

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CATHERINE CONRAD,

Plaintiff,

v.

JAMES BENDEWALD, MARIA VEDRAL
and SILVER EDGE SYSTEMS SOFTWARE, INC.,

Defendants.

ORDER

11-cv-305-bbc

Plaintiff Catherine Conrad has filed a motion for leave to amend her complaint for two purposes: (1) to add a right of publicity claim; and (2) to add several new defendants. I am denying the motion as futile. Bethany Pharmacal Co. v. QVC, Inc., 241 F.3d 854, 861 (7th Cir. 2001) (motion for leave to amend may be denied if proposed claims do not have merit).

Plaintiff is proceeding on a claim that defendants James Bendewald, Maria Vedral and Silver Edge Systems Software, Inc. infringed plaintiff's copyright in her song "As Strong as I Can Be" by recording her performance of the song without her permission. She included a claim for a violation of her right of publicity in her original complaint, but I dismissed that

claim because she did not allege that any of the defendants used her name, picture or any other aspect of her identity for any commercial purpose, which is one of the requirements of the claim. Hirsch v. S.C. Johnson & Son, Inc., 90 Wis. 2d 379, 397-98, 280 N.W.2d 129, 138 (1979); Wis. Stat. § 995.50(2)(b).

An initial problem with plaintiff's proposed amended complaint is that it includes only the new allegations; it does not incorporate the allegations of her previous complaint. Once a plaintiff files an amended complaint, it "supersedes an original complaint and renders the original complaint void." Flannery v. Recording Industry Association of America, 354 F.3d 632, 638 (7th Cir. 2004). See also Massey v. Helman, 196 F.3d 727, 735 (7th Cir. 1999)("[W]hen a plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward."). In other words, a case may have one operative pleading only; a plaintiff may not add to a complaint in piecemeal fashion. As I have informed other pro se plaintiffs, "parties are not allowed to amend a pleading by simply adding to or subtracting from the original pleading in subsequent filings scattered about the docket. If [plaintiffs] wish to amend their complaint, they must file a proposed amended complaint that will completely replace the original complaint. . . . [T]here can be only one operative complaint in the case." Boriboune v. Berge, No. 04-C-15-C, 2005 WL 256525, *1 (W.D. Wis. Jan. 31, 2005).

The reason for such a rule is plain enough. If the "operative pleading" consists of

multiple documents, the scope of the plaintiff's claims becomes unclear and it becomes difficult if not impossible for the defendants to file an answer. To avoid ambiguity, the complaint must be self-contained in one document.

This defect could be cured, but the amended complaint has other problems as well. With respect to her right of publicity claim, plaintiff includes a number of new allegations in her complaint about defendants' *intent* to use her image and performance for commercial purposes, but she does not allege that they actually did so. Thus, the problem with this claim in the original complaint is still present in the proposed amended complaint. It does not matter whether defendants wanted to put plaintiff on their website; plaintiff must show that defendants *did use* her identity for a commercial purpose.

With respect to the proposed new defendants, plaintiff fails to include any allegations showing that they were involved in any acts of infringement. She says that Leigh Loftus was involved in scheduling a performance by plaintiff, that Think Leigh Photography is owned by Loftus and lists defendant Silver Edge as one of its clients and that defendant Deltek Systems, Inc. and Silver Edge "work together." However, parties cannot be held liable for copyright infringement simply because they have some relationship with other alleged infringers. At a minimum, they must contribute to the infringement or encourage others to do so. Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 930 (2005). Because plaintiff does not include allegations showing that any of these proposed defendants

facilitated infringement of her copyright, it would be pointless to allow plaintiff to amend her complaint to include them.

ORDER

IT IS ORDERED that plaintiff Catherine Conrad's motion for leave to amend her complaint, dkt. #22, is DENIED.

Entered this 1st day of September, 2011.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge