

OCT 17 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TOM BEAN,

Plaintiff - Appellant,

v.

HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY,

Defendant - Appellee.

No. 10-16771

D.C. No. 3:10-cv-08034-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted October 10, 2014**
Phoenix, Arizona

Before: WALLACE, SILVERMAN, and M. SMITH, Circuit Judges.

Tom Bean appeals from the dismissal of his copyright infringement action against Houghton Mifflin Harcourt. The district court held that Bean had not met 17 U.S.C. § 411(a)'s pre-suit copyright registration requirement because his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

photographs were improperly registered under 17 U.S.C. § 409. We have jurisdiction pursuant to 28 U.S.C. § 1291, *Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F.3d 612, 614 (9th Cir. 2010), and we **VACATE** the dismissal order and **REMAND** for further proceedings.

We recently held in a similar case, *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Company*, that the registration of a compilation of photographs also registers the individual photographs within the compilation where, as here, the registrant follows Copyright Office practice and does not include the title and author of each individual photograph on the registration application. 747 F.3d 673, 685 (9th Cir. 2014). Consistent with our *Alaska Stock* opinion's express disagreement with the district court's decision in this case, *id.* at 684 n.50, we hold that the district court erred in dismissing Bean's action under Federal Rule of Civil Procedure 12(b)(6) on the ground that his photographs were not individually registered.

VACATED and REMANDED.

Costs awarded to Appellant.