

2023 WL 142545

United States Court of Appeals, Ninth Circuit.

Ralph T. REILLY, an  
individual, Plaintiff-Appellant,

v.

Steve WOZNIAK, an individual;  
et al., Defendants-Appellees.

Nos. 21-16140, 21-17047

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Argued and Submitted November  
16, 2022 Phoenix, Arizona

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FILED January 10, 2023

Appeal from the United States District Court for the District  
of Arizona, [Michael T. Liburdi](#), District Judge, Presiding,  
D.C. No. 2:18-cv-03775-MTL

#### Attorneys and Law Firms

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Woz U Education, LLC, Wozu Education Holdings, LLC,  
Southern Careers Institute, Inc.

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Schern Richardson Finter, PLC, Mesa, AZ, for Defendants-  
Appellees Steve Wozniak, Woz U Education, LLC, Wozu  
Education Holdings, LLC, Southern Careers Institute, Inc.

Before: [BYBEE](#), [OWENS](#), and [COLLINS](#), Circuit Judges.

#### MEMORANDUM\*

\* This disposition is not appropriate for publication and is  
not precedent except as provided by [Ninth Circuit Rule  
36-3](#).

\*1 In the first of two consolidated cases (“First Appeal”),  
Ralph Reilly appeals from the district court's summary  
judgment against him on his claim for breach of an implied-  
in-fact contract (“Count One”) and judgment on the pleadings

against him on his claim for money had and received (“Count  
Two”). The two claims, based in California law, were part  
of a federal copyright infringement lawsuit against Steve  
Wozniak, co-founder of Apple, for Wozniak's alleged use of  
Reilly's idea for and work on a “high tech university” using  
Wozniak's name and likeness.<sup>1</sup> In the second case (“Second  
Appeal”), Reilly appeals from the district court's award of  
attorney's fees to Appellees. As the parties are familiar with  
the facts, we do not recount them here. We affirm.

<sup>1</sup> Reilly's claim for copyright infringement proceeded to  
trial. The jury found in favor of Appellees, and Reilly  
does not appeal that verdict.

1. In the First Appeal, the district court granted summary  
judgment on Count One because Reilly did not allege that he  
disclosed his idea to Wozniak for sale. We review a district  
court's grant of summary judgment de novo and construe  
disputed facts in the light most favorable to the nonmovant.  
[Rollins v. Cmty. Hosp. of San Bernardino](#), 839 F.3d 1181, 1185  
(9th Cir. 2016). Reilly implores this court to hold that a party  
claiming breach of a contract for conveyance and use of an  
idea need not show that the claimant offered the idea to the  
defendant for sale because California law provides a broad  
equitable basis to find implied-in-fact contracts for the use of  
ideas. We decline to do so. Reilly's argument is contrary to  
the holding in [Desny v. Wilder](#), 299 P.2d 257, 269–70 (Cal.  
1956) and its progeny.

When interpreting state law, we are bound to follow the  
decisions of the state's highest court, and when “the state  
supreme court has not spoken on an issue ... [we] must  
determine what result the [state] court would reach based on  
state appellate court opinions, statutes and treatises.” [Diaz v.  
Kubler Corp.](#), 785 F.3d 1326, 1329 (9th Cir. 2015) (internal  
quotations omitted).

Reilly's argument is foreclosed by [Aliotti v. R. Dakin &  
Co.](#), 831 F.2d 898 (9th Cir. 1987), where we followed [Faris  
v. Enberg](#), 158 Cal. Rptr. 704 (Ct. App. 1979), to hold  
that “no contract may be implied where an idea has been  
disclosed *not to gain compensation for that idea* but for  
the sole purpose of *inducing the defendant to enter a future  
business relationship*.” [Aliotti](#), 831 F.2d at 902–03 (citing  
[Faris](#), 158 Cal. Rptr. at 709–10) (emphasis added). Reilly,  
by his own admission, expected that Wozniak would “jointly  
market,” and be his “partner[ ] in exploiting,” Reilly's idea. It  
was in this precise context, contemplating a future business  
relationship, that [Aliotti](#) and [Faris](#) held that an idea must  
be disclosed for sale for an implied-in-fact contract to exist.

Therefore, the district court did not err in granting summary judgment because there was no genuine dispute of fact as to whether Reilly offered his idea to Wozniak for sale.

\*2 2. Also in the First Appeal, the district court held that Count Two, Reilly's claim for money had and received, was preempted under § 301 of the Copyright Act ("Act"). "We review the granting of ... a motion [for judgment on the pleadings] de novo" and accept as true the nonmovant's allegations of fact. *Unite Here Loc. 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695, 700 (9th Cir. 2022). "We also review de novo questions of preemption and statutory interpretation." *Ass'n des Éleveurs de Canards et d'Oies du Québec v. Becerra*, 870 F.3d 1140, 1145 (9th Cir. 2017). We affirm.

To the extent that Reilly's claim for money had and received is based on the transmission of his idea apart from its embodiment in any tangible medium, that claim is merely a repackaging of his *Desny* claim, and it fails for the same reasons discussed above. An essential element of a claim for money had and received is that the defendant received something that, under "principles of justice and fairness," it ought to pay for. See *Philpott v. Superior Ct.*, 36 P.2d 635, 640 (Cal. 1934). Here, there is no tenable basis, apart from a *Desny*-based theory, for saying that Appellees ought to pay for that receipt of a mere idea. Accordingly, Reilly's claim for money had and received can rest only on his contention that Appellees improperly made use of tangible materials that embodied his ideas. We hold that that claim is preempted.

A particular cause of action is preempted by the Act if 1) the subject matter of the state law claim is within the subject matter of copyright as set out in §§ 102 and 103 of the Act, and 2) the rights asserted under state law are equivalent to the rights under § 106 of the Act. *Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1010 (9th Cir. 2017). Reilly alleges that Appellees owe him money for the profit they made from Woz U because that profit was derived from his idea and his related copyrighted material without Reilly's consent or participation. His attempts to distinguish this count from his copyright claims, which he lost on the merits at trial, are unavailing.

For the first prong of the preemption test, this court has held that ideas underpinning copyrighted material fall within the subject matter of copyright if the "ideas and concepts ... are fixed in a tangible medium," even though "fixed ideas [are excluded] from the scope of actual federal copyright

protection." *Montz v. Pilgrim Films & Television, Inc.*, 649 F.3d 975, 979 (9th Cir. 2011) (en banc).

Reilly contends that Appellees are indebted to him "for money had and received by ... each of them from their use, application and exploitation of Reilly's Work in the operation, marketing and promotion of Woz U." Because Reilly's Work includes his ideas and their expressions in tangible media, Count Two is within the subject matter of copyright, satisfying the first prong of the preemption test.

For the second prong of the preemption test, "[t]o survive preemption, the state cause of action must protect rights which are qualitatively different from the copyright rights. The state claim must have an extra element which *changes the nature of the action*." *Del Madera Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 977 (9th Cir. 1987) (emphasis added) (internal quotation and citations omitted), *overruled on other grounds by Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994). Reilly argues that Count Two is not preempted because it is based on a contractual, or impliedly contractual, personal agreement with Wozniak rather than on a monopoly against the world, as in copyright.

\*3 In *Del Madera*, under much the same circumstances as Reilly alleges, a party in a joint venture with the plaintiff conveyed information that allowed a third party to develop "property" based on copyrightable materials. *Id.* While there was an extra element in the unjust enrichment claim that the plaintiff had brought—an implied promise not to use the materials, based on the existing relationship between the parties—this element did not *transform the nature* of the action such that the claimed right was distinct from those provided for in the Act. *Id.* For the same reasons that the analogous unjust enrichment claim was preempted in *Del Madera*, Reilly's Count Two claim for money had and received does not assert rights qualitatively different from those under copyright and is thus preempted.

3. In the Second Appeal, Reilly challenges the district court's award of attorney's fees and costs on all Reilly's claims pursuant to the Act. See 17 U.S.C. § 505. We review the district court's fee award for abuse of discretion and do not reverse unless the district court's decision "is based on an inaccurate view of the law or a clearly erroneous finding of fact." *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 556 (9th Cir. 1996) (quotation omitted).

The district court's decision rests on a proper weighing of the relevant factors. See *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 614 (9th Cir. 2010) (discussing the five factors a court should consider); *Kirtsaeng v. John Wiley & Sons, Inc.*, 579 U.S. 197, 199–200 (2016) (noting that courts should give substantial weight to the objective unreasonableness factor while giving due consideration to the other factors). In particular, the district court found that Reilly's copyright claim was objectively unreasonable because he “[chose] to focus on his idea and not the protected elements of his copyrighted work” at trial despite it being “[h]ornbook law that ideas are not copyrightable subject matter.”

The district court did not misstate relevant law or demonstrate a clearly erroneous understanding of the facts. Accordingly, it did not abuse its discretion in awarding attorney's fees on the copyright claim.

Nor did the district court abuse its discretion by awarding fees on Reilly's state law claims. “Attorney's fees are awardable ...

if there is express statutory authorization, or for work done on claims that involve a common core of facts or [are] based on ... legal theories [related to] claims governed by statutory ... attorney's fees provisions, such that the lawsuit cannot be viewed as a series of discrete claims.” *Love*, 611 F.3d at 614 (internal quotations and citation omitted).

All of Reilly's claims stem from a common core of facts—his allegation that Appellees did not compensate him for their use of his idea. Thus, the district court did not abuse its discretion in holding that Reilly's claims were sufficiently related to warrant application of the Act's attorney's fees and costs provision to all causes of action.

**AFFIRMED.**

#### All Citations

Not Reported in Fed. Rptr., 2023 WL 142545, 2023 Copr.L.Dec. P 32,078

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