

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

Pro se plaintiff Catherine Conrad is proceeding on a claim that defendants James Bendewald, Maria Vedral and Silver Edge Systems Software, Inc. infringed plaintiff's copyright in the song "As Strong as I Can Be" by video recording her performance of it. Defendants Vedral and Silver Edge have filed a motion to dismiss for failure to state a claim upon which relief may be granted on two grounds: (1) they were not involved in recording the performance; and (2) plaintiff gave defendants permission to record the performance. Defendant Bendewald has joined the motion with respect to the second ground. I am denying the motion.

In the order screening plaintiff's complaint, I concluded that she stated a claim upon

which relief may be granted, so defendants' motion is essentially one for reconsideration of that order. With respect to the first ground of defendants' motion, it is true that plaintiff does not allege that Vedral or Silver Edge videotaped the performance, but that is not required. A party may be held liable for infringement if she induces or encourages others to infringe. Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 930 (2005). Because plaintiff alleges that Benedwald was hired by Vedral and Silver Edge, it is reasonable to infer at this stage that they may be held liable for contributory infringement or inducement.

With respect to defendants' second ground, plaintiff does not allege in her complaint that she gave them permission to record her performance. In fact, in her brief, she says explicitly that "[t]here was no implied license or written consent from" her. Dkt. #21, at 10-11. In addition, she says that she informed defendants "ahead of time that if they desired to videotape her performance . . . they would need a written release with her consent." Id. at 10. Although defendants point to other statements in plaintiff's filings, I cannot resolve these discrepancies in the context of a motion to dismiss. Further, I cannot consider the declaration submitted by defendant Vedral. Miller v. Herman, 600 F.3d 726, 733 (7th Cir. 2010) ("[A] Rule 12(b)(6) motion must be decided solely on the face of the complaint and any attachments that accompanied its filing.").

To the extent that plaintiff did give defendants permission to record her song, she seems to be asserting a claim in the alternative that defendants breached the license agreement by retaining the videotape even after they declined to use the performance on their website or for another commercial purpose. Accordingly, I will allow plaintiff to proceed on that theory as well.

ORDER

IT IS ORDERED that

1. The motions to dismiss the complaint filed by defendants James Bendewald, Maria Vedral and Silver Edge Systems Software, Inc., dkt. ##13 and 18, are DENIED.

2. Plaintiff is GRANTED leave to proceed on a claim in the alternative that defendants breached a license agreement with plaintiff by retaining the videotape of her performance when they declined to use it on their website.

Entered this 9th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge