786 Fed.Appx. 711 (Mem)

This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

Sean HALL, doing business as Gimme Some Hot Sauce Music, an individual; Nathan Butler, doing business as Faith Force Music, an individual, Plaintiffs-Appellants, v. Taylor SWIFT, an individual; et al., Defendants-Appellees.

No. 18-55426 | FILED December 5, 2019

Before: HURWITZ, OWENS, and LEE, Circuit Judges.

There has been no timely petition for panel rehearing or petition for rehearing en banc. No further petitions for rehearing or rehearing en banc may be filed.

AMENDED MEMORANDUM

Sean Hall and Nathan Butler (together, Hall) appeal from the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) of their complaint against Taylor Swift, Martin Sandberg, and Karl Schuster (together, Swift) alleging copyright infringement. The complaint alleged that Swift's hit song *Shake It Off* (2014) illegally copied a six-word phrase and a four-part lyrical sequence from Hall's *Playas Gon' Play* (2001). We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court's dismissal under Rule 12(b)(6). *See Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011). As the parties are familiar with the facts, we do not recount them here. We reverse and remand.

The district court dismissed the complaint based on a lack of originality in the pertinent portions of Hall's work. *See Satava v. Lowry*, 323 F.3d 805, 810 (9th Cir. 2003) ("Any copyrighted expression must be 'original.' Although the amount of creative input ... required to meet the originality standard is low, it is not negligible." (citing *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 345, 362, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991))); *see also* 1 Nimmer on Copyright § 2.05[B] (2017) (noting that originality is established when "the work originates in the author" and "has a spark that goes beyond the banal or trivial"). Even taking into account the matters of which the district court took judicial notice, *see United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003), Hall's complaint still plausibly alleged originality. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).[1]

REVERSED and REMANDED.

[1] Swift argues that this Court should affirm the district court's decision on other grounds. However, we decline to do so. The district court may consider Swift's alternative arguments on remand.