

In the
Supreme Court of the United States

MICHAEL YAMASHITA AND MICHAEL YAMASHITA, INC.,
Petitioners,

v.

SCHOLASTIC INC.,
Respondent.

On a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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JANUARY 13, 2020

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QUESTION PRESENTED

Nearly thirty years ago in *Feist*, this Court set forth two elements required to state a claim for copyright infringement: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.”¹ The Second Circuit acknowledges a split from the Third Circuit’s holding in *In re McGraw-Hill*, which ruled that, under *Feist*, a plaintiff need not plead “unauthorized” copying to state a *prima facie* case,² citing the Seventh Circuit’s concordant finding in *Muhammad-Ali v. Final Call, Inc.*³ The Second Circuit affirmed dismissal of the Petitioner’s complaint, which was nearly identical to those analyzed in *In re McGraw*. The Question Presented is:

Did the Second Circuit err in holding that a complaint for copyright infringement must be dismissed unless it alleges particular facts showing “1) which specific original works are the subject of the copyright claim, 2) that plaintiff owns the copyrights in those works, 3) that the copyrights have been registered in accordance with the statute, and 4) [as now required by the Second Circuit but not by the Third and Seventh Circuits] by what acts during what time the defendant infringed the copyright”?⁴

¹ *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282, 1296, 113 L.Ed.2d 358 (1991).

² *In re McGraw-Hill Glob. Educ. Holdings LLC*, 909 F.3d 48, 66 (3d Cir. 2018).

³ F.3d 755, 760 (7th Cir. 2016) (“a plaintiff is not required to prove that the defendant’s copying was unauthorized in order to state a *prima facie* case of copyright infringement.”) (emphasis in original).

⁴ *Yamashita v. Scholastic Inc.*, 936 F.3d 98, 104 (2d Cir. 2019) (emphasis added).

PARTIES TO THE PROCEEDINGS

There are no parties to the proceedings other than those listed in the caption. Petitioners Michel Yamashita, Inc. and Michael Yamashita (collectively, “Yamashita”) were plaintiffs in the district court and appellants in the court of appeals. Respondent Scholastic Inc. (“Scholastic”) was defendant in the district court and appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, petitioner Michael Yamashita, Inc. states that it has no parent company, and no publicly held corporation owns 10% or more of its stock. Petitioner Michael Yamashita, an individual, is not subject to the corporate disclosure requirements of S.Ct. Rule 29.6.

LIST OF PROCEEDINGS

United States Court of Appeals for the Second Circuit

17-1957-cv

*Michael Yamashita, Michael Yamashita, Inc. v.
Scholastic Inc.*

Final Opinion: August 28, 2019

Rehearing Denial: October 16, 2019

United States District Court for the Southern
District of New York

16-cv-9201 (KBF)

*Michael Yamashita, Michael Yamashita, Inc. v.
Scholastic Inc.*

Order: January 5, 2017

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.



OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Second Circuit, dated August 28, 2019, is published at 936 F.3d 98. App.1a. Petitioners' request for en banc rehearing was denied without opinion. App.25a. The Memorandum and Order of the United States District Court for the Southern District of New York, dated January 5, 2017, is not reported but is available at 2017 WL 74738. App.21a.



JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1338, and the Second Circuit had jurisdiction under 28 U.S.C. § 1291. The Second Circuit denied Petitioner's timely filed petition for rehearing on October 16, 2019. App.25a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).



JUDICIAL RULES INVOLVED

Fed. R. Civ. P. 8(a) provides:

(a) Claim for Relief

A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.⁵

Fed. R. Civ. P. 8(c)(1)

Federal Rules of Civil Procedure Rule 8(c)(1) provides, in pertinent part:

In General

In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

[. . .]

License . . .

⁵ Fed. R. Civ. P. 8.



INTRODUCTION

This copyright infringement case presents the oft-litigated question of how much detail is enough for a complaint to make it through the courthouse door and into discovery. Under this Court’s ruling in *Feist*, only two elements must be pleaded to allege copyright infringement: ownership and copying. And under Rule 8, license is an affirmative defense. Accordingly, both the Seventh and Third Circuits determined that a copyright plaintiff need not establish that copying is “unauthorized” as part of its *prima facie* case.

That copyright plaintiffs are not required to anticipate and disprove the defense of license is especially significant in cases like this one, where the fact of use is provable, but the scope of use is known only to the alleged infringer. In adopting a heightened pleading standard and affirming the district court’s dismissal of Yamashita’s case without discovery and with prejudice, the Second Circuit permits Scholastic, and other similarly situated infringers, to commit the perfect crime—so long as they are able to hide specific evidence of infringements, they will never have to defend the merits of these cases.⁶

⁶ The district court characterized Yamashita’s complaint as a “fishing expedition.” *Yamashita v. Scholastic, Inc.*, No. 16-cv-9201 (KBF), 2017 WL 74738, at *2 (S.D.N.Y. Jan. 5, 2017), *aff’d*, 936 F.3d 98 (2d Cir. 2019). But Rule 11 and the Copyright Act itself—which authorizes the award of attorneys’ fees—provide sufficiently powerful weapons to discourage and punish frivolous filings.



STATEMENT OF THE CASE

I. THE DISTRICT COURT PROCEEDINGS BELOW

Michael Yamashita is a noted National Geographic photographer, travelling the world for 40 years to create images for the magazine. He and his company Michael Yamashita, Inc. (together “Yamashita”) own the copyrights in the at-issue photographs. In his complaint, Yamashita alleged that publisher Scholastic Inc. (“Scholastic”) infringed his photographs by continuing to use them after exhaustion of limited, one-time use licenses obtained from stock photo agency Corbis Corporation (“Corbis”), and in ways never licensed in the first place.⁷

After successfully petitioning—over Yamashita’s opposition—the District of New Jersey to transfer the case to the Southern District of New York, Scholastic moved to dismiss the complaint. It contended that Yamashita failed to plead facts, known only to Scholastic, regarding the scope of the alleged Corbis licenses, and the extent of Scholastic’s actual use of Yamashita’s images.⁸ The district court granted Scholastic’s motion, applying a standard set forth in 1992 in *Kelly v. L.L. Cool J.*:

A properly plead [sic] copyright infringement claim must allege 1) which specific original works are the subject of the copyright claim, 2) that plaintiff owns the copyrights in those

⁷ App.29a.

⁸ App.36a.

works, 3) that the copyrights have been registered in accordance with the statute, and 4) by what acts during what time the defendant infringed the copyright.⁹

In doing so, the district court disregarded Yamashita's contention that it was impossible for him to include facts regarding Scholastic's uses, because those facts were known only to Scholastic and kept secret. In similar cases throughout the country, Scholastic has repeatedly claimed that such information is "confidential" and warrants protective orders that effectively hide its systemic copyright infringements from the public.¹⁰

II. THE SECOND CIRCUIT PROCEEDINGS

A. The Panel Decision

Yamashita timely appealed the district court's dismissal of his complaint. The Second Circuit affirmed, holding that the heightened pleading standard adopted by the district court was appropriate, noting "a plaintiff who has authorized the licensed use of its work to the alleged infringer must allege with specificity facts

⁹ *Kelly v. L.L. Cool J.*, 145 F.R.D. 32, 36 (S.D.N.Y. 1992), *aff'd sub nom. Kelly v. L.L. Cool J.*, 23 F.3d 398 (2d Cir. 1994) (emphasis added).

¹⁰ *See, e.g., Bob Daemmrch Photography, Inc. v. Scholastic Inc.*, Western District of Texas Case No. 15-cv-01150-RP, Doc. 58 (Scholastic Motion for Protective Order); *Krasemann et al. v. Scholastic Inc.*, District of Arizona Case No. 18-cv-08313-DWL, Doc. 30 (Protective Order); *Keller v. Scholastic, Inc.*, E.D.Pa. Case No. 16-cv-01829-WB, Doc. 35 (Protective Order); *Frans Lanting, Inc. v. Scholastic, Inc.*, N.D.Cal. Case No. 15-cv-05671-JSC, Doc. 39 (Protective Order).

concerning the limits and asserted breaches of the licenses by the alleged infringer.”¹¹

B. Denial of Rehearing En Banc

On September 11, 2019, Yamashita timely petitioned the Second Circuit to rehear the case en banc. The Second Circuit denied Yamashita’s petition without comment.



REASONS FOR GRANTING THE PETITION

The question presented is both straightforward and manifestly important.

As the law exists now, there is one pleading standard in New York and a very different one in Chicago and Philadelphia. A copyright plaintiff alleging ownership and copying as set forth in *Feist* is allowed to proceed in New Jersey but denied his day in court in New York. One need not be a lawyer to know that is wrong and antithetical to our system of justice.

I. THE SECOND CIRCUIT ACKNOWLEDGES THAT THIS OPINION DIVERGES FROM THE THIRD CIRCUIT, WHICH CITED WITH APPROVAL AN OPINION OF THE SEVENTH CIRCUIT, CREATING A SPLIT REGARDING THE REQUIREMENTS FOR A COPYRIGHT INFRINGEMENT COMPLAINT TO SURVIVE A MOTION TO DISMISS.

The Second Circuit panel acknowledged that its opinion diverged from the holding of the Third Circuit

¹¹ *Yamashita v. Scholastic Inc.*, 936 F.3d at 104.

in *In re McGraw-Hill Global Ed. Holdings LLC*, 909 F.3d 48, 66 (3d Cir. 2018) (citing *Muhammad-Ali v. Final Call, Inc.*, 832 F.3d 760-61) (7th Cir. 2016):

We acknowledge that in a similar suit brought by photographers against a publisher, the Third Circuit has recently expressed disagreement with this approach . . . But this panel is not at liberty to relax the pleading requirements as we have previously applied them. (App.17a)

This split raises a “question of exceptional importance.”¹²

In re McGraw dealt with the question of whether, given that McGraw had initially obtained limited, one-time use licenses, the plaintiffs were required to allege that McGraw’s later use was unauthorized. After a review of its prior rulings as well as this Court’s holding in *Feist*, the Third Circuit found that proving unauthorized use is not part of the photographers’ *prima facie* case.¹³

¹² Fed. R. App. P. 35(b)(1)(B) (“the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.”). *See also New England Health Care Employees Welfare Fund v. iCare Mgmt., LLC*, 792 F.Supp.2d 269, 279 (D. Conn. 2011) (“A conflict with another Circuit is the only example Rule 35(b)(1)(B) gives of ‘a question of exceptional importance.’”).

¹³ *Id.* at 66 (3d Cir. 2018).

The Seventh Circuit conducted an even more in depth analysis in *Muhammad-Ali v. Final Call, Inc.*¹⁴ There, as here, the district court below “added an additional element [to the two-element *Feist* standard]: that Ali had to prove that the copying was not ‘authorized.’”¹⁵ In overturning this decision, the Seventh Circuit found the source of the problem in its own misstatement of the law in a prior case, explaining, “*Peters* omits the word with good reason: a plaintiff is not required to prove that the defendant’s copying was unauthorized in order to state a *prima facie* case of copyright infringement. Rather, the burden of proving that the copying was authorized lies with the defendant.”¹⁶

**A. Seventh Circuit Conflict:
*Muhammad-Ali v. Final Call, Inc.*¹⁷**

In *Muhammad-Ali v. Final Call, Inc.*, a professional artist brought suit against a newspaper, alleging it infringed copyright in a portrait of Louis Farrakhan. The defendant claimed it had an implied license for the use. The parties disputed who had the burden of showing that the uses at issue were unlicensed. The district court placed the burden on the plaintiff to prove that the defendant’s copying was unauthorized.

¹⁴ 832 F.3d 755, 760 (7th Cir. 2016).

¹⁵ *Id.*

¹⁶ *Muhammad-Ali v. Final Call, Inc.*, 832 F.3d at 760-62 (internal citations omitted).

¹⁷ 832 F.3d 755, 758 (7th Cir. 2016).

Chief Judge Wood wrote for the Seventh Circuit panel, reversing the district court:

To establish copyright infringement, Ali was required to prove two elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Peters v. West*, 692 F.3d 629, 632 (7th Cir. 2012) (quoting *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991)). No one disputes that Ali proved both of these. The district court, however, added an additional element: that Ali had to prove that the copying was not “authorized.”¹⁸

* * *

Muhammad-Ali then described the “transcription error” that lead to the district court’s heightened requirement and concluded, “a plaintiff is not required to prove that the defendant’s copying was unauthorized in order to state a *prima facie* case of copyright infringement.”¹⁹

Continuing, the Seventh Circuit held,

As Rule 8 indicates, “the existence of a license, exclusive or nonexclusive, creates an affirmative defense to a claim of copyright infringement.” *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th Cir. 1996). This rule makes sense: “proving a negative is a challenge in any

¹⁸ *Id.*

¹⁹ *Muhammad-Ali v. Final Call, Inc.*, 832 F.3d 755, 760 (7th Cir. 2016) (internal citations omitted).

context,” *Vieth v. Jubelirer*, 541 U.S. 267, 311, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004), and if there is evidence of a license, it is most likely to be in the possession of the purported licensee.²⁰

B. Third Circuit Conflict: *In re McGraw-Hill*²¹

In re McGraw arose from two separate copyright infringement lawsuits brought by photographers against a book publisher, alleging use of their photographs after exhaustion of limited, one-time use licenses issued by Corbis Corporation.²² In each case, the defendant McGraw-Hill filed a motion to transfer to the S.D.N.Y.²³ One was granted, the other denied.²⁴ The losing party of each motion then filed a petition for a writ of mandamus, and the cases were combined on appeal.²⁵ The Third Circuit’s decision directly addressed the erroneous addition of “unauthorized” into the elements for a claim of copyright infringement. Confirming that a copyright plaintiff is not required to plead “unauthorized use” to state a *prima facie* case of copyright infringement, the Court explained:

The licenses obtained by McGraw-Hill were not granted by the photographers directly

²⁰ *Id.* at 761.

²¹ *In re McGraw-Hill Glob. Educ. Holdings LLC*, 909 F.3d 48 (3d Cir. 2018).

²² *Id.* at 54.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 52.

but by Corbis as a sub-licensor. And the royalty statements received by the photographers lacked specific detail as to the scope of each license granted . . . As such, it stands to reason that the photographers may not be aware of each license issued, or the scope of each license. Because they were not themselves directly privy to those licenses, we cannot expect them to plead unauthorized use as part of a *prima facie* case. As the Seventh Circuit recognized when considering this very issue, “proving a negative is a challenge in any context,” and if there is evidence of a license, it is most likely to be in the possession of the purported licensee.” *Muhammad-Ali v. Final Call, Inc.*, 832 F.3d 755, 761 (7th Cir. 2016).²⁶

II. BY ADOPTING A HEIGHTENED PLEADING STANDARD FOR COPYRIGHT INFRINGEMENT ACTIONS, THE SECOND CIRCUIT FAILED TO FOLLOW BINDING SUPREME COURT PRECEDENT.

The Court should exercise its certiorari jurisdiction because the pleading standard established by the Second Circuit conflicts with direct and binding precedent established by this Court in *Feist*.²⁷ This standard is consistent with the Copyright Act,²⁸ and

²⁶ *Id.* at 66 (internal citations omitted).

²⁷ 499 U.S. 340, 361 (1991).

²⁸ *See* 17 U.S.C. § 501(a) (West) (“Anyone who violates any of the exclusive rights of the copyright owner . . . is an infringer of the copyright.”).

has been quoted in thousands of subsequent copyright cases.

A. *Feist* Established Two Elements Required to Properly Plead Copyright Infringement.

Feist Publications, Inc. v. Rural Telephone Service Company, Inc., decided by this Court in 1992, established the standard for stating a *prima facie* case of copyright infringement, identifying only two elements of copyright infringement::

To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.²⁹

“The word ‘copying’ is shorthand for the infringing of any of the copyright owner’s five exclusive rights, described at 17 U.S.C. § 106.”³⁰

Scholastic did not challenge Yamashita’s allegations of copyright ownership.³¹ And the complaint alleged “copying” by stating the five specific ways Scholastic reproduced, distributed and displayed the Photographs.³² Accepting the facts Yamashita pleaded

²⁹ *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282, 1296, 113 L.Ed.2d 358 (1991).

³⁰ *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 (9th Cir. 1989). See also *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 117 (2d Cir. 2010); *Ford Motor Co. v. Summit Motor Prod., Inc.*, 930 F.2d 277, 291 (3d Cir. 1991) (same).

³¹ A10 ¶ 1, A11 ¶ 7. Copyright registrations are also identified in Exhibit 1 to the Complaint. A16-31.

³² A12 ¶ 13.

as true, and drawing reasonable inferences in Yamashita's favor, the complaint plausibly alleged 119 instances of Scholastic's infringement of Yamashita's copyrights. Nothing more was required, yet his case was dismissed on its pleadings.

B. The Second Circuit's Decision Improperly Creates a Heightened Pleading Standard for Copyright Infringement Claims.

In affirming the district court's dismissal of Yamashita's complaint, the Second Circuit relied on language from *Kelly v. L.L. Cool J.*³³, which in turn was taken from *Gee v. CBS, Inc.*,³⁴ an Eastern District of Pennsylvania case pre-dating *Feist*. The S.D.N.Y. court found Yamashita did not adequately plead the fourth element in the *Kelly* pleading standard: "by what acts during what time the defendant infringed the copyright."³⁵

But since copyright infringement is not one of the special matters that must be pleaded with particularity under Fed. R. Civ. P. 9,³⁶ it should not be subject to a heightened pleading standard. Nonetheless, as one district court in New York observed, "the courts in the Second Circuit are generally in agreement that a heightened pleading standard must be

³³ *Kelly v. L.L. Cool J.*, 145 F.R.D. 32, 36 (S.D.N.Y. 1992), *aff'd sub nom. Kelly v. L.L. Cool J.*, 23 F.3d 398 (2d Cir. 1994).

³⁴ *Gee v. CBS, Inc.*, 471 F.Supp. 600 (E.D. Pa.), *aff'd without opinion*, 612 F.2d 572 (3d Cir. 1979).

³⁵ 2017 WL 74738, at *1, *quoting Kelly*, 145 F.R.D. at 36 (emphasis added).

³⁶ Fed. R. Civ. P. 9.

met [t]o sufficiently plead a copyright infringement claim.”³⁷ Another commented, “[c]ourts in this district have construed [Rule 8] ‘to require a plaintiff to plead with specificity the acts by which a defendant has committed copyright infringement.’”³⁸

C. Moreover, a Plaintiff–Like Yamashita Here–Is Permitted to Plead on Information and Belief When Factual Details Are Peculiarly Within the Defendant’s Possession and Control

“The *Twombly* plausibility standard, which applies to all civil actions, does not prevent a plaintiff from ‘pleading facts alleged “upon information and belief” where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible.’”³⁹ “The *Twombly* Court stated

³⁷ *Zalewski v. T.P. Builders, Inc.*, 2011 WL 3328549 *3 (N.D.N.Y. 2011) (emphasis added), citing *Kelly*; see also *Bob Daemmrigh Photography, Inc. v. McGraw-Hill Global Education Holdings, LLC*, 2017 WL 2544046 *2 (W.D. Tex. June 12, 2017) (noting defendant’s argument that “courts have applied a heightened pleading standard for copyright infringement claims,” citing *Kelly*).

³⁸ *Elektra Entertainment Group, Inc. v. Barker*, 551 F.Supp.2d 234, 238 (S.D.N.Y. 2008) (emphasis added), quoting *Marvullo v. Gruner & Jahr*, 105 F.Supp.2d 225, 230 (S.D.N.Y. 2000), and citing *Kelly*.

³⁹ *Arista*, 604 F.3d at 120, citing *Boykin v. KeyCorp*, 521 F.3d 202, 215 (2d Cir. 2008); see also *Zuma Press, Inc. v. Getty Images (US), Inc.*, 2017 WL 2829517 *3 (June 29, 2017) (“Where relevant information is exclusively in the possession of the defendant . . . a plaintiff may allege facts on information and belief, and need not plead more specific facts that are unavailable to the plaintiff as a result of the defendant’s own conduct.”).

that ‘[a]sking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal[ity].’”⁴⁰

The import of a plaintiff’s ability to plead on information and belief is clearly illustrated in the case below. Scholastic keeps confidential and refuses to disclose the details it says are missing from the complaint, including its print data (how many copies Scholastic reproduced, and when), and its geographic distributions. Further, Corbis—which no longer exists—provided the invoices identifying the scope of the licenses granted to Scholastic, not Yamashita. Scholastic knows the terms of its limited licenses, but Yamashita does not. In requiring Yamashita to plead details about Scholastic’s infringing uses that are known only to Scholastic, the Second Circuit permitted Scholastic to commit the perfect crime. By withholding the evidence of its misconduct, Scholastic was able to completely escape liability.

D. The Second Circuit Also Ignored Yamashita’s Complaint by Reframing This Case as One Involving Only the Scope of a License

The panel attempted to sidestep *Feist* by reframing Yamashita’s complaint as one involving a dispute about the scope, rather than the existence, of a

⁴⁰ *Arista*, 604 F.3d at 120 (emphasis added), *quoting Twombly*, 550 U.S. at 556. *See also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Twombly*) (“The plausibility standard is not akin to a ‘probability requirement, . . .’”).

license,⁴¹ and wrote, “[w]e think that, under our Circuit’s governing law, the correct disposition here turns not on whether there are two or four elements of a generic copyright infringement claim, but instead on the implications of the fact, acknowledged in Yamashita’s Complaint, that Scholastic procured licenses to copy the Photographs.”⁴² But this statement on its face directly conflicts with *Feist*. And fundamentally, how could it be anything other than of the utmost importance whether a cause of action requires a showing of two or four elements?

Moreover, the panel’s characterization of Yamashita’s claim is contrary to the complaint. In addition to alleging infringing use beyond the limited licenses granted, Yamashita also pleaded, “[u]pon information and belief, after obtaining access to the Photographs, Scholastic used the Photographs without any license or permission in additional publications that have not yet been identified.”⁴³ But the Second Circuit panel ignored this part of the complaint and now requires copyright holders like Yamashita to plead around the affirmative defense of license. This is elemental error.

Further, and importantly, there is no dispute about the scope of any license. As evidenced by the examples of licensing provided in the complaint and proposed amended complaint, the terms of the original licenses were clear and finite. For example, Invoice

⁴¹ App.32a (Complaint ¶ 14).

⁴² *Id.*

⁴³ App.29a (Complaint).

285658 provided a license to create 20,000 copies of Yamashita's photograph in *SSS Hawaii*.⁴⁴ The case is not about the meaning of the listed limitations; it concerns whether Scholastic had any authority to continue reproducing Yamashita's work after it made 20,000 copies.



CONCLUSION

Under the present state of copyright law in the United States, if a plaintiff files his case in New Jersey, the case proceeds; if he files it across the Hudson River in Manhattan—or the defendant successfully moves the case there, as happened here⁴⁵—he loses from the start. This should not stand; it diminishes respect for law and justice. Certiorari is warranted here to resolve the important matter of what elements of copyright infringement are necessary to state a claim for relief.

⁴⁴ App.36a, Complaint Exhibit 1.

⁴⁵ See, e.g. *Lefkowitz v. John Wiley & Sons, Inc.*, No. Civ.A. 13-1662, 2013 WL 4079923, at *1 (E.D. Pa. Aug. 13, 2013); *Keller v. McGraw-Hill Glob. Educ. Holding, LLC*, No. cv 16-1778, 2016 WL 4035613, at *2 (E.D. Pa. July 28, 2016); *Gordon v. Houghton Mifflin Harcourt Pub. Co.*, No. Civ.A. 14-4703, 2015 WL 3871788, at *1 (E.D. Pa. June 23, 2015); *Jon Feingersh Photography, Inc. v. Houghton Mifflin Harcourt Pub. Co.*, No. Civ.A. 13-2378, 2014 WL 716723, at *4 (E.D. Pa. Feb. 25, 2014).

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JANUARY 13, 2020