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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KELVIN WILLIAMS, an individual d/b/a
Uprise Productions,

Plaintiff - Appellant,

v.

UMG RECORDINGS, INC., a Delaware
corporation; et al.,

Defendants - Appellees.

No. 04-56314

D.C. No. CV-01-03135-DT

MEMORANDUM*

KELVIN WILLIAMS, an individual d/b/a
Uprise Productions,

Plaintiff - Appellee,

v.

CASH MONEY RECORDS, INC., a
Texas corporation; et al.,

Defendants - Appellants.

No. 04-56398

D.C. No. CV-01-03135-DT

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

KELVIN WILLIAMS, an individual d/b/a
Uprise Productions,

Plaintiff - Appellee,

v.

UMG RECORDINGS, INC., a Delaware
corporation; et al.,

Defendants.

No. 04-56399

D.C. No. CV-01-03135-DT

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Submitted May 1, 2006**
Pasadena, California

Before: LAY***, KLEINFELD, and SILVERMAN, Circuit Judges.

Kelvin Williams appeals the district court's grant of partial summary judgment to Universal and Cash Money (collectively, "Defendants") on his claims for breach of contract, interference with prospective economic advantage, and copyright infringement. Williams also appeals the district court's judgment as a matter of law on his remaining copyright claim and his quantum meruit claim for

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

the value of screen credit. Universal and Cash Money cross-appeal the district court's rulings on partial preemption, prejudgment interest, and attorneys' fees. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Main Appeal

The alleged "agreement" between Kelvin Williams and Ronald Williams lacked the requisite definiteness with respect to price, scope of work, and other material terms to constitute a binding contract. *See California Lettuce Growers v. Union Sugar Co.*, 289 P.2d 785, 790 (Cal. 1955). In the absence of a binding contract, summary judgment was proper on Williams's claims for breach of contract, breach of implied covenant of good faith and fair dealing, and tortious interference with contract.

Williams has failed to show a triable issue of material fact regarding several elements of his claims for intentional and negligent interference with prospective economic advantage. The nebulous discussions between Williams and Cash Money over various projects indicate that any prospective economic advantage was speculative and not "reasonably probable." *Youst v. Longo*, 729 P.2d 728, 733 (Cal. 1987); *see Navellier v. Sletten*, 262 F.3d 923, 939 (9th Cir. 2001). Furthermore, Williams has not demonstrated a triable issue of fact regarding whether Universal owed him a duty of care. *See Worldvision Enterprises, Inc. v.*

American Broad. Companies, Inc., 191 Cal. Rptr. 148, 152 (Cal. Ct. App. 1983).

Similarly, Williams has not shown any evidence of intent to engage in “wrongful acts designed to disrupt the plaintiff’s relationship.” *Korea Supply Co. v.*

Lockheed Martin Corp., 63 P.3d 937, 958 (Cal. 2003).

The district court correctly ruled that Williams’s initial collaboration with Cash Money gave rise to an implied license for Cash Money to use his narration script. *See Oddo v. Ries*, 743 F.2d 630, 634 (9th Cir. 1984); *Effects Associates, Inc. v. Cohen*, 908 F.2d 555, 558 (9th Cir. 1990). Consequently, summary judgment to Defendants was proper for activities occurring before April 2001, at which point Williams revoked this implied license by filing his complaint.

The district court also correctly granted judgment as a matter of law on Williams’s remaining copyright claim for activities occurring after April 2001. It is well-established that “a derivative copyright protects only the new material contained in the derivative work, not the matter derived from the underlying work.” *Russell v. Price*, 612 F.2d 1123, 1128 (9th Cir. 1979). Here, it is undisputed that Williams’s narration script was wholly derived from the underlying work, and so Williams cannot assert a copyright interest in it. It is also undisputed that Defendants did not provide Williams with written authorization

permitting him to copyright the derivative work. *See* 17 U.S.C. § 204(a); *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1113 (9th Cir. 1998).

The district court did not abuse its discretion in excluding the value of screen credit in determining quantum meruit damages. The evidence introduced to establish that value was wholly speculative. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993). Williams’s proffered expert provided no rigorous methodology for his calculations and based his estimates on a “rule of thumb” that is not widely adopted. In any case, quantum meruit damages are an equitable remedy for the value of *services*, not intangible elements. *See In re De Laurentiis Entm’t Group Inc.*, 963 F.2d 1269, 1272 (9th Cir. 1992).

Cross-Appeal

The district court correctly ruled that Williams’s claims for quantum meruit for resequencing the order of scenes and selecting music were not preempted by federal law. Services such as those do not fall within the “subject matter of copyright.” *Grosso v. Miramax Film Corp.*, 383 F.3d 965, 968 (9th Cir. 2004).

The district court did not abuse its discretion in granting prejudgment interest on Williams’s quantum meruit claims. Under California law, the trier of fact has discretion to grant interest “[i]n an action for the breach of an obligation not arising from contract.” Cal. Civ. Code § 3288; *see Casinos v. Union Oil Co.*

of California, 18 Cal. Rptr. 2d 574, 586 (Cal. Ct. App. 1993). Here, the district court acted as the trier of fact, and it did not abuse its discretion in granting prejudgment interest starting from the date of Williams's invoice.

Finally, the district court did not abuse its discretion in denying Defendants' request for attorneys' fees pursuant to 17 U.S.C. § 505. In denying the request, the district court identified and applied the correct factors for determining whether to award attorneys' fees. *See Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994) (overruled on other grounds).

AFFIRMED.