UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:18-cv-09691-RGK-PJW	Date	March 13, 2019
Title	***Leonard Williams, et al. v. Warner Music Group, et al.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Defendants' Motion to Dismiss for Failure to State a Claim Pursuant to Rule 12(b)(6) and to Strike Pursuant to Rule 12(f) (DE 21)**

I. INTRODUCTION

This action arises out of a dispute between a musician and his record label. On December 21, 2018, plaintiffs Leonard Williams ("Williams") and The Lenny Williams Production Company ("LWPC") (collectively, "Plaintiffs") filed a class action complaint against defendants Warner Music Group Corp. ("WMG"), Warner Bros. Records, Inc. ("WBR"), and Does 2–10 (collectively, "Defendants"). Plaintiffs' complaint alleges ten causes of action: (1) breach of contract; (2) open book account; (3) fraud; (4) violations of business and professions code § 17200; (5) conversion; (6) unjust enrichment; (7) accounting; (8) breach of the covenant of good faith and fair dealing; (9) declaratory judgment; and (10) rescission.

Defendants now move to dismiss Plaintiffs' compliant (DE 21). For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion.

II. FACTUAL BACKGROUND

Plaintiffs allege the following:

Williams is a musician with numerous chart hits, and LWPC is the corporate entity that Williams used to enter contracts on his behalf. WBR is a record label in the business of exploiting sound recordings of musical performances. WMG, its parent corporation, administers artist royalty payments according to artists' Compensation Agreements. WMG, WBR, and their foreign subsidiaries are each other's alter egos.

In January 1974, LWPC and WBR signed a Compensation Agreement ("Agreement"). The Agreement allows WBR, the "Distributor," to license and distribute the "Artist" Williams' works in exchange for royalty payments. LWPC is named in the Agreement as the "Producer." Plaintiffs aver that Defendants are contractually required to pay artists a portion of the international revenue they receive from the exploitation of Plaintiffs' and class members' artistic works from digital streaming. The Agreements do not allow Defendants to assess an intercompany charge for international sales reported to Defendants' wholly-owned foreign subsidiaries, but Defendants do. Specifically, Defendants remove up to 40% from international streaming sales revenue by subtracting a charge on revenues collected by their foreign subsidiaries, then basing the artists' royalty rates on the remainder. Because these foreign subsidiaries are wholly-owned, Defendants are essentially keeping the additional revenue for themselves. As a result, Plaintiffs' and class members' shares are reduced.

In the 1974 Agreement, WBR agreed to pay LWPC "[a] royalty with respect to phonograph records manufactured and sold by Distributor embodying the master recordings." (First Amended Complaint, Ex. 1 at 10, ECF No. 14-1.) The Agreement further provides that royalties will be computed based on "100% of Distributor's net sales of all phonograph records embodying Producer's performances" minus taxes. (*Id.* at 1A.) Net sales are determined "cumulatively on the basis of the number of copies of such record sold by Distributor or one of its affiliates to an independent third party," minus "all returns, rebated credits, cancellations, exchanges, etc." (*Id.*) Finally, royalties for records not sold through Distributor's customary distribution channels "shall be computed on the basis of the net amount per record . . . actually received or accounted for by Distributor or its subsidiaries." (*Id.* at 3A.)

While the Agreement is between LWPC and WBR, the Agreement does mention Williams: "Artist will render Artist's exclusive services in recording of phonograph record masters for Producer," while Artist "will look to Producer for the payment of Artist's fees or royalties." (*Id.* at 8.) "Artist" is defined as Lenny Williams. (*Id.* at 2.) "Phonograph record" is defined as "all conventional types of phonograph records now in use, as well as tape recordings of all types, and any other products and devices now known or unknown by which sound may be recorded for later transmission to listeners. . ." (*Id.* at 1.)

The Agreement ends with the following limitation: "All royalty statements and other accounts rendered by Distributor shall be binding upon Producer and not subject to any objection for any reason, unless such objection is made in writing, stating the basis thereof, and delivered to Distributor within one year from the date of such statement or account . . ." (*Id.* at 5A.)

Defendants now move to dismiss Plaintiffs' complaint.

III. JUDICIAL STANDARD

A. Motion to Dismiss

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 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable. *Id.* While a plaintiff need not provide detailed factual allegations, he must provide more than mere legal conclusions. *Twombly*, 550 U.S. at 555. When ruling on a Federal Rule of Civil Procedure ("Rule") 12(b)(6) motion, the court generally must accept the allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). However, the court need not accept as true "[t]hreadbare recitals of the elements of a cause of action." *Iqbal*, 556 U.S. at 678.

Though the court generally cannot consider facts outside the complaint in ruling on a Rule 12(b)(6) motion to dismiss, *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001), it may consider documents that are referenced in the complaint, *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 925 n. 2 (9th Cir. 2003).

B. Motion to Strike

Pursuant to Rule 12(f), a court may strike "any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Rule 12(f) functions to avoid expenditures of time and money that arise from litigating spurious issues by dispensing with those issues prior to trial. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (citations omitted). Generally, motions to strike are disfavored. *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1478 (C.D. Cal. March 21, 1996).

IV. DISCUSSION

Defendants move to dismiss and to strike several of Plaintiffs' claims. The Court addresses each claim in turn.

A. <u>Claim One: Breach of Contract</u>

Defendants first move to dismiss Plaintiffs' breach of contract claim. Plaintiffs allege that Defendants breached express and implied contract provisions allowing Plaintiffs and class members[1] to be paid on all money received by Defendants from distribution of the artistic works. Although the Agreement, entered in 1974, does not discuss digital streaming, Plaintiffs assert that they have been paid by Defendants for the digital streaming of their music for years. In exchange, Plaintiffs have performed their obligations under the contract. Defendants have now materially breached the Agreement by failing to disburse the entire streaming revenue derived from international sales, causing Plaintiffs damages.

Defendants, on the other hand, contend that the Agreement does not contemplate royalties for streaming revenue, since the express terms discuss only the manufacture and sale of phonorecords. Defendants, therefore, have no obligation to pay any royalties from streaming revenue in the first place. As a result, they are not prohibited from calculating these royalties based on the total revenue earned by WBR *after* payments are made to its foreign affiliates.

To adequately state a claim for breach of contract, a plaintiff must plead the following elements: "(1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." *CDF Firefighters v. Maldonado*, 158 Cal. App. 4th 1226, 1239 (2008). "A cause of action for breach of implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor's conduct." *Yari v. Producers Guild of Am., Inc.*, 161 Cal. App. 4th 172, 182 (2008); *see also* Cal. Civ. Code § 1621.

Implied contracts may co-exist with express contracts. *See Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 682 (1988); *see also Retired Emps. Assn. of Orange County, Inc. v. County of Orange*, 52 Cal. 4th 1171, 1178–79 (2011) ("Even when a written contract exists, evidence derived from experience and practice can now trigger the incorporation of additional, implied terms.") (internal citations omitted). That said, "[t]here cannot be a valid express contract and an implied contract, each embracing the same subject, but compelling different results." *Eisenberg v. Alameda Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1387 (1999); *see also Wal-Noon Corp. v. Hill*, 45 Cal. App. 3d 605, 613 (1975). "Implied contractual terms ordinarily stand on equal footing with express terms, provided that, as a general matter, implied terms should never be read to vary express terms." *Retired Emps. Assn.*, 52 Cal.

[1] Plaintiffs allege each claim on behalf of themselves and class members. For the purposes of this Order, the Court will refer solely to Plaintiffs from this point.

4th at 1179 (internal citations omitted). Whether an implied contract exists is a question of fact. *Silva v. Providence Hospital of Oakland*, 14 Cal. 2d 762, 774 (1939).

Here, Plaintiffs have adequately alleged breach of an implied contract. Although the words "digital streaming" are not present in the 1974 Agreement, Plaintiff alleges that after the rise of digital streaming, Defendants continued to pay royalties for digital streaming under the existing contractual terms. Providing royalty payments for digital streaming in addition to sales of phonorecords does not conflict with the express terms of the contract; rather, it supplements the terms. As a result, Defendants' conduct may plausibly indicate that the terms of the contract apply equally to digital streaming. And if there is an implied contract that requires Defendants to pay Plaintiffs royalties for digital streaming, the contract may also prohibit the removal of some percentage of the total revenue by Defendants' wholly-owned foreign subsidiaries before calculating artist royalties. At this stage, Plaintiffs have adequately pleaded a claim for breach of contract.

Defendants argue that under Ninth Circuit law, revenues received from digital services with respect to the distribution of digital copies of sound recordings are licenses, not sales, and therefore are subject to the Agreement's broad licensing provision. The Agreement provides in relevant part that "Producer grants to Distributor the right to assign this agreement to any parent or subsidiary corporation . . . it being understood and agreed that nothing herein contained shall be deemed to limit the right of Distributor to license its rights in said masters to its foreign associates. . ." (First Amended Complaint, Ex. 1 at 14, ECF No. 14-1.) To be sure, the Ninth Circuit held in *F.B.T. Productions, LLC v. Aftermath Records* that an agreement permitting third parties to use a record company's sound recordings to produce and sell permanent downloads related to licenses, not sales. *F.B.T. Productions, LLC v. Aftermath Records*, 621 F.3d 958, 965–66 (9th Cir. 2010). But the Court here does not have access to the language of the digital streaming agreements between Defendants and the foreign third parties, nor does the Court have details about the current practice of digital streaming more broadly. It may be true that the digital streaming at issue here constitutes a license, but the Court declines to decide this at the motion to dismiss stage.

Finally, Defendants contend that because the Agreement contains an integration clause, there cannot be an implied contract. A court will not usually imply terms into a fully integrated agreement. *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848, 859 (9th Cir. 1995). That said, the terms set forth in a fully integrated writing may still "be explained or supplemented by course of dealing or usage of trade or by course of performance." Cal. Civ. Proc. Code § 1856(c). Under California law, the court considers four factors to determine whether a contract is integrated: (1) the presence of an integration clause; (2) the language and completeness of the written agreement; (3) the terms of any alleged oral agreement and whether the terms contradict the written agreement; and (4) whether the oral agreement might naturally be made as a separate agreement. *Id.* Here, the terms of the alleged implied agreement do not contradict

the written agreement, and there is no reason that they might naturally be made as a separate agreement. As a result, Plaintiffs have adequately pleaded the existence of an implied contract despite the Agreement's integration clause.

Accordingly, Plaintiffs' contract claim survives.

1. Contractual Limitations Clause

Defendants also argue that even if Plaintiffs' contract claim survives, it is subject to the Agreement's one-year contractual limitations clause. Plaintiffs' complaint serves as the first written objection to the royalty statements, and therefore, claims that survive must be limited to statements rendered one year prior to the complaint. But Plaintiffs correctly counter that the applicability of the contractual limitations clause is not properly decided on a motion to dismiss. For example, Plaintiffs contend that the discovery rule and the doctrine of equitable estoppel toll the contractual limitations period. *See, e.g., Wind Dancer Production Group v. Walt Disney Pictures*, 10 Cal. App. 5th 56, 79 (2017). Whether these doctrines apply is not an appropriate inquiry at this stage.

B. Claim Eight: Breach of the Implied Covenant of Good Faith and Fair Dealing

A cause of action for breach of contract may also be established by the implied covenant of good faith and fair dealing. *See Storek & Storek, Inc. v. Citicorp Real Estate, Inc.*, 100 Cal. App. 4th 44, 55 (2002). "It has long been recognized, of course, that every contract imposes upon each party a duty of good faith and fair dealing in the performance of the contract such that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* (citing *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal. 4th 1, 36 (1995)). The covenant supplements the terms of the contract "to prevent a contracting party from acting in a way that, although it does not technically breach the contract, frustrates the other party's rights to the benefit of the contract." *Miller v. Wells Fargo Bank, N.A.*, No. CV 14-03391 DDP (AJWx), 2015 WL 5074466, at *4 (C.D. Cal. Aug. 27, 2015). Here, Plaintiffs allege that Defendants breached the implied covenant by arbitrarily and secretly paying fees to its own foreign subsidiaries and thus depriving Plaintiffs of the full benefit of the Agreement.

Defendants contend that the covenant of good faith and fair dealing claim must be dismissed because it cannot prohibit what the contract expressly allows; namely, licensing. "The Supreme Court has clarified . . . that an implied covenant of good faith and fair dealing cannot contradict the express terms of a contract." *Id.* (citing *Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 374 (1992)); *see also Cell-Crete Corp. v. Lexington Ins. Co.*, No. SACV 14-503 AG (ANx), 2014 WL 12601011, at *3 (C.D. Cal. July 30, 2014) (stating that "[b]ecause the covenant exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of

the agreement actually made, an implied covenant cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.") (internal citations omitted). But as discussed above, the Court is not yet convinced that the digital streaming at issue here is necessarily a license rather than sales. As a result, the implied covenant does not clearly contradict any express terms of the contract. Plaintiffs have adequately alleged a breach of the implied covenant of good faith and fair dealing. Accordingly, this claim will not be dismissed.

C. Claim Two: Open Book Account

Plaintiffs also allege an open book account claim under California Code of Civil Procedure § 337(a). Specifically, Plaintiffs allege that Defendants were obligated to keep open book accounts reflecting the debits and credits made to Plaintiffs' accounts. Pursuant to these accounts, Defendant have become indebted to Plaintiffs in the amount equal to Defendants' underpayment of royalties.

Defendants contend that this claim fails because Plaintiffs do not allege that the royalties are due under any agreement other than the written contract. "[U]nder California law, a debt which is predicated upon the breach of the terms of an express contract cannot be the basis of an account stated." *Nat'l Ins. Co. of Hartford v. Expert Automotive Reconditioning, Inc.*, No. SACV 13-0873-DOC (JPRx), 2013 WL 6190591, at *3 (C.D. Cal. Nov. 24, 2013). An open book claim must thus be based not on the contract at issue, but on a new contract—express or implied—by and which the parties have reached an agreement. *Id.*

Here, Plaintiffs do not allege that the royalty payments are due under a new contract. Instead, they allege that the payments are due under the existing Agreements. As a result, the claim for open book account is dismissed. *See Advanced Cleanup Techs., Inc. v. BP America Inc.*, No. CV14-9033-CAS(AJWx), 2016 WL 67671, at *7 (C.D. Cal. Jan. 4, 2016).

D. Claim Five: Conversion

Defendants also move to dismiss Plaintiffs' conversion claim because conversion claims cannot rest solely on contractual rights of payment. "[T]he simple failure to pay money owed does not constitute conversion." *Kim v. Westmoore Partners, Inc.*, 201 Cal. App. 4th 267, 284 (2011). "[A] mere contractual right of payment, without more, does not entitle the obligee to the immediate possession necessary to establish a cause of action for the tort of conversion." *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999) (internal citations omitted). Therefore, "conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law." *Erlich v. Menezes*, 21 Cal. 4th 543, 551 (1999).

Plaintiffs' conversion claim rests solely on their alleged contractual rights. Accordingly, Plaintiffs' claim for conversion is dismissed.

E. <u>Claim Six: Unjust Enrichment</u>

Defendants move to dismiss the unjust enrichment claim because it is a remedy, not a freestanding claim. Is it well-established that there is no cause of action in California for unjust enrichment. *See Melchior v. New Line Prods., Inc.*, 106 Cal. App. 4th 779, 793 (2003). "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." *Id.* (citing *Lauriedale Assocs., Ltd. v. Wilson,* 7 Cal. App. 4th 1439, 1448 (1992)). Unjust enrichment is "'a general principle, underlying various legal doctrines and remedies,'" rather than a remedy itself. *Id.* (citing *Dinosaur Dev., Inc. v. White*, 216 Cal. App. 3d 1310, 1315 (1989)). As a result, the Court dismisses Plaintiffs' unjust enrichment claim.

F. <u>Claim Ten: Rescission</u>

Similarly, Defendants also move to dismiss the claim for rescission because it is a remedy rather than a claim. Defendants are correct. Under California law, rescission is a remedy, not a cause of action. *Nakash v. Super. Ct.*, 196 Cal. App. 3d 59, 70 (1987). Accordingly, Plaintiffs' freestanding claim for rescission is dismissed.

G. <u>Claims by Williams</u>

Defendants additionally move to dismiss all claims by Williams because Williams is not a party to the contract and therefore, Defendants argue, has no standing to sue. Plaintiffs counter that Williams is an intended third-party beneficiary to the contract, as he is identified in the Agreement as "Artist" and the payments made to LWPC under the contract are for the sole benefit of Williams.

California Civil Code § 1559 allows a third party to enforce the terms of a contract "made expressly for the benefit of the third person." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Servs. Group, Inc.*, 171 Cal. App. 4th 35, 51 (2009). "Expressly" means not incidentally. *Id.* "Whether a third party is an intended beneficiary or merely an incidental beneficiary to the contract involves construction of the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered." *Id.* (citations omitted). This is only a question of law if the facts are undisputed. *Id.*

Here, Plaintiffs have adequately alleged that Williams is the intended third-party beneficiary to the contract. This fact is disputed. Accordingly, claims by Williams survive the motion to dismiss.

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H. Claims Against WMG

Finally, Defendants move to dismiss all claims against WMG because the contracting party is WBR, not WMG. Plaintiffs counter that because parent corporations are liable for the acts of their subsidiaries, WMG can be sued here.

"It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries." *U.S. v. Bestfoods*, 524 U.S. 51, 61 (1998). "But there is an equally fundamental principle of corporate law, applicable to the parent-subsidiary relationship as well as generally, that the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf." *Id.*

Here, Plaintiffs do not allege the piercing of a corporate veil, or any other compelling reason to find the parent corporation, WMG, liable for the acts of its subsidiary, WBR. The only relevant allegation is that both WBR and WMG are members of the same enterprise, which is insufficient. Under California law, "a plaintiff cannot maintain a breach of contract claim against an entity who is not a party to the contract." *Barnhart v. Points Dev. US Ltd.*, No. 2:16-cv-02516-CAS(Ex), 2016 WL 3041036, at *3 (C.D. Cal. May 25, 2016). Here, because WMG is not a party to the contract and Plaintiffs have not pleaded facts plausibly showing that the WMG is liable for the acts of WBR, all claims against WMG are dismissed.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion to dismiss. The Court dismisses claims two, five, six, ten, and all claims against WMG.

IT IS SO ORDERED.

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Initials of Preparer _____