

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7060

September Term, 2020

1:18-cv-03028-KBJ

Filed On: February 5, 2021

Moreh J. Buchanan, also known as Ray
Baby, doing business as Ray Baby-Fairplay
Recordings,

Appellant

v.

Sony Music Entertainment Inc., et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Pillard, Katsas, and Walker, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to appoint counsel, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's May 26, 2020 order be affirmed. The district court correctly concluded that appellant failed to state a claim for copyright infringement. Most of the songs that appellant claims were infringed were not registered with the U.S. Copyright Office before appellant filed suit and thus cannot form the basis of a copyright action. See 17 U.S.C. § 411(a) (“[N]o civil action for infringement . . . shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.”); Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC, 139 S. Ct. 881, 887 (2019). As to his song that was registered, appellant has failed to plausibly allege that appellees had access to his registered work or that there are substantial similarities between protectable aspects of his registered work and the allegedly infringing works. See Reader's Digest Ass'n, Inc. v. Conservative Digest, Inc., 821 F.2d 800, 806 (D.C. Cir. 1987). Additionally, to the

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extent appellant attempts to raise a claim for copyright infringement pertaining to another registered work of his on appeal, that claim was expressly waived before the district court and cannot be resurrected on appeal. See Kingman Park Civic Ass'n v. Williams, 348 F.3d 1033, 1039 (D.C. Cir. 2003). Lastly, appellant has forfeited any challenge to the district court's dismissal of his tort claims by failing to raise it on appeal. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk