



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN LIEBERMAN,
:
Plaintiff,
:
-against-
:
OUTRIGGER MEDIA, INC. and SPRING
MOUNTAIN CAPITAL, LP,
:
Defendants.
-----X

14 Civ. 427 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

On December 24, 2013, Plaintiff Jonathan Lieberman (“Plaintiff”) commenced a civil action against Defendants Outrigger Media, Inc. and Spring Mountain Capital, L.P. by filing a Summons With Notice (the “Summons”) in the Supreme Court of the State of New York, County of New York (“State Court”). The Summons seeks a “declaratory judgment that Plaintiff is a ‘Co Founder’ of Outrigger Media, Inc., the sole owner of the intellectual property known as the ‘Open Slate Process’ and money damages for Defendants’ wrongful conversion of such property, breach of contract and/or fraud.” *See* Notice of Removal, ECF No. 1, Ex. A. On January 23, 2014, Defendants removed the action to this Court pursuant to 28 U.S.C. § 1441, claiming that the Court has federal jurisdiction because the claims arise under copyright laws. On February 20, 2014, Plaintiff moved to remand the action to State Court and requested attorneys’ fees and costs. Accordingly to Plaintiff, he solely alleges claims for fraud and breach of contract, not for copyright infringement.

“A case is removable when the initial pleading ‘enables the defendant to intelligently ascertain removability from the face of such pleading, so that in its petition for removal[, the] defendant can make a short and plain statement of the grounds for removal’” *Whitaker v.*

Am. Telecasting, Inc., 261 F.3d 196, 205–06 (2d Cir. 2001) (quoting *Richstone v. Chubb Colonial Life Ins.*, 988 F. Supp. 401, 403 (S.D.N.Y. 1997)) (alterations in original). “A pleading enables a defendant to intelligently ascertain removability when it provides ‘the necessary facts to support [the] removal petition.’” *Id.* at 206 (quoting *Rowe v. Marder*, 750 F. Supp. 718, 721 (W.D. Pa. 1990), *aff’d*, 935 F.2d 1282 (3d Cir. 1991)) (alteration in original). “When federal question jurisdiction is at issue, this requirement is met if the initial pleading contains a claim that explicitly and necessarily relies on federal law.” *Casale v. Metro. Transp. Auth.*, No. 05 Civ. 4232, 2005 WL 3466405, at *8 (S.D.N.Y. Dec. 19, 2005). Here, Plaintiff neither explicitly nor necessarily relies on federal law. Instead, the Summons merely alleges “wrongful conversion” of “intellectual property.” *See* Notice of Removal, ECF No. 1, Ex. A. While the action may arise under the Copyright Act, the Summons does not provide the facts necessary to draw that conclusion. *See Whitaker*, 261 F.3d at 206.

Accordingly, Plaintiff’s motion to remand is GRANTED. Plaintiff, however, is not entitled to an award of fees and costs incurred in connection with removal. Although removal was premature, Defendants certainly had an objectively reasonable basis for seeking removal. *See* Notice of Removal, ECF No. 1, ¶ 15 (alleging that the Summons triggered the 30-day time limit for filing a notice of removal under *Whitaker*). The Clerk of Court is directed to REMAND this case to New York State Supreme Court, New York County, under Index Number 654449/2013.

Dated: New York, New York
April 7, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge