

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REBECCA FRANCESCATI,
Plaintiff,
v.
STEFANI JOANNE GERMANOTTA
p/k/a LADY GAGA, INTERSCOPE RECORDS,
UNIVERSAL MUSIC GROUP, INC.,
DJ WHITE SHADOW, LLC, and
BRIAN JOSEPH GAYNOR,
Defendants.
No. 1:11-cv-05270
Honorable Marvin E. Aspen
Magistrate Judge Jeffrey T. Gilbert
ECF CASE
JURY TRIAL DEMANDED

DEFENDANTS' MOTION TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants, by and through their undersigned counsel, hereby request this Court take notice of and consider a recent decision granting a motion to dismiss a copyright infringement claim on the basis of lack of substantial similarity, issued by Judge Denise Cote in Edwards v. Raymond, 2014 U.S. Dist. LEXIS 71482, 13 Civ. 7985 (DLC) (S.D.N.Y. May 23, 2014) (attached hereto as Exhibit A). While the Edwards decision was issued by a different judicial district and is not binding on this Court, the decision was interpreting provisions of the United States Copyright Act at issue in this action and thus has direct bearing on this case.

The Edwards decision makes clear that on a dispositive motion, applying the ordinary observer test (followed by the Seventh Circuit and Second Circuit), the court must examine the plaintiffs' and defendants' musical works and if that examination demonstrates that the works are not substantially similar as a matter of law, the infringement claims must be dismissed; no expert analysis or allegations of substantial similarity may save the plaintiff's claim.

Relevant to the facts of this matter, the *Edwards* case provides further authority that even if the title lyrics of the two songs at issue are the same, and even if those lyrics are repeated in a chorus, they are not eligible for copyright protection if common phrases or words. The only lyrical similarity that Francescatti alleges in this case is in the title character – the repeating of “Juda” in her song and “Judas” in Lady Gaga’s song (the expression of which in each work is entirely different, in all events). See Plaintiff’s Brief Opposing Summary Judgment, Dkt. 145, at 21-22, 25. As in *Edwards*, which found the lyrics “caught up” to be unoriginal, the lyric “Judas,” whether as a song title or lyric, is too common to be protectable. See Defendants’ Brief in Support of Summary Judgment, Dkt. 119, at 17-20.

The *Edwards* case also confirms that, if after listening to the sound recordings of the two songs at issue the Court finds the overall sound and feel of the works to not be substantially similar considering all the material differences between them, the court should dismiss the case. As demonstrated throughout Defendants’ briefs in support of their motion for summary judgment, that is the case here.

Dated: May 29, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system on this 29th day of May, 2014.

/s/ Steven R. Gilford

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No Shepard's Signal™
As of: May 29, 2014 12:40 PM EDT

Edwards v. Raymond

United States District Court for the Southern District of New York
May 23, 2014, Decided; May 23, 2014, Filed
13 Civ. 7985 (DLC)

Reporter: 2014 U.S. Dist. LEXIS 71482

ZACHARIA L. EDWARDS, MITCH MOSES and VINCE McCLEAN, Plaintiffs, -v- USHER RAYMOND IV (p/k/a USHER), ARISTA RECORDS, INC. (n/k/a RCA RECORDS, INC.), ANDRE HARRIS, VIDAL DAVID, JASON BOYD, RYAN TOBY, UNIVERSAL MUSIC CORPORATION (n/k/a UNIVERSAL MUSIC GROUP, INC.), DIRTY DRE MUSIC (d/b/a UNIVERSAL MUSIC GROUP, INC.), DOUBLE OH EIGHT (d/b/a UNIVERSAL MUSIC GROUP, INC.), POO BZ PUBLISHING, INC., HITCO MUSIC PUBLISHING, LLC, MUSIC OF WINDSWEPT, PLADIS MUSIC, INC. and EMI APRIL MUSIC, INC., Defendants.

Core Terms

song, substantially similar, catch, lyric, copyright infringement, music, copyright protection, singer, usher, musical composition, motion to dismiss, district court, male, supplemental jurisdiction, breach of contract claim, chorus, eligible, woman

Counsel: [*1] For Zacharia L. Edwards, Mitch Mosees, Vince McClean, Plaintiffs: David J. Voelker, Olga S. Dmytriyeva, Voelker Litigation Group, Chicago, Illinois.

For Usher Raymond IV, Sony Music Entertainment, Defendants: Jonathan D. Davis, Jonathan D. Davis, P.C., New York, New York.

Judges: DENISE COTE, United States District Judge.

Opinion by: DENISE COTE

Opinion

OPINION & ORDER

DENISE COTE, District Judge:

Zacharia L. Edwards, Mitch Moses, and Vince McClean (collectively, the "Plaintiffs") bring this action against Usher Raymond IV ("Usher"), Sony Music Entertainment ("Sony"), and other related music industry defendants¹ (collectively, the "Defendants"), asserting copyright infringement and breach of contract. The Plaintiffs plead one count of copyright infringement. They allege that the Defendants willfully copied the Plaintiff's original composition, entitled "Caught Up" ("Plaintiffs' Song"), to create Usher's 2004 hit song of the same name (the "Challenged Song") in violation of [17 U.S.C. § 501](#). The Plaintiffs contend that the Defendants violated the Plaintiffs' musical composition and sound recording rights in their song. See [17 U.S.C. § 102\(a\)\(2\) & \(7\)](#). They also allege one count of breach of contract against defendants Usher [*2] and Sony only. For the following reasons, the copyright infringement claim is dismissed. The Court declines to exercise supplemental jurisdiction over the breach of contract claim.

BACKGROUND

The following facts are undisputed or taken in the light most favorable to the Plaintiffs. The

¹ Those defendants are Andre Harris, Vidal Davis, Jason Boyd, Ryan Toby, Universal Music Corporation, Dirty Dre Music, Double Oh Eight, Poo B Z Publishing, Inc., Hitco Music Publishing, LLC, Music of Windswept, Pladis Music Inc., and EMI April Music, Inc.

2014 U.S. Dist. LEXIS 71482, *2

Plaintiffs are music composers. In 2002, they composed an original musical composition entitled "Caught Up." They filed an application for copyright registration of that song on May 15, 2012. In October of 2002, Michael Barackman, a Senior Director of Artist and Repertoire at Artista Records, Inc. -- a now defunct record label that was previously a Sony subsidiary² -- scheduled a meeting with the Plaintiffs so that the Plaintiffs could present him with original songs for possible use in one of Artista's upcoming albums. At the meeting, the Plaintiffs played the Plaintiffs' Song for Barackman. Barackman liked the song and, per his request, the Plaintiffs [*3] provided him with a compact disk that included the Plaintiffs' Song. The Plaintiffs contend that they provided the compact disk with their song to Barackman based on an agreement that any use of the song would be in exchange for "reasonable compensation" based on "industry practices and standards."

The Plaintiffs contend that Usher began work on his album "Confessions" in late 2002. On March 23, 2004 Usher released "Confessions," which included as a track the Challenged Song, also entitled "Caught Up." The album and the Challenged Song achieved great popularity. The Challenged Song peaked at number eight on the U.S. Billboard "Hot 100" Chart.

On November 7, 2013, the Plaintiffs filed this lawsuit. This is the second lawsuit filed in this district against Usher alleging copyright infringement in connection with the Challenged Song. The first action, brought by different plaintiffs, was resolved by Opinion and Order of May 19, 2011 in *Pyatt v. Raymond*, 10 Civ. 8764 (CM), 2011 U.S. Dist. LEXIS 55754, 2011 WL 2078531 (S.D.N.Y. May 19, 2011). In *Pyatt*, the court dismissed the copyright action, finding [*4] that the plaintiffs' songs lacked the requisite "substantial similarity" to the Challenged Song under the "ordinary observer" test to constitute unlawful copying. 2011 U.S.

*Dist. LEXIS 55754, [WL] at *1; see Peter F. Gaito Architecture, LLC v. Simone Dev. Corp., 602 F.3d 57, 66 (2d Cir. 2010).*

Usher and Sony moved to dismiss the complaint in this action on January 16, 2014. They attached with their motion an exhibit consisting of a side-by-side comparison of the lyrics of the Plaintiffs' Song and the Challenged Song. They also attached as exhibits two compact disks, containing, respectively, each song. The motion was fully submitted on March 14.

DISCUSSION

When deciding a motion to dismiss under *Rule 12(b)(6), Fed. R. Civ. P.*, a court must "accept all allegations in the complaint as true and draw all inferences in the non-moving party's favor." *LaFaro v. New York Cardiothoracic Group, PLLC*, 570 F.3d 471, 475 (2d Cir. 2009). To survive a motion to dismiss, "a complaint must contain 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citation omitted). A complaint must do more, however, than offer "naked assertions devoid [*5] of further factual enhancement." *Id.* (citation omitted).

"For purposes of a motion to dismiss, we have deemed a complaint to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference, as well as . . . documents that the plaintiffs either possessed or knew about and upon which they relied in bringing the suit." *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000) (citation omitted). Although the Plaintiffs did not attach copies of the lyrics and audio recordings of the two songs, the Plaintiffs clearly relied upon those materials in bringing this suit. Accordingly, this Court will consider them in connection with this motion to dismiss.

The Defendants contend that the Plaintiffs' copyright infringement claim must be dismissed

² Artista Records was initially erroneously sued in this action. Sony has been substituted in its place as a defendant.

because the Plaintiffs' Song and the Challenged Song share no protectable expression and are not "substantially similar." See Peter F. Gaito Architecture, 602 F.3d at 66. They also contend that the lawsuit is barred by the doctrine of laches because the Plaintiffs waited nearly eight and a half years from the accrual of their claim to file this action. See generally Petrella v. Metro-Goldwyn-Mayer, Inc., 12-1315, 2014 U.S. LEXIS 3311, 2014 WL 2011574 (U.S. May 19, 2014). [*6] Finally, they contend that the breach of contract claim should be dismissed because the Plaintiffs have not adequately alleged the existence of a contract and that in any event their breach of contract claim is either time barred or void under the statute of frauds. Because the two songs are not substantially similar as a matter of law, the copyright claim is dismissed and it is unnecessary to reach the issue of laches. The Court declines to exercise supplemental jurisdiction over the state law breach of contract claim.

I. Copyright Infringement

A plaintiff asserting a copyright infringement claim must show: "(i) ownership of a valid copyright; and (ii) unauthorized copying of the copyrighted work." Jorgensen v. Epic/Sony Records, 351 F.3d 46, 51 (2d Cir. 2003). The Defendants do not contest that the Plaintiffs have a valid copyright in their work. "To demonstrate unauthorized copying, the plaintiff must first show that his work was actually copied; second, he must establish 'substantial similarity' or that the copying amounts to an improper or unlawful appropriation" Tufenkian Imp./Exp. Ventures, Inc. v. Einstein Moomjy, Inc., 338 F.3d 127, 131 (2d Cir. 2003) [*7] (citation omitted). "Actual copying may be established by direct or indirect evidence." Boisson v. Banian, Ltd, 273 F.3d 262, 267 (2d Cir. 2001) (citation omitted). "The plaintiff then must show that the copying amounts to an improper or unlawful appropriation by demonstrating that substantial similarities relate to protectable material." Laureyssens v. Idea Group, Inc., 964 F.2d 131, 139-40 (2d Cir. 1992) (citation omitted).

Because the Plaintiffs' Song is not "substantially similar" to the Challenged Song, the Plaintiffs' copyright infringement claim fails. As a result, it is unnecessary to reach the question of whether the Plaintiffs have adequately pled actual copying.

A. Substantial Similarity

The standard for the substantial similarity inquiry is well established:

The standard test for substantial similarity between two items is whether an ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard the aesthetic appeal as the same. In applying the so-called "ordinary observer" test, we ask whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.

Peter F. Gaito Architecture, 602 F.3d at 66 [*8] (citation omitted).

On occasion . . . [the Second Circuit has] noted that when faced with works that have both protectable and unprotectable elements, [the] analysis must be more discerning, and that [a court] instead must attempt to extract the unprotectable elements from . . . consideration and ask whether the protectable elements, standing alone, are substantially similar.

Id. (citation omitted).

No matter which test we apply, however, we have disavowed any notion that we are required to dissect the works into their separate components, and compare only those elements which are in themselves copyrightable. Instead, we are

principally guided by comparing the contested design's total concept and overall feel with that of the allegedly infringed work as instructed by our good eyes and common sense.

Id. (citation omitted).

It is a fundamental principle of copyright law that "the similarity between two works must concern the expression of ideas, not the ideas themselves. This principle, known as the 'idea/expression dichotomy,' assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work." *Id.* at 67 (citation [*9] omitted). Consequently, a court "must decide whether the similarities shared by the works are something more than mere generalized idea or themes." *Walker v. Time Life Films, Inc.*, 784 F.2d 44, 48-49 (2d Cir. 1986) (citation omitted).

In the context of

a case alleging music plagiarism, the claimant is constrained to prove that defendant took from plaintiff's works so much of what is pleasing to the ears of lay listeners, who comprise the audience for whom such music is composed, that defendant wrongfully appropriated something which belongs to the plaintiff.

Repp v. Webber, 132 F.3d 882, 889 (2d Cir. 1997) (citation omitted).

A district court in the Second Circuit may resolve a "substantial similarity" challenge on a *Rule 12(b)(6)* motion to dismiss. "[I]t is entirely appropriate for the district court to consider the similarity between those [relevant] works in connection with a motion to dismiss, because the court has before it all that is necessary in order to make such an evaluation." *Peter F. Gaito Architecture*, 602 F.3d at 64. "When a court is called upon to consider whether the works are

substantially similar, no discovery or fact-finding is typically necessary, because what is required [*10] is only a . . . comparison of the works." *Id.* (citation omitted). "If, in making that evaluation, the district court determines that the two works are not substantially similar as a matter of law, the district court can properly conclude that the plaintiff's complaint, together with the works incorporated therein, do not plausibly give rise to an entitlement of relief." *Id.* (quoting *Iqbal*, 556 U.S. at 679).

1. The Phrase "Caught Up"

As an initial matter, the phrase "caught up," which is the title of both the Plaintiffs' Song and the Challenged Song, is not eligible for copyright protection. It is well established that common phrases are not eligible for copyright protection. See, e.g., *Acuff-Rose Music, Inc. v. Jostens, Inc.*, 155 F.3d 140, 143 (2d Cir. 1998) (the phrase "[y]ou've got to stand for something, or you'll fall for anything," lacks originality and was therefore not protected" by the plaintiff's copyright). Only those components of a work that are original to the author are eligible for copyright protection. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345, 111 S. Ct. 1282, 113 L. Ed. 2d 358 (1991) ("[t]he sine qua non of copyright is originality."). The phrase "caught up" is not original to the [*11] Plaintiffs; it is used in everyday speech in a variety of contexts. See *Pyatt*, 2011 U.S. Dist. LEXIS 55754, 2011 WL 2078531, at *8 (providing examples: "'I'm all caught up with my homework;' 'I'm caught up in traffic;' or 'I'll be late because I'm caught up at work'"). The phrase has "enjoyed a robust existence in the public domain long before [the plaintiffs] employed it for [their] song's title and in the key lyrics." *Acuff-Rose Music, Inc.*, 155 F.3d at 144 (citation omitted). Indeed, the Plaintiffs concede that "short phrases which do not exhibit the minimal creativity for copyright protection are not protectable expression." And they do not argue that the phrase "caught up" is an exception to that rule.

It is true, however, that an original arrangement of unprotectable material can be protected by the copyright laws. "[E]ven a directory that contains absolutely no protectible written expression, only facts, meets the constitutional minimum for copyright protection if it features an original selection or arrangement." *Feist Publ'ns*, 499 U.S. at 348. The Plaintiffs contend that the Defendants copied the "manner" in which the Plaintiffs used the phrase "Caught Up" in their song. They argue that the Plaintiffs' [*12] use of the phrase is one example of the Defendants' misappropriation of a number of expressive elements of the Plaintiffs' Song which together suffice to render the Challenged Song "substantially similar." This allegation will be addressed below in conjunction with the Plaintiffs' other contentions of substantial similarity between the two songs.

2. The Plaintiffs' Specific Allegations of Similarity

The Plaintiffs devote ten paragraphs of their complaint to allegations of similarity between their song and the Challenged Song. Four of those allegations are addressed to similarities in the ideas expressed by the two songs, which are not copyrightable as a matter of law. See *id.* at 344-45 ("The most fundamental axiom of copyright law is that no author may copyright his ideas or the facts he narrates." (citation omitted)). Those allegations include: 1) that both songs use the phrase "caught up" to "tell the same story [of] a man who is becoming so involved with a woman to become oblivious to the reality of the situation;" 2) that the "themes" of both songs "depict a man caught up in a lost love;" 3) that "the male singer is shocked by the state of his woman's grasp on him;" and that 4) both [*13] songs end with expressions "that the male singer is in a total state of confusion."

The latter two allegations also contain quotes from the lyrics in the two songs expressing the ideas in question. If the quotes were intended to show similarity of expression, they fail to do so. With respect to the first, the singer's shock at a

woman's "grasp on him" is expressed in the Plaintiffs' Song as "I can't believe it." In the Challenged Song, it is expressed as "I can't believe it, but it seems she's got me twisted." "I can't believe it" is a commonplace phrase ineligible for copyright protection. See *Acuff-Rose Music*, 155 F.3d at 143. The Plaintiffs have not shown that they have made any original use of the phrase "I can't believe it" worthy of copyright protection. Second, the idea that the male singer is in "a state of confusion" is expressed in the Plaintiffs' Song as "What could I do?" and in the Challenged Song as "I can't figure out why." There is nothing similar about the expression identified there other than the use of the word "I."

Two of the remaining six allegations of similarity in the Plaintiffs' complaint state, respectively, a legal conclusion that "an ordinary lay observer [*14] . . . [would] find that the songs are substantially similar and that an infringement has occurred," and the Plaintiffs' contention that "upon hearing the two (2) musical compositions at issue, several individuals have informed Plaintiffs that, in their lay opinions, Defendants have copied Plaintiffs' musical composition." A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678. And the Plaintiffs' contention that "several individuals" have told them that the two songs are similar is not entitled to significant weight.

The remaining four allegations of similarity between the two songs in the Plaintiffs' complaint allege similarities in copyrightable expression. But, they still do not suffice to state a plausible claim of substantial similarity. The Plaintiffs contend that: 1) the "[t]he theme, melody, hook, lyrics, and chorus of the musical compositions are substantially similar;" that 2) the two songs "begin similarly, with each respective singer building the song and then leading into the first verse, which introduces the plot of the composition, a man caught up in lost love; that 3) "[t]he choruses of the two . . . musical [*15] compositions are similarly

arranged. Both musical compositions have one line, followed by the phrase, 'Caught Up,' which is then followed by one line and the phrase, 'Caught Up';" and that (4) "the songs "end with similar lyrics expressing . . . confusion In Plaintiffs' musical composition . . . the composition ends with the lyric, "She's messing with my mind." Comparably, Usher's version . . . ends with the lyric, "I'm losin' control, this girl's got a hold on me."

These four allegations do not plausibly plead substantial similarity. The first is a bare legal conclusion. The second contends first that both songs "build the song and lead[] into the first verse," which is a necessary and non-copyrightable part of nearly any song, and second that it introduces the idea of a man in love, which is an non-protectable idea. The third contention fails because, as explained above, the phrase "caught up" is a common phrase not eligible for copyright protection. Putting the phrase "caught up" in a chorus and situating it between two other lines is not an "original contribution[]" eligible for protection by the copyright laws. *Feist Publ'ns*, 499 U.S. at 359. Many choruses feature a phrase [*16] repeating on every other line. And the fourth allegation fails to show any similarity of expression. While the lyrics "she's messing with my mind," and "this girl's got a hold on me," both express the idea of a man under the influence of a woman, there is no overlap in the mode of expression of that idea. In sum, nothing in the Plaintiffs' complaint plausibly alleges copyright infringement.

3. Holistic Comparison of the Two Songs

The Plaintiffs argue that even if the "areas of similarity between the two songs at issue that Plaintiffs previously identified" do not independently plead substantial similarity, the Second Circuit requires this Court to compare the "total concept and overall feel" of the two songs, "as instructed by our good eyes and common sense . . . focus[ing] on whether the alleged infringer has misappropriated the

original way in which the author has selected, coordinated, and arranged the elements of his or her work." *Peter F. Gaito*, 602 F.3d at 66 (citation omitted). Careful analysis of the two songs' music and lyrics, considered as a whole, confirms a lack of substantial similarity.

a. Music

The Defendants argue vigorously that there is no substantial similarity in the [*17] music of the two songs. The Plaintiffs fail to respond to these arguments. The Defendants are correct, in any event.

A comparison of the sound recordings of the two songs confirms that their music is not substantially similar. There are a number of material differences. First, the Plaintiffs' Song is in significant part a rap song. The Challenged Song has no rapping; Usher sings all of the lyrics. The Plaintiffs' Song also consists of a duet including a male and a female singer, whereas the Challenged Song features a solo male lead singer. Moreover, the Challenged Song contains significantly sparser instrumentation backing the singers' vocals than does the Plaintiffs' Song. The Challenged Song also features "unmistakable Motown influences" influences, *Pyatt*, 2011 U.S. Dist. LEXIS 55754, 2011 WL 2078531, at *9, whereas the Plaintiffs' Song does not. And the chorus, or hook, of each song, although both employing the phrase "Caught Up," feature entirely dissimilar melodies.

Finally, the "feel" of the two songs is dissimilar. The Plaintiffs' Song is an upbeat, optimistic song, whereas the Challenged Song has a contemplative, questioning feel. Because of these differences, the "total concept and overall feel" of the [*18] music in the two songs are different, and an average observer would not find that the Defendants have taken "from [P]laintiff[s]' works so much of what is pleasing to the ears of lay listeners . . . that [D]efendant[s] wrongfully appropriated something which belongs to the [P]laintiff[s]." *Repp*, 132 F.3d at 889 (citation omitted).

b. Lyrics

The lyrics of the two songs are also not substantially similar. Attached to this Opinion as an Appendix is a side by side comparison of the two songs' lyrics. The only significant point of overlap is the use of the phrase "caught up" in the chorus of each song. As explained above, that phrase is not copyrightable. Nor have the Defendants copied any original arrangement of that phrase that would constitute protectable expression. Beyond the phrase "caught up" there is no overlap between the lyrics of the two songs beyond commonplace words like "hit" "girl" and "control." Moreover, the Plaintiffs' Song's lyrics are structured as a back-and-forth between the male protagonist and the woman who is the object of his affections. The Challenged Song's lyrics do not contain any back-and-forth and consist solely of the male narrator telling his story.

Nor does [*19] the fact that both songs' lyrics tell the story of "a man caught up in love" save the Plaintiffs' claim. Themes are not independently protectable. Cf. *Feist Publ'ns*, 499 U.S. at 344-45. And as explained above, the Plaintiffs have not shown any misappropriation of any protected expression of that theme through original arrangement or other contribution by the Plaintiffs. In sum, "an average lay observer would [not] recognize the alleged[ly] [copied lyrics] as having been appropriated from the copyrighted work." *Peter F. Gaito*, 602 F.3d at 67 (citation omitted).

II. Supplemental Jurisdiction

The Plaintiffs also plead a breach of contract claim under state law. A federal district court's supplemental jurisdiction over state law claims is governed by 28 U.S.C. § 1367. Under that provision, a district court "may decline to exercise supplemental jurisdiction over a claim" if, *inter alia*, "the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). "In deciding whether to exercise jurisdiction over supplemental state-law

claims, district courts should balance the values of judicial economy, convenience, fairness, and comity -- the 'Cohill [*20] factors.'" *Klein & Co. Futures, Inc. v. Bd. of Trade of City of New York*, 464 F.3d 255, 262 (2d Cir. 2006) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988)). "It is well settled that where . . . the federal claims are eliminated in the early stages of litigation, courts should generally decline to exercise pendent jurisdiction over remaining state law claims." *Klein & Co. Futures*, 464 F.3d at 262.

It is well to recall that in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendant jurisdiction doctrine -- judicial economy, convenience, fairness, and comity -- will point toward declining to exercise jurisdiction over the remaining state-law claims.

Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Centers Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc., 712 F.3d 705, 727 (2d Cir. 2013)(citation omitted).

The federal claim of copyright infringement having been dismissed, this Court declines to exercise supplemental jurisdiction over the state law breach of contract claim. This litigation is at an early stage; discovery has not yet commenced, and principles of judicial economy do not counsel [*21] in favor of the exercise of jurisdiction. Nor is there any reason grounded in principles of convenience, fairness, or comity to depart from the standard practice of declining to exercise jurisdiction over state claims once no federal law claims remain.

CONCLUSION

The Defendants' January 16, 2014 motion to dismiss is granted. The Clerk of Court shall close the case.

SO ORDERED:

Dated: New York, New York

May 23, 2014

/s/ Denise Cote

DENISE COTE

United States District Judge

Caught up I don't know what it is but it seems She got me twisted I'm so Caught up Really feelin' it Caught up I'm losin' control, this girl's got A hold I'm so
Hook
Caught up I'm so Caught up I don't know what it is but it seems She's got me twisted I'm Caught up Really feelin' it Caught up I'm losin' control, this girl's got A hold on me
Ohh Ohh Ohh Ohh

Plaintiff's Song	Challenged Song
Female Rap Verse 1 Aye you was it cool for you to be with Her and me? Hey what you doin' Is you tryin' to play with me? And is it wrong for me to put it on you And never call you Sit me a'ry day and I ignore you I don't wanna do that Too slow for that An' you top out for me in wanna get Down like that Cause it's like that and that's the way It is Got you caught up in a girl When I made your toes turt Anything I want, anything I need Anything I get, anything I see You got it for me And I see it all when I made this man Gy Was the power of the p-u-s-s-y	Male Introduction Ohh O's up Ohh O's up Ohh Ohh Ohh You know how I do If you gimplin' pop a bottle
Male Vocal/Verse 1 Almost every weekend, I'm in my spot Gettin' my groove on Tryin' to make it pop On this evening, the finest thing Walked up to me And this is what she said	Male Vocal/Verse 1 I'm the kind of brother Who been doin' it my way Gettin' my way for years, in my career And every lower, y'all In and out of my life I've hit, loved, and left in tears Without a care
Female/Male Vocal (Alternating Lines) You got that vibe about you Then I looked her up and down and said you too Do you wanna take a ride, is that cool? Well I'm a man and she's a diva, what could I do?	Hook Caught up Got me feelin' it Caught up I don't know what it is but it seems She got me twisted I'm so Caught up Got me feelin' it Caught up I'm losin' control, this girl's got A hold on me Yeah Ohh Let me go baby Ohh How listen Ohh
Chorus Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) Can't believe that Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) She's messin' with my mind	Pre-Hook Until I met this girl who turned the tables around She caught me by surprise and I never thought I'd be the one Breakin' down I can't figure it out why I'm so
Male Vocal/Verse 2 Jumped in her beamer Drove to her spot Think I got it made 'Cause damn the place was hot Excused herself Came back lookin' just like a queen Straight Victoria's massage	Male Vocal/Verse 2 My man told me Be careful who you do 'Cause some comes back around Same ol' song But I was so sure That it wouldn't happen to me 'Cause I know how to put it down But I was so wrong
Female/Male Vocal Can I get you a drink? And would you like to take a bubble bath with me? Oh damn, what do you think? I'm alive with her, Let's get this thing poppin'	Pre-Hook This girl was real, (no mean) she really turned me out Her body was so tight I'm looking for her in the daylight With a flashlight My homies say this girl is crampin' (she's crampin') my style And I can't figure it out And I'm so
Chorus Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) Can't believe that Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) She's messin' with my mind	Hook Caught up Got me feelin' it Caught up I don't know what it is but it seems She got me twisted I'm so Caught up Got me feelin' it Caught up I'm losin' control, this girl's got A hold I'm so
Male Vocal/Bridge Used to be the one That's in control But I'm not mad at all Now you flipped the script on me 'Whenever you wanna go Girl, take me there (take me there) I'm with you	Hook Caught up Really feelin' it Caught up (hey hey) I don't know what it is but it seems She's got me twisted I'm so Caught up Really feelin' it Caught up I'm losin' control, this girl's got A hold on me
Female Rap Verse 2 To I got you caught up With this honey You think it's funny When she's nuttin' now but the money But the money But the jumpoff jumped off I'm headed up north I'm gonna take you around your ain' downtown You want to get up with the right spot You ready to go? Ready the five Gotta run, you gonna catch up to me Who would you choose? It would be Sleep with whomever	Hook Caught up Really feelin' it Caught up (hey hey) I don't know what it is but it seems She's got me twisted I'm so Caught up Really feelin' it Caught up I'm losin' control, this girl's got A hold on me
Chorus (Repeated 3 times) Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) Can't believe that Now I'm caught up It's the jumpoff now (Caught up) But to be on and poppin' (Caught up) Let's do the damn thing (Caught up) She's messin' with my mind	Hook Caught up Really feelin' it Caught up (hey hey) I don't know what it is but it seems She's got me twisted I'm so Caught up Really feelin' it Caught up I'm losin' control, this girl's got A hold on me