pélem" for inclusion on Ando Drom's album "Kaj Phirel o Del?" The record was re-released in the United States in 1997 as "Gypsy Life on the Road." Plaintiff learned that her voice was featured in "Drunk in Love," the lead single of the self-titled album "Beyoncé," after receiving phone calls from friends. Plaintiff's voice, which was digitally sampled and altered from her recording of "Bajba, Bajba Pélem," is used in three portions of "Drunk in Love." Together, plaintiff's voice is featured for over one and a half minutes of the song, including the first thirteen seconds of the song, which features her voice singing a cappella. "Drunk in Love" reached the top of Billboard's Hot R&B/Hip Hop Songs chart and has been nominated for and has won various awards. The "Drunk in Love" music video, which also features plaintiff's voice, has been viewed on YouTube over 236 million times, as of the time of plaintiff's complaint. Plaintiff did not authorize the use of her voice in "Drunk in Love."

On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept. 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977) (quoting *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956)). However,

“conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss.” *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009).

Defendants move for an order dismissing plaintiff’s complaint on the ground that the “Drunk in Love” song and video are constitutionally protected works of art and therefore are outside the scope of Civil Rights Law § 51, which provides:

Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without...written consent...may maintain an equitable action...and may also sue and recover damages for any injuries sustained by reason of such use...

Courts have consistently held that Civil Rights Law § 51 does not apply to works of literary and artistic expression. *See Foster v. Svenson*, 128 A.D.3d 150, 156-57 (1st Dept 2015). Thus, when a plaintiff’s name, portrait, picture or voice is used in a work of artistic expression without her written consent, she has no recourse pursuant to Civil Rights Law § 51. *See id.* at 158-59. Similarly, Civil Rights Law § 51 does not apply to advertising used to promote the work of art. *Id.* at 160. Defendants’ motion to dismiss plaintiff’s complaint is granted as it is undisputed that the “Drunk in Love” song and video are works of artistic expression and, pursuant to well-established law, they are therefore exempted from Civil Rights Law § 51.

Plaintiff’s argument in opposition that the “Drunk in Love” song and video are not exempted from Civil Rights Law § 51 as works of artistic expression because portions of the “Drunk in Love” song and video were used in HBO advertisements and a series promoting defendant Beyoncé Knowles’s concert tour is without merit. The use of the “Drunk in Love” song and video in the HBO advertisements and series does not vitiate their character as works of artistic expression exempted from Civil Rights Law § 51. As it is well established that Civil Rights Law § 51 does not apply to advertising used to promote a work of art, Civil Rights Law §

