No.: 23-430

IN THE

Supreme Court of the United States

RICHARD R. FINCH,

Petitioner,

v.

HARRY WAYNE CASEY and HARRICK MUSIC, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I. No Factual Findings on the Merits Were Made Below

Casey's Brief in Opposition takes great pains to present hotly disputed allegations as settled facts. See, e.g., Br. in Opp. 3 ("Casey Wrote All the Music & Lyrics"); *Id.* at 4 ("Casey Gifted the Petitioner Co-Author Status"). Casey presented these same "facts" in his Answer Brief in the Eleventh Circuit (Casey C.A. Brief 1-3), which Finch squarely addressed in his Reply Brief by detailing his more-than-significant creative contributions to the authorship of the Compositions. Finch C.A. Reply Brief 6-9.

Regardless, the trial court in this case only made a legal determination at summary judgment that Finch's statute of limitations had expired. To that extent, the merits of Casey's retrospectively-developed theory that he "gifted" Finch with co-authorship status is irrelevant at this stage.

II. The Discovery Accrual Rule is the Central Issue

Incredibly, Casey asserts that the Eleventh Circuit's rule regarding when a statute of limitations begins to run was not employed by the Eleventh Circuit in determining when the statute of limitations began to run. Although it did not use the phrase "discovery accrual rule," the Eleventh Circuit specifically cited to the rule in its Opinion, and its application is central to this case as stated in Petitioner's Question Presented.

The Eleventh Circuit formally adopted the "discovery accrual rule" regarding copyright ownership and authorship claims in *Webster v. Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020) ("…[W]e adopt the approach used by the First, Second, Fifth, and Seventh Circuits—that an ownership [or authorship] claim accrues when the plaintiff learns, or should as a reasonable person have learned, that the defendant was violating his ownership [or authorship] rights—as this approach is most consistent with our existing precedent."). The Eleventh Circuit specifically relied on *Webster* in its holding below that "[a]n express assertion of sole authorship or ownership—like Casey's letter—triggers the accrual of an ownership claim." Pet. App. 3a.

Casey's Brief in Opposition references the "accrual" of Finch's claim or the "triggering" of his statute of limitations no less than eleven (11) times (Br. in Opp. 2, 7, 10, 11, 13, and 16), while also arguing that the discovery accrual rule was never applied below. Br. in Opp. *i* ("…was not raised, discussed, or applied in any of the underlying proceedings."); *Id.* at 2 ("…neither the Eleventh Circuit nor the District Court applied the 'discovery accrual rule.'"); *Id.* at 11 (citing the Eleventh's Circuit's holding which specifically relies on *Webster* and then stating "In other words, the Eleventh Circuit's decision was not based in anyway on the 'discovery accrual rule' nor was the discovery accrual rule at issue."); *Id.* at 12 ("…neither the District Court nor the Eleventh Circuit invoked the 'discovery accrual rule' or considered it as part of their respective rulings.). These assertions are simply disingenuous. Clearly, the very rule

determining when the claim accrued, or limitations period triggered, was employed by the Eleventh Circuit – particularly where the Eleventh Circuit's Opinion cited the definition of the rule ("knew or should have known") as contained in *Webster*. Pet. App. 3a.

Finch's position below has consistently been that, pursuant to *Webster*, Casey knew or should have known of his sole-authorship claim in the late 70's and early 80's. As a result, Casey's out-of-court claim of sole-authorship in 2015 could not trigger a ripe, non-speculative controversy as to that issue such that the limitations period began to run.

III. Compelling Reasons Warrant a Writ of Certiorari

Casey argues that Petitioner "failed to provide this Court with any reason, let alone a compelling reason, to grant the Petition." Br. in Opp. 21. However, as stated in the Petition, (1) a 17 U.S.C. §203 termination may be nullified by out of court statements not contemplated by the Copyright Act, (2) the purposes of statutes of limitation are contravened by the Eleventh Circuit's holding, and (3) the holdings were incorrect because there was no ripe, non-speculative controversy. Pet. 10-15. Casey only argues that an error is not a compelling reason for certiorari under Rule 10, but that was not the only reason asserted by Petitioner.

17 U.S.C. §203 requires that an "author" must wait 35 years after a grant of copyright in order to terminate a grant and bring a termination claim.

Given the existence of §203, both an author and a grantee know or should know, at the time of the grant, that the author/grantor may one day terminate the grant. Yet, that knowledge does not cause §203 termination claims to immediately accrue at the time of the grant. In that regard, 17 U.S.C. §507(b), as applied by the discovery accrual rule, naturally conflicts with, or is excepted by, 17 U.S.C. §203. *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 580 U.S. 328, 337 (2017) ("While some claims are subject to a 'discovery rule' under which the limitations period begins when the plaintiff discovers or should have discovered the injury giving rise to the claim, that is not a universal feature of statutes of limitations.").

Moreover, in a case where the grant is between two co-authors, the unwieldy application of the discovery accrual rule yields anomalous results in an area of copyright law that calls for certainty. Indeed, certainty is the reason for statutes of limitation. *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944) ("Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."). Here, Finch waited the requisite three and half decades under §203 in order to exercise his rights, during which time Finch and Casey were co-authors of the Compositions and "evidence [was] lost, memories…faded, and witnesses…disappeared." *Id.* As this case demonstrates, Casey's ability to simply

renounce the authorship *status quo* undermines the purposes for which statutes of limitations exist.

Lastly, Petitioner asserts that the Court's recent granting of a petition for writ of certiorari in *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325 (11th Cir. 2023), *cert. granted*, 2023 WL 6319656 (Mem) (U.S. September 29, 2023) (No. 22-1078) makes this case particularly ripe for review – even more so than *Nealy*'s infringement dispute because ownership and authorship claims only accrue once. This Court's decision regarding the discovery accrual rule in *Nealy* may significantly impact other areas of copyright law, such as authorship and ownership claims. Therefore, certiorari is also warranted to promote the uniformity of this Court's decision in *Nealy*.

CONCLUSION

For all the reasons stated herein and in the Petition for Writ of Certiorari, Petitioner respectfully requests that certiorari be granted.

Respectfully Submitted,

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