IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FASTCASE, INC.,

Plaintiff,

v.

LAWRITER, LLC,

Defendant.

CIVIL ACTION FILE

NUMBER 1:17-cv-00414-TCB

O R D E R

This case comes before the Court on Defendant's motion to dismiss [4].

I. Factual Background

Plaintiff Fastcase, Inc. and Defendant Lawriter, LLC are competitors in the market for legal research services. Both companies provide online access to searchable databases of public law, such as federal and state statutes, administrative rules and regulations, and judicial decisions. At issue in this lawsuit is the right to publish the Georgia Administrative Rules and Regulations ("Georgia Regulations") for use by lawyers and law firms.

O.C.G.A. § 50-13-17 requires the Georgia Regulations to be published by the Georgia Secretary of State ("SOS") for use by the public. The SOS has delegated that duty to Lawriter pursuant to a contract that requires Lawriter to publish the regulations on a website. The contract further provides that Lawriter must "make the Georgia Regulations continuously and freely available twenty-four hours a day, seven days a week for viewing and searching by the general public via internet connection. . . ." and, "this shall be done at no charge and without the requirement of any passwords, codes, or requirements of any kind." [1] at ¶17.

Lawriter contends that the contract gives it the exclusive rights to electronically publish the Georgia Regulations. On April 7, 2016, pursuant to its belief that it holds the exclusive rights, Lawriter imposed a terms of use policy on the SOS's website. Following this addition, a viewer who wants to access the regulations must agree to the terms of use, which provide:

- You agree that you will not sell, will not license, and will not otherwise make available in exchange for anything of value, anything

> that you download, print, or copy from this site. [1] at ¶ 6.
>
> - You agree that you will not copy, print, or download any portion of the regulations posted on this site exceeding a single chapter of regulations for sale, license, or other transfer to a third party, except that you may quote a reasonable portion of the regulations in the course of rendering professional advice. *Id.*
>
> - If you violate this agreement, or if you access or use this website in violation of this agreement, you agree that Lawriter will suffer damages of at least $20,000. *Id.*

Fastcase's legal database includes the Georgia Regulations and is available by subscription to lawyers and law firms. In 2010, Fastcase entered into a contract with the State Bar of Georgia that required Fastcase to build a database of Georgia law that includes the Georgia Regulations. The State Bar of Georgia pays an annual per-member fee to Fastcase, and in return the members of the bar can access the database free of charge. Before Lawriter added the terms of use restriction, Fastcase, acting pursuant to its contract with the State Bar of Georgia, updated its database, specifically the Georgia Regulations portion, by visiting the SOS website multiple times a week.

On December 21, 2015, Lawriter sent a letter to Fastcase accusing Fastcase of violating Lawriter's rights by providing users with access to the Georgia Regulations as a fee-based service. The letter demanded that Fastcase stop offering such service or Lawriter would "take those steps Lawriter deems necessary to protect its legal rights, which may include litigation. . . ." *Id.*

On February 3, 2016, Fastcase filed its first suit against Lawriter ("*Fastcase I*"). Fastcase sought declaratory relief and a permanent injunction that would prevent Lawriter from interfering with Fastcase's publication of the Georgia Regulations. In its complaint, Fastcase asserted that Lawriter has no legal rights, by contract or copyright, to restrict publication of the Georgia Regulations.

In response, Lawriter asserted counterclaims for unjust enrichment and quasi contract but later withdrew its counterclaims.

During this time, Lawriter added the terms of use restrictions and alleged that these restrictions rendered Fastcase's allegations moot.

Ultimately, this Court dismissed the action for lack of subject-matter jurisdiction. The Court determined that there was no federal-

question jurisdiction because Lawriter did not currently hold a copyright and therefore could not have brought an infringement claim in federal court. The Court further held that jurisdiction could not be premised on Fastcase's speculation that future events may create a federal question.

The Court also determined that while there was complete diversity between the parties, Fastcase failed to meet the $75,000 amount-in-controversy requirement. Fastcase had alleged that the amount-in-controversy requirement was satisfied by the cumulative subscription revenue for its entire database, but the Court determined that value to be inapplicable because the lawsuit concerned only one component of the database. Accordingly, on January 26, 2017, this Court dismissed the case without prejudice.

A week later, on February 2, 2017, Fastcase filed this action pursuant to the Declaratory Judgment Act. Fastcase argues that Lawriter cannot claim an exclusive right to the Georgia Regulations or regulations of any other state because it is "public law published under statutory mandate and are in the public domain." [1] at ¶ 12. Further,

Fastcase argues that Lawriter cannot indirectly gain exclusive rights by imposing the terms of use restrictions on the SOS website. Fastcase avers that the terms of use are unenforceable as against public policy and are a violation of the contract between Lawriter and the SOS. Thus, Fastcase seeks a declaration that terms of use cannot establish a binding contract between Lawriter and any person accessing the Georgia Regulations through the SOS website.

Lastly, Fastcase contends that the terms of use restrictions are a violation of federal copyright law, specifically copyright preemption and the merger doctrines; thus, any state law claim brought by Lawriter would be preempted by federal copyright law.

Lawriter, however, contends that it can claim an exclusive right and that the terms of use policy establishes a valid and enforceable contract between Lawriter and any party accessing the Georgia Regulations.

II. Analysis

As noted above, Fastcase filed this lawsuit pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202. "[I]t is well

established that the Declaratory Judgment Act does not, of itself, confer jurisdiction upon federal courts." *Stuart Weitzman, LLC v. Microcomputer Res., Inc.*, 542 F.3d 859, 861–62 (11th Cir. 2008). Thus, "a suit brought under the Act must state some independent source of jurisdiction, such as the existence of diversity or the presentation of a federal question." *Borden v. Katzman*, 881 F.2d 1035, 1037 (11th Cir. 1989).

A. Diversity Jurisdiction

Federal district courts are vested with original jurisdiction over any civil action between citizens of different states "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs. . . ." 28 U.S.C. § 1332(a). In this case, there is no dispute that the parties are completely diverse[1]; thus, the jurisdictional inquiry pertains to whether the amount-in-controversy requirement is satisfied.

[1] Fastcase, a corporation, is deemed to be a citizen of both Delaware, its state of incorporation, and Washington, D.C., its principal place of business. 28 U.S.C. § 1332(c); *see also* [1] at ¶ 2. Lawriter is a limited liability company and is deemed to be a citizen of each state in which any of its members is a citizen. *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F.3d 1020, 1021–22 (11th Cir. 2004). Lawriter has a single member, SSN Holdings, LLC, which has two members, Satish and Paresh Sheth. The Sheths are citizens of California. Accordingly, SSN Holdings and Lawriter are also deemed citizens of California. [1] at ¶ 3.

Where, as here, "a plaintiff seeks injunctive or declaratory relief, the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective." *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1077 (11th Cir. 2000). Put another way, "the value of injunctive or declaratory relief for amount in controversy purposes 'is the monetary value of the object of the litigation that would flow to the plaintiff if the injunction were granted.'" *D & R Party, LLC v. Party Land, Inc.*, 406 F. Supp. 2d 1382, 1384 (N.D. Ga. 2005) (quoting *Ericsson GE Mobile Commc'ns, Inc. v. Motorola Commc'ns & Elecs., Inc.*, 120 F.3d 216, 218 (11th Cir. 1997)). The Court cannot rely on speculation or conjecture to conclude that is has jurisdiction; therefore, only benefits that are "sufficiently measurable and certain" may be considered. *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1268–69 (11th Cir. 2000) (internal punctuation omitted).

Generally, a plaintiff's allegations regarding the amount-in-controversy requirement are entitled to deference by the court, meaning that the courts will dismiss for lack of jurisdiction only when it is shown to a "legal certainty" that the claim is really for less than the

jurisdictional threshold. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288–89 (1938); *Morrison*, 228 F.3d at 1268, 1272. However, when a plaintiff brings a claim for declaratory judgment, "the *Red Cab Co.* 'legal certainty' test gives way, and the party seeking to invoke federal jurisdiction bears the burden of proving by a preponderance of evidence that the claim on which it has based jurisdiction meets the jurisdictional minimum." *Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 807 (11th Cir. 2013).

Fastcase attempts to carry this burden first by asserting that "if Fastcase was unable to offer the Georgia Regulations to all members of the State Bar of Georgia, Fastcase's contract with the State Bar would be subject to termination, causing a loss to Fastcase substantially more than $75,000 per year." [1] at ¶ 5. Additionally, Fastcase asserts that in order to maintain a current Georgia law library and update the Georgia Regulations it will need to access the SOS's website and violate Lawriters' terms of use policy daily, and each violation would subject it to liquidated damages of at least $20,000, well over the jurisdictional requirement.

In its motion to dismiss, Lawriter asserts that the amount-in-controversy requirement is not satisfied for two reasons. First, Lawriter contends that Fastcase's alleged future loss due to the possible contract termination by the State Bar of Georgia is too speculative to satisfy the amount-in-controversy requirement. Second, Lawriter contends that Fastcase failed to assert that any monetary gain would result if the injunction was granted, and instead Fastcase only alleges that, given the terms of use policy, it would suffer monetary loss and be subject to the collection of liquidated damages if the injunction were denied.

The Court finds that the amount-in-controversy requirement is not satisfied and thus diversity jurisdiction does not exist. Given that the Eleventh Circuit has refused to find the amount-in-controversy requirement satisfied in cases where the value of the litigation is too speculative and immeasurable, Fastcase's first argument—that the amount-in-controversy requirement is satisfied by the monetary amount it stands to lose if the State Bar of Georgia terminates their contract—is misplaced.

In *Ericsson*, 120 F.3d at 217, a mobile communications company claimed that it lost a communication system contract with the City of Birmingham because the City improperly handled the bidding process. The company sought to enjoin the City of Birmingham's contract with the winning bidder. However, the Eleventh Circuit determined that if the injunctive relief was granted the only benefit the company stood to gain was "the possibility that the city might rebid the contract and that, during the rebid, the city might select [plaintiff's] communication system and price." *Id.* at 221–22. Ultimately, the Eleventh Circuit refused to speculate about the monetary value of the litigation and held that the amount-in-controversy requirement was not satisfied.

This case is similar to *Ericsson*. Fastcase has averred that failure to update the Georgia Regulations "could put Fastcase in breach of the entire agreement." [7] at 13. Fastcase has not pointed to any specific contractual provision or statement by the State Bar of Georgia indicating that a failure to update the Georgia Regulations would constitute a breach and would lead to termination. Instead, like in *Ericsso*n, granting the injunction would only lead to a long list of

hypothetical scenarios that could lead to monetary damages. There is no concrete evidence before the Court that provides a reasonably definite monetary value of the injunctive relief from Fastcase's perspective. The Court will not speculate about the importance and value of the Georgia Regulations portion of the database and attempt to predict whether the State Bar of Georgia would cancel the entire contract because of a problem with just the Georgia Regulations component.[2] Accordingly, the possible termination of Fastcase's contract with the State Bar of Georgia is an insufficient basis for satisfying the amount-in-controversy requirement.

The Court is equally unpersuaded by Fastcase's argument that the amount-in-controversy requirement is satisfied because it faces exposure to damages of $20,000 every time it violates Lawriter's terms of use policy. As explained by this Court in *Fastcase I*, the damages or other costs Fastcase may have to pay if its request for injunctive relief

[2] The argument by Fastcase that it would lose the whole contract because of a problem with just the Georgia Regulations component is also undermined by the fact that the Georgia Regulations are available elsewhere for free. Given that the Georgia Regulations can be found free elsewhere, their value to the State Bar of Georgia and the contract becomes increasingly unclear.

is denied does not speak to "the monetary value of the object of the litigation that would flow to [Fastcase] if the injunction were granted." *D & R Party*, 406 F. Supp. 2d at 1384; *see also Ala. Power Co. v. Calhoun Power Co.*, No. 2:12-cv-3798-WMA, 2012 WL 6755061, at *3 (N.D. Ala. Dec. 28, 2012) ("[T]he Eleventh Circuit has held that the value of a declaratory judgment action is judged by the value a plaintiff will receive if an injunction is granted, not if it is denied."). As it stands, if the injunction were granted, the only benefit flowing to Fastcase that is connected to this litigation is the annual flow of payments from the State Bar of Georgia pursuant to their 2012 contract. However, the contract payment from the State Bar of Georgia is not representative of the monetary value of access to just the Georgia Regulations; it is payment for access to the entire database created by Fastcase. Accordingly, the total contract amount is not the relevant or applicable monetary benefit that will flow to Fastcase if the injunction is granted; thus, it cannot be used as a basis for satisfying the amount-in-controversy requirement. *See Leonard v. Enter. Rent a Car*, 279 F.3d 967, 974 (11th Cir. 2003) (determining that in a class action lawsuit

challenging rental-car companies' sale of insurance to individuals the amount-in-controversy is evaluated by reference to the specific "amount of the allegedly fraudulent insurance charges," not the total amount the plaintiffs had paid to rent vehicles from the defendants). Moreover, as stated previously, the Court will not attempt to speculate about whether the Georgia Regulations component of the database alone is worth enough to satisfy the jurisdictional requirement.

"[F]ederal courts are obligated to strictly construe the statutory grant of diversity jurisdiction." *Morrison*, 228 F.3d at 1268. Presently, there is nothing before the Court that would allow it to do anything but speculate about the monetary value of the object of this ligation from Fastcase's perspective. *See Morrison*, 228 F.3d at 1268 (explaining that the "liberal standard for jurisdictional pleading is not a license for conjecture"). Thus, Fastcase has failed to carry its burden of "proving by a preponderance of the evidence" that the amount-in-controversy requirement has been met; therefore, diversity jurisdiction does not exist in this case. *McKinnon Motors*, 329 F.3d at 807.

B. Federal Question Jurisdiction

Under 21 U.S.C. § 1331, federal district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Ordinarily, an action can be said to "arise under" federal law "only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Dunlap v. G&L Holding Grp., Inc.*, 381 F.3d 1285, 1290 (11th Cir. 2004). However, "in the context of declaratory judgment action, . . . [the] court must determine whether or not the cause of action anticipated by the declaratory judgment plaintiff arises under federal law." *Stuart Weitzman*, 542 F.3d at 862 (internal punctuation omitted). The "inquiry is thus whether, absent the availability of declaratory relief, the instant case could nonetheless have been brought in federal court." *Id.* (internal punctuation omitted).

In this case, it is undisputed that the only federal claims potentially implicated by Lawriter's threatened litigation are federal copyright claims. It is also undisputed that "Lawriter has neither registered nor applied to register a copyright in the materials at issue."

[4-1] at 5. Additionally, this Court found no federal-question jurisdiction in *Fastcase I*. Fastcase, however, contends that the Court improperly applied *Stuart Weitzman* in *Fastcase I*, and asserts that the proper controlling authority is *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010).

In *Muchnick*, 559 U.S. at 1247, the Supreme Court held that 17 U.S.C. § 411(a)'s registration requirement was nonjurisdictional and instead classified it as a precondition to suit. Fastcase argues that *Muchnick*, a 2010 decision by the Supreme Court, is the controlling authority, not *Stuart Weitzman*, a 2008 decision from the Eleventh Circuit. However, the Supreme Court's decision in *Muchnick* was made in the context of a class action certification for purposes of class settlement approval, and not in the context of a declaratory-judgment action. Additionally, while the Supreme Court in *Muchnick* classified the registration requirement as a precondition to suit, the Supreme Court did not address whether claims involving unregistered works would necessarily be dismissed. Nevertheless, following the *Muchnick* decision, other courts, including the Eleventh Circuit, have dismissed

copyright infringement claims because they involve unregistered works. *See Dowbenko v. Google, Inc.*, 582 F. App'x 801, 805 (11th Cir. 2014) (holding that plaintiff's copyright infringement claim must be dismissed because the precondition of registration was not satisfied); *see also Fund for Lost Boys & Girls of Sudan, Inc. v. Alcon Entm't LLC*, No. 1:15-cv-00509-LMM, 2016 WL 4394486, *7 (N.D. Ga. Mar. 22, 2016) (holding that plaintiff's declaratory judgment claim must be dismissed because it sought to enforce copyright rights but no copyright had been registered). Thus, the Court will follow the Eleventh Circuit and others who have found that the registration requirement acts as a procedural bar to infringement claims, even post-*Muchnick*.

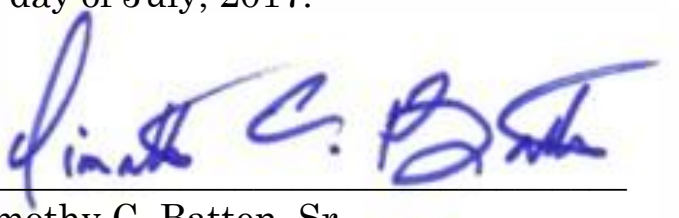
Accordingly, in this case, federal-question jurisdiction does not exist. The facts clearly indicate that Lawriter has not registered or attempted to register an actual copyright for the Georgia Regulations. Additionally, contrary to Fastcase's suggestion, it would be unreasonable for the Court to infer from Lawriter's threats of litigation that Lawriter has begun the process of registration for its copyright. The existence of subject-matter jurisdiction can only be based on the

facts as they exist at the time the declaratory-judgment action is filed. *Household Bank v. JFS Grp.*, 320 F.3d 1249, 1259 (11th Cir. 2003). Thus, in this case, where Lawriter could not bring a successful infringement claim because it lacks copyright registration, the Court cannot base jurisdiction on speculation that forthcoming events might create federal-question jurisdiction.

III. Conclusion

For the foregoing reasons, Lawriter's motion to dismiss [4] for lack of subject-matter jurisdiction is granted. This action is dismissed without prejudice.

IT IS SO ORDERED this 17th day of July, 2017.



Timothy C. Batten, Sr.
United States District Judge