

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

AF HOLDINGS, LLC	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	2:12-cv-00262-WCO
	:	
RAJESH PATEL,	:	
	:	
Defendant.	:	

Defendant’s Notice of Objection

COMES NOW, Rajesh Patel, by and through counsel, filing this **Defendant’s Notice of Objection**, objecting to the authenticity of a purported affidavit located at Dkt. No. 127-1. Defendant also objects to the authenticity of Dkt. No. 126-2 as it appears to be a copy and paste from somewhere.

Relevant Facts and Procedural History

At the July 2, 2013 hearing in this case, Defendant argued that the copyright assignment in this case contained the forged signature of “Alan Cooper” but also that the assignment agreement at issue was not authentic in any legal sense of the word:

We would also object to the authenticity of the assignor’s signature on there because of Prenda’s long history of using shell companies, which there’s more than ample evidence of, appropriating peoples’ personalities.

...

There's a forged signature – we would argue there's a forged signature on the copyright assignment agreement from the original owner to the plaintiff.

...

We would just – we don't believe that the copyright assignment is authentic

Dkt. No. 64, p.9. *See generally* Dkt. No. 16 (discussing various shell entities and the likely appropriation of Mr. Cooper's identity as well as an "Allan Mooney" and "Anthony Saltmarsh."); Dkt. No. 61, p.9-11 (citing the GoDaddy production as additional impersonation or identity theft by Mr. Steele, and attaching audio located at Dkt. Nos. 61-19, 61-25, 61-26).

The Court subsequently granted discovery and Defendant – understandably skeptical – served a subpoena on Biz Xpress, LLC (Dkt. No. 60-12). Biz Xpress, LLC is/was a Nevada entity that, as Defendant discovered, rents mailboxes, and one of those boxes the Nevada Secretary of State showed as the address for Heartbreaker Digital, LLC's registered agent. This subpoena generally sought information concerning the person/entity renting the mailbox. *See* Dkt. 60-12, p.2.

Defendant also served a subpoena directly on this supposed registered

agent's address for Heartbreaker Digital, LLC,¹ generally seeking information regarding any alleged agreements between Heartbreaker Digital, LLC and AF Holdings, LLC and between Heartbreaker Digital, LLC and "Nina Mercedez" (the female star in the film). *See* Dkt. 68-7, p.3. Defendant was unable to obtain compliance (as of yet...) because of issues concerning two motions filed by Plaintiff already briefed and not directly relevant here.

On December 18, 2013, the Court ordered Plaintiff to show cause as to why it should not be sanctioned on *inter alia* two specific issues [90, p.20]:

- 1) "Whether plaintiff committed a fraud on this court by initiating a lawsuit that it lacked standing to bring."
- 2) "Whether issue preclusion bars plaintiff from relitigating its standing to assert claims based on Popular Demand copyright."

The Court also ordered that it would, "as part of its show cause order . . . require plaintiff to produce the original assignment agreement." [90, p.7-8]. The Court emphasized that:

. . . plaintiff must produce the original assignment agreement for inspection. If a party wishes to present testimony that it deems critical to its case, the party should be prepared to solicit that testimony through a live witness. The parties are on notice that they may not use affidavits as a means to circumvent cross examination." –

¹ The alleged "assignor" for the assignment agreement in this case.

22.

Id at 22.

It is important to note that the purported affidavit of Mr. Rogers was filed in Judge Wright's case in California on April 8, 2013 – *well before* the Court's order to show cause and even *before* this Court granted discovery. *Ingenuity 13, LLC v. John Doe*, CACD 2:12-cv-08333, Dkt. No. 108-2 (filed **April 8, 2013**). Defendant was also able to locate two additional cases where the document was filed:

- **May 29, 2013** – *AF Holdings, LLC v. Harris*, AZD, 2:12-cv-02144, Dkt. No. 59-1 (filed by Steven Goodhue – *See* Dkt. No. 59, p.2).²
- **August 26, 2013** – *AF Holdings, LLC v. Hean*, MND, 0:12-cv-01449, Dkt. No. 54-8 (filed by Paul Hansmeier – *see* Dkt. No. 54, p.27).³

On January 28, 2014, a hearing was held and Plaintiff failed to produce the assignment agreement as ordered. Also, despite having filed it in previous actions months earlier, it did not seek to admit into evidence the affidavit from Mr. Rogers.

Regarding the copyright assignment that was not produced, Mr. Nazaire elicited

² Incidentally, counsel for Defendant filed an affidavit in Judge Wright's case regarding a phone call received from "Tommy Labriola" purportedly at the behest of Mr. Goodhue. *See* Dkt. No. 29-1 in this case. The phone number called (1-800-380-0840) is listed by Mr. Duffy as his number at "Anti-Piracy Law Group having the same address as Prenda. *See e.g.* Exhibits submitted to the Court at the November 20, 2014 hearing.

³ The same Paul Hansmeier referenced by Judge Wright's order that this Court in part adopted.

the following testimony from Mr. Lutz at the hearing:

Q. Did you have that assignment?

A. I did not, no.

Q. Did AF Holdings have it or somebody on behalf of AF Holdings?

A. Our attorney Brett Gibbs would have handled that.

A true and correct copy of the transcript is attached hereto as Exhibit A, page 8, ln.18.

The January 28th hearing was cut short because of inclement weather and the Court in its order re-scheduling gave Plaintiff another chance [121, 1-2]:

Additionally, as discussed in the previous hearing, the court expects plaintiff to produce the original assignment agreement at the rescheduled hearing. (*See Minutes, ECF No. 09*). If plaintiff is unable to produce the original assignment agreement, plaintiff should be prepared to explain why it is unable to produce that agreement. The explanation should be accompanied by supporting evidence (telephone records, emails, records from other court proceedings, etc.) that provide an adequate explanation as to why plaintiff has been unable to recover its own property from its former attorney. Finally, in the event that plaintiff cannot produce the original assignment agreement, it must provide a copy supported by sufficient indicia of authenticity.

The continued hearing was held on November 20, 2014 and Plaintiff did not produce the original assignment agreement, a copy and seek to authenticate it nor

seek to admit into evidence the purported affidavit of Mr. Rogers. And despite the affidavit being filed in at least three cases over a year prior, Plaintiff did not mention the issue of the elements of a copyright assignment until its closing argument, and even then it did not seek to admit into evidence the purported “affidavit” of Mr. Rogers or provide supporting evidence in the form of “telephone records, emails, records from other court proceedings, etc.” as instructed by the Court [121, p.1-2].

Recently, on November 16, 2014, Mr. Nazaire filed a request for judicial notice that had attached to it what purports to be an “acknowledgement” signed by one “Ray Rogers.” [127-1]. The request for judicial notice that it was attached to did not specify the specific fact that was requested to be judicially noticed. [See 127]. Forty-five minutes before the November 20, 2014 hearing, Exhibit B,⁴ and while counsel for Defendant was *en route* to the courthouse and/or setting up his computer in the courtroom, Plaintiff filed a “supplemental brief” that, relying on Dkt. No. 172-1, argued that it did not lack standing to bring this lawsuit because the transfer of a copyright only requires (1) a writing that is (2) signed by the assignor. Dkt. No. 132, p.8 (citations omitted). The brief goes on to state that the purported copyright assignment attached to the complaint “was written and it was

⁴ Which may explain why Mr. Duffy was late to the hearing rather than his plane.

signed by the copyright owner,” *id* at 9, and makes similar arguments throughout:

Statement	Page of Brief
“[n]either of these elements is even in dispute”	9
“No could they be. Raymond Rogers signed an affidavit . . .”	9.
“Cooper’s signature is utterly irrelevant to the mechanics of copyright transfer”	10

Five days after the hearing, Plaintiff filed a “notice of order” reiterating that the transfer of a copyright has two elements and that “[n]either of those elements is in dispute with respect to the ‘Popular Demand’ copyright.” *Id* at 2. Plaintiff then mischaracterizes Dkt. No. 127-1 as an “affidavit” and concludes yet again that “[t]he affidavit is notarized and has not been challenged in any manner.” *Id*.

Defendant requests judicial notice of the following statutes true and correct copies of which are attached as Exhibit C:

- Nev. Rev. Stat. 240.060, providing that a notary may “perform notarial acts.”
- Nev. Rev. Sta. 240.004, providing that a “notarial act” means *inter alia* taking an “acknowledgement” or executing a “jurat.”
- Nev. Rev. Stat. 240.002 – defining an “acknowledgement” as a “declaration by a person that he or she has executed an instrument for the purposes stated therein and, if the instrument is executed in a

representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity . . .”

Nev. Rev. Stat. 240.0035 – defining a “Jurat” as a “declaration . . . that the signer of a document . . . swore to or affirmed that the statements in the document are true.”

Defendant’s Objections

Considering the foregoing, Defendant humbly reiterates its objection to the authenticity of the purported copyright assignment and objects to the purported “affidavit” of one “Ray Rogers.”

First, considering the facts of this case as well as findings in other cases, and now in this case, especially due to the Court’s partial findings, lead Defendant to object as to authenticity.

Second, the requisite notary “wording” at the bottom states that it is an “acknowledgement” and not a “jurat.” Pursuant to the above Nevada law, a “jurat” is essentially an affidavit as Plaintiff argues in Dkt. Nos. 132 and 136 in this case. As the above statutory definition describes, however, an “acknowledgment” pertains to documents attached to the acknowledgement. With respect to this self-titled “affidavit,” **Paragraphs 3 and 4** purportedly seeks to “acknowledge” the copyright assignments attached as “Exhibit A” and “Exhibit B.” However, these

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Defendant.	:	

Certificate of Service

I hereby certify that on November 26, 2014, I filed the **Defendant’s Notice of Objection** using the Court’s CM/ECF system, which will e-mail a copy to the attorneys’ of record:

Jacques Nazaire (for Plaintiff)

Dated November 26, 2014:

Respectfully Submitted:

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