IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

YOLAND PATRICK,

Plaintiff,

v.

APRIL LOUISE POREE,

Defendant.

Civil Action No.
1:22-cv-04236-VMC

ORDER

This matter is before the Court on Plaintiff Yoland Patrick's Motion for Default Judgment.[1] (Doc. 15). For the reasons that follow, the Court will deny Plaintiff's Motion.

I. Background

This action was commenced by Plaintiff Yoland Patrick's filing of a Complaint for copyright infringement on October 24, 2022. (Doc. 1). Ms. Patrick alleges that she is the "exclusive owner" of a sound recording entitled "I Do What I Want," U.S. Copyright Registration No. SRu001374377 (the "Song" or the "Work"). (Doc. 15-6 ¶ 7). Accordingly, she alleges that Defendant April Louise Poree, a co-author of the Song, is willfully infringing her copyright by performing

[1] Ms. Patrick also styles her Motion as a motion for summary judgment, in the alternative. To the extent she seeks summary judgment, it is also denied.

the Song and making it available for use in television shows and airplay on radio and internet streaming. (Doc. 15-6 ¶¶ 9-16). The copyright registration for the Work was applied for on July 8, 2019. (Doc. 15-1 ¶ 1; Doc. 15-5 at 30-33). The registration for the Song was granted the same day. (Doc. 15-1 ¶ 2; Doc. 15-4 at 25-27).

Ms. Poree was personally served on November 16, 2022. (Doc. 14-2). Ms. Poree has not appeared in or otherwise defended this action. The Court previously held a hearing on Ms. Patrick's Motion for Preliminary Injunction (Doc. 3) on December 7, 2022. (Doc. 10). The Court denied Ms. Patrick's Motion for Preliminary Injunction, finding that she had not shown a likelihood of success on the merits of her claim. (Doc. 13 at 3-4).

On December 15, 2022, Ms. Patrick moved for entry of default, which the Clerk granted. (Doc. 14). Ms. Patrick now seeks default judgment. In support of her Motion, she submits various exhibits purporting to show Ms. Poree's infringement and alleged profits from the use of the Song, as well as affidavits from herself and Sherman Laneth Patrick. (Docs. 15-1 - 15-7).

II. Legal Standard

If a defendant fails to plead or otherwise defend a lawsuit within the time required by Federal Rule of Civil Procedure 12(a)(1)(A), upon motion, the clerk must enter default against the defendant pursuant to Federal Rule of Civil

Procedure 55(a). A default constitutes admission of all well-pleaded factual allegations contained in the complaint, but is not considered an admission of facts that are not well-pleaded or conclusions of law. *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005). "Before a default can be entered, the court must have subject-matter jurisdiction and jurisdiction over the party against whom the judgment is sought, which also means that the party must have been effectively served with process." Wright & Miller, 10A Fed. Prac. & Proc. Civ. § 2682 (4th ed.) (citations omitted).

Once a default has been entered, the Court has the "discretion in determining whether the judgment should be entered." *Patray v. Nw. Publ'g, Inc.*, 931 F. Supp 865, 868 (S.D. Ga. 1996) (internal footnote and citation omitted); Fed. R. Civ. P. 55(b): *see also Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1576 (11th Cir. 1985) ("The entry of a default judgment is committed to the discretion of the district court.").

The Eleventh Circuit has made clear that entry of judgment by default is not granted as a matter of right and is judicially disfavored because there is a "strong policy of determining cases on their merits." *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1244-45 (11th Cir. 2015) (citation omitted); *see also Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1316-17 (11th Cir. 2002) ("Entry of judgment by default is a drastic remedy which should be used only in extreme

situations, . . . we must respect the usual preference that cases be heard on the merits rather than resorting to sanctions that deprive a litigant of his day in court.").

Entry of default judgment is only warranted when there is "a sufficient basis in the pleadings for the judgment entered." *Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F. 2d 1200, 1206 (5th Cir. 1975). Although *Nishimatsu* did not elaborate as to what constitutes "a sufficient basis" for the judgment, courts have subsequently interpreted the standard as being akin to that necessary to survive a motion to dismiss for failure to state a claim. *See Chudasama v. Mazda Motor Corp*., 123 F.3d 1353, 1370 n. 41 (11th Cir. 1997) ("[A] default judgment cannot stand on a complaint that fails to state a claim."). Conceptually, then, a motion for default judgment is like a reverse motion to dismiss for failure to state a claim. *See Wooten v. McDonald Transit Assocs., Inc.*, 775 F.3d 689, 695 (5th Cir. 2015) (stating in the context of a motion for default judgment, "whether a factual allegation is well-pleaded arguably follows the familiar analysis used to evaluate motions to dismiss under Rule 12(b)(6)").

When evaluating a motion to dismiss, a court looks to see whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face."' *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This plausibility

standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556); *Surtain*, 789 F.3d at 1245 (footnote omitted). "The court must therefore examine the sufficiency of plaintiff's allegations to determine whether plaintiff is entitled to an entry of judgment by default." *Fidelity & Deposit Co. of Md. v. Williams*, 699 F. Supp. 897, 899 (N.D. Ga. 1988). The Supreme Court has explained that the pleading standard of Rule 8 of the Federal Rules of Civil Procedure does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement. *Iqbal*, 556 U.S. at 678 (citations and quotations omitted)."This analysis is equally applicable to a motion for default judgment." *Edenfield v. Crib 4 Life, Inc.*, No. 6:13-CV-319-Orl-36KRS, 2014 WL 1345389, at *2 (M.D. Fla. Apr. 4, 2014) (adopting report and recommendation) (citing *De Lotta v. Dezenzo's Italian Rest., Inc.*, No. 6:08-CV-2033-Orl-22KRS, 2009 WL 4349806, at *5 (M.D. Fla. Nov. 24, 2009)).

Further, the Court may only enter a judgment by default without a hearing where the amount of damages is a liquidated sum or one capable of mathematical calculation. Fed. R. Civ. P. 55(b): *Jenkins v. Clerk of Court*, 150 F. App'x 988, 989 (11th

Cir. 2005). Whether to hold a hearing is committed to the Court's discretion. *DIRECTV, Inc. v. Huynh*, 318 F. Supp, 2d 1122, 1129 (M.D. Ala. 2004) (citing Fed. R. Civ. P. 55(b)(2)).

A plaintiff seeking a default judgment award under Rule 55(b)(1) must supply an affidavit and evidence supporting that she is entitled to a specific, certain sum of money. A claim is not a sum certain unless there is no doubt as to the amount to which a plaintiff is entitled as a result of the defendant's default. Examples of actions seeking a sum certain include actions on money judgments and negotiable instruments. *Lubin, Sarl, a French Co. v. Lubin N. Am., Inc.*, No. 1:13-CV-2696-AT, 2014 WL 11955396, at *2 (N.D. Ga. Apr. 10, 2014) (citations and internal punctuation omitted).

III. Discussion

The Court finds that entry of default judgment is unwarranted because Plaintiff's well-pleaded facts are insufficient to state a claim for copyright infringement. To establish a prima facie case of copyright infringement, "two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1232–33 (11th Cir. 2010) (quoting *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991)). "To satisfy *Feist*'s first prong, a plaintiff must prove that the work . . . is original and that the plaintiff complied with applicable

statutory formalities." *Id.* (quoting *Bateman v. Mnemonics, Inc.*, 79 F.3d 1532, 1541 (11th Cir. 1996)).

The problem here lies with the first prong of the claim. Ms. Patrick has not established that she has ownership or exclusive license in the Song. Ms. Patrick has submitted a copy of the copyright registration for the Song, as shown on the copyright Official Public Catalog located at cocatalog.loc.org,[2] in support of her claim. (Doc. 1-1, the "Registration"). The Registration is dated July 8, 2019, and shows Sherman Laneth Patrick and Ms. Poree listed on the line for "Copyright Claimants," Sherman Laneth Patrick and Ms. Poree listed on the line for "Authorship on Application," and Ms. Patrick listed on the line for "Rights and Permissions." (*Id.*).

Importantly, as noted above, the Registration lists Ms. Patrick's name only in the Rights and Permissions field, not in the Claimant or Authorship fields. To the extent Ms. Patrick claims she is "listed as the exclusive owner of the Work" based on her name appearing in the Rights and Permissions field of the Registration, she is incorrect. As indicated by the Compendium of U.S. Copyright Office Practices, the "Rights and Permissions" information on a copyright listing

[2] It is established law that a court may take judicial notice of government websites. *Lamonte v. City of Hampton, Ga.*, 576 F. Supp. 3d 1314, 1327 n.12 (N.D. Ga. 2021) (citing Fed. R. Evid. 201(b)(2); *Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co.*, 309 F. Supp. 3d 1216 n. 4 (S.D. Fla. 2018)).

is an optional field on the online application: "The applicant may provide the name, address, and other contact information for the person and/or organization that should be contacted for permission to use the work. Providing this information is optional and an application will be accepted even if this portion of the application is left blank."[3]

All copyright interests are originally vested in the authors of a work; here, Mr. Patrick and Ms. Poree. *See* 17 U.S.C. § 201. Ms. Patrick has shown no evidence that any rights to the Song were transferred to her by a written instrument or in some other fashion. At most, Ms. Patrick's affidavit states that she was a former manager of Ms. Poree's, and that they had a verbal agreement that Ms. Patrick would "hold the exclusive rights and permissions for the Work to direct the licenses and permissions." (Doc. 15-6 ¶¶ 8-9).

Mr. Sherman Patrick, the other listed claimant on the Registration, also provided an affidavit. (Doc. 15-7). His affidavit states that he was the "producer/composer" for the Song, and he was the one who submitted the application for copyright registration on or about July 8, 2019. (Doc. 15-7 ¶¶ 3, 8, 10). He states that "[i]n the submission of the application for the copyright

[3] U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 622.1 Rights and Permissions Information (3d ed. 2021), https://www.copyright.gov/comp3/docs/compendium.pdf (last accessed June 28, 2023).

registration, [he] specifically listed [Ms. Patrick] as the owner of the exclusive rights and permissions for the Work," and Ms. Poree was "aware of" and "agreed to" the transfer of intellectual property interests to Ms. Patrick. (Doc. 15-7 ¶ 11).

These affidavits are insufficient to establish that Ms. Poree granted an exclusive license to Ms. Patrick in the Song. The Copyright Act provides that "[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent." 17 U.S.C. § 204. The Eleventh Circuit has found that the Copyright Act "requires a writing for all exclusive transfers of copyright," including an exclusive license. *Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1235 (11th Cir. 2010) (citing 17 U.S.C. § 204(a)); *see also Karlson v. Red Door Homes, LLC*, 611 F. App'x 566, 569 (11th Cir. 2015) ("A copyright owner can transfer copyright ownership through the grant of an exclusive license, but the grant must be in writing").

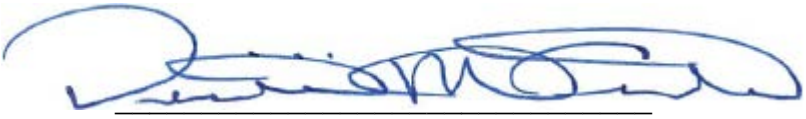
Therefore, evidence of a "verbal agreement" between Ms. Patrick and Ms. Poree is insufficient to establish the transfer of exclusive copyright interests to Ms. Patrick. And to the extent Ms. Patrick contends that Mr. Patrick, as a co-owner, could transfer exclusive license to her without Ms. Poree's written consent, she is incorrect. *See Davis v. Blige*, 505 F.3d 90, 99 (2d Cir. 2007) ("An owner may not,

however, convey the interests of his fellow co-owners without their express written consent[.]"); *Sybersound Recs., Inc. v. UAV Corp.*, 517 F.3d 1137, 1146 (9th Cir. 2008) ("[U]nless all the other co-owners of the copyright joined in granting an exclusive right to Sybersound, TVT, acting solely as a co-owner of the copyright, could grant only a nonexclusive license to Sybersound because TVT may not limit the other co-owners' independent rights to exploit the copyright."). Because Ms. Patrick has failed to plead the existence of a writing transferring copyright ownership or exclusive license, and has provided no evidence of such a writing, she fails to show valid ownership of the Song and therefore does not state a claim for copyright infringement.

IV. Conclusion

For these reasons, Plaintiff's Motion for Default Judgment is **DENIED**. Plaintiff's alternative Motion for Summary Judgment is also **DENIED**. The Court hereby notifies Plaintiff that it intends to dismiss the Complaint for failure to state a claim. On or before July 13, 2023, Plaintiff is **DIRECTED** to show cause in writing why her Complaint should not be dismissed for failure to state a claim. Failure to respond will result in dismissal of this action with prejudice.

SO ORDERED this 28th day of June, 2023.



Victoria Marie Calvert
United States District Judge