

No.: 23-

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a question of national significance regarding the interplay between the Copyright Act's statute of limitations provision and its termination of transfer provision. 17 U.S.C. §507(b); 17 U.S.C. §203(a)(3). The question presented is:

- Whether a time-barred assertion of sole authorship status by one co-author may, under the discovery accrual rule, form the basis for a statute of limitations affirmative defense against the other co-author's action for declaratory relief under 17 U.S.C. §203.

This question of significant precedential value is also ripe for review due to 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).

PARTIES TO THE PROCEEDING

Petitioner is Richard Finch.

Respondents are Harry Wayne Casey and Harrick Music, Inc.

EMI Consortium Songs, Inc d/b/a EMI Longitude Music was dismissed at the trial level and is not a participant in this proceeding.

RELATED PROCEEDINGS

- *Harry Wayne Casey v. Richard R. Finch, et al.*, 1985-18364-CA-01, Miami-Dade Circuit Court. Judgment entered September 24, 1986.
- *Richard R. Finch v. Harry Wayne Casey, et al.*, 22-cv-20144, U.S. District Court for the Southern District of Florida. Judgment entered February 7, 2023.
- *Richard R. Finch v. Harry Wayne Casey, et al.*, 23-10554, U.S. Court of Appeals for the Eleventh Judicial Circuit. Judgment entered July 25, 2023.

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The Opinion of the Eleventh Circuit's decision (Pet. App. 1a-4a) is available at 2023 U.S. App. WL 4743753. The district court's Order on the Parties' Motions for Summary Judgment (Pet. App. 5a-24a) is available at 2023 U.S. Dist. WL 1796450.

JURISDICTION

The Eleventh Circuit entered its decision on July 25, 2023. Pet. App. 1a-4a. This Court has jurisdiction under 28 U.S.C. §1254.

STATUTORY PROVISIONS

17 U.S.C. § 203 provides in relevant part:

(a) Conditions for Termination.—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author....

...

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under

the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

17 U.S.C. § 410(c) provides in relevant part:

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

17 U.S.C. § 507(b) provides in relevant part:

(b) Civil Actions.—

No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

INTRODUCTION

The Eleventh Circuit's holding below, and the current state of the Copyright Act's statute of limitations jurisprudence, allow a co-author to circumvent 17 U.S.C. §507(b)'s limitations period by delivering a repudiation of authorship letter to another co-author thirty five years after the first co-author knew of his claim. Such a loophole yields anomalous results in an area of copyright law that calls out for certainty.

As noted above, the question presented has significant precedential value and is ripe for review due to 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) to consider "[w]hether, under the discovery accrual rule applied by the circuit courts and the Copyright Act's statute of limitations for civil actions, 17 U. S. C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit." That case involves copyright infringement whereas this case involves copyright authorship and termination rights; however, this Court's interpretation of the Copyright Act's statute of limitations in the context of the discovery accrual rule carries even greater public importance for copyright authorship disputes such as this one because authorship claims only accrue once.

As this Court now intends to pass upon issues related to the discovery accrual rule for the very first time, *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, n.4 (2014), this case presents a strong opportunity for the Court to consider the discovery accrual rule, not just in the context of copyright infringement, but also in the context of copyright authorship and termination under 17 U.S.C. §203. In doing so, the Court could promote the uniformity of its decision in multiple aspects of copyright litigation.

STATEMENT OF THE CASE

This case involves a dispute between Petitioner Richard Finch ("Finch") and Respondent Harry Wayne Casey ("Casey") who are designated as co-authors of approximately ninety-nine (99) musical compositions (the "Compositions") on numerous documents from the 1970s, including all their "hit"

recordings from approximately 1973 to 1979 when they were both members of the musical group K.C. & The Sunshine Band. These documents include copyright certificates, songwriter agreements, labels from albums and singles released at that time, and BMI registrations submitted in the 1970s – many of which were executed or authorized by both Casey and Finch. Notably, those copyright registrations are entitled to a presumption of truth under 17 U.S.C §410(c) which provides that "[i]n any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate." As further described below, Finch filed suit seeking under 17 U.S.C. §203 to terminate his prior assignment of rights to Casey. On the other hand, Casey maintains that he has been the sole author of the Compositions from the very beginning.

At issue is the discovery accrual rule, under which Casey's claim for sole authorship accrued in the 1970's through 1982. The Eleventh Circuit below held that Finch's claim for termination under §203 accrued when Casey delivered a letter in 2015 asserting that Casey was the sole author and that Finch had no authorship right to termination. Therefore, the Eleventh Circuit held that Finch's 2022 lawsuit for declaratory relief under §203 was beyond §507(b)'s three-year limitation period. This result defeats §507(b)'s purpose of promoting certainty. A single out of court statement by Casey, which itself could not be the basis of any authorship claim, nevertheless deprived Finch of his co-authorship rights for all practical purposes.

I. Legal Background

"In 1957, Congress...prescribed a three-year look-back limitations period for all civil claims arising under the Copyright Act." *Petrella, Inc.*, 572 U.S. at 670 (2014); 17 U.S.C. §507(b). The Copyright Act's statute of limitations "serves two purposes: (1) to render uniform and certain the time within which copyright claims could be pursued; and (2) to prevent the forum shopping invited by disparate state limitations periods, which ranged from one to eight years." *Petrella*, 572 U.S. at 670. About twenty years later, "[t]he Copyright Act was pervasively revised in 1976...." *Petrella*, 572 U.S. at n.3. Once that revision became effective in 1978, it "...provide[d] an inalienable termination right" to authors of copyrighted works. *Stewart v. Abend*, 495 U.S. 207, 230 (1990); 17 U.S.C. §203 (allowing termination of a copyright grant after the passage of thirty-five years). Despite this notable change, "...the three-year look-back statute of limitations has remained materially unchanged." *Petrella*, 572 U.S. at n.3; 17 U.S.C. §507(b) ("No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.").

In the many years that followed, a split has developed among the Circuits regarding when copyright ownership or authorship claims accrue. "The Sixth and Ninth Circuits have held that a copyright ownership claim accrues when there is a plain and express repudiation of ownership by one party as against the other." *Webster v. Dean Guitars*, 955 F.3d 1270, 1275 (11th Cir. 2020) (internal quotation omitted). On the other hand, "[t]he First, Second, Fifth,...Seventh [and Eleventh] Circuits have

held that copyright ownership claims accrue 'when the plaintiff learns, or should as a reasonable person have learned, that the defendant was violating his rights.'" *Id.* The former accrual rule is known as the "repudiation" rule, while the latter is the "discovery" rule. The Court has not yet passed on a question involving the discovery rule, which is at issue in this case. *Petrella*, 572 U.S. at n.4.

II. Factual Background and Procedural History

During the 1970's, Sherlyn Music Publishing Co., Inc. ("Sherlyn") had Finch and Casey sign what are commonly referred to as "Single-Song Songwriter's Agreements" ("SSSA") for each song written and recorded by KC & The Sunshine Band. Finch C.A. Br. 1-2; *see* Pet. App. 6a. Those agreements conveyed rights from Finch and Casey to the publisher, Sherlyn, in exchange for royalties to be paid to them by Sherlyn. Finch C.A. Br. 1-2. Each SSSA specifically identified Casey and Finch as the "sole authors and composers of the music and/or lyrics" and contained signature lines, one on top of the other, for each as "Composers." *Id.* At that time, Casey never objected to Finch being identified as a co-author on each SSSA. *Id.* Further, in connection with the SSSA, Casey and Finch formed a Florida corporation, Harrick Music Inc. ("Harrick"), which they designated as their "publishing designee" and which Casey and Finch co-owned on a 50/50 basis. Pet. App. 7a. All of the Compositions were registered by Sherlyn in the United States Copyright Office with the names of Finch and Casey listed as the only co-authors. Finch C.A. Br. 3. All of the Compositions that were

registered by Sherlyn were submitted to the Copyright Office for registration within five years of publication of those works. *Id.* Casey, to the extent that he believed that any of the information set forth in the copyright registrations for the Compositions was not true and accurate, failed to file any legal proceeding whatsoever in the 1970s, early 1980s, or at any time within three years of the creation and publication of any or all of the Compositions. *Id.* at 4.

As a result of disputes and disagreements between Finch and Casey, on or about October 27, 1983, Finch agreed to assign not only his portion of the copyrights in and to the Compositions, but also his “writer’s royalty interest and other royalty interest or intangible property rights with respect to or in connection with music which is or was individually owned by the Assignor....” (Finch C.A. Br. 5; *see* Pet. App. 2a.) (included in definition of “Intangible Property Rights”), by means of the 1983 Assignment, comprised of the Property Division Agreement, including the one-page document entitled “Intangibles Assignments” (collectively, the “1983 Assignment”). Pet. App. 7a.

Finch has been an undisputed co-author for decades, and has never surrendered his co-authorship status, only his rights to royalties. *See* Intangibles Assignment, 1 C.A. App. 49-91, (“...certain copyrights, master recordings, musician's royalty interests, producer's royalty interests, writer's royalty interest and other royalty interest or intangible property rights...”). The Statement of the Case in Finch's Initial Brief describes in detail the decades-old documentary evidence which affirmatively established that Finch is a co-author. Finch C.A. Br.

1-7; *see e.g.*, 1 C.A. App. 324-660 (Single-Song Songwriter's Agreements specifically identifying Casey and Finch as the "sole authors and composers of the music and/or lyrics" and contained signature lines, one on top of the other, for each as "Composers."); 1 C.A. App. 175-323 (All of the Compositions were registered by Sherlyn in the United States Copyright Office with the names of Finch and Casey listed as the only co-authors.); 2 C.A. App. 840-841 (in 2001, Casey agreed that BMI should restore Finch's name as a co-writer); *Id.* at 842-845 (a BMI Interoffice Memorandum dated September 27, 2002 stating "Mr. Casey ... agreed that BMI could again show Rick Finch as a co-writer on all of the songs they wrote together"); *Id.* at 786-788, and 802 (a Letter dated October 1, 2002 stating "Certainly Mr. Finch should be mollified by the fact that Harry Wayne Casey in 2001 agreed to have Mr. Finch's name put back on the credits of the subject songs as a co-writer").

On or about August 30, 2012, Finch served a Notice of Termination upon Casey and Harrick (the "2012 Notice") whereby he sought to terminate the 1983 Assignment with an effective date of October 28, 2018, that is, 35 years after the execution of the 1983 Assignment, pursuant to §203 of the Copyright Act. Finch C.A. Br. 6; *see* Pet. App. 8a. While the 2012 Notice was written correctly, and duly served upon Casey and Harrick, Finch's representative at that time failed to record it in the Copyright Office, as per the statute, and it did not become effective. *Id.* The 2012 Notice listed both Finch and Casey as co-authors of most of the Compositions listed therein. Finch C.A. Br. 7.

Casey failed to respond to the 2012 Notice for almost three years, until May 26, 2015, when his attorney sent a letter to Richard Wolfe, a lawyer in Miami who claimed to be Finch's attorney. Finch C.A. Br. 7; *see* Pet. App. 8a. In that letter, Casey, through his attorney, stated for the first time (that is, approximately 40 years since Finch and Casey were credited as co-authors in the 1970s), that "Finch is not an author" of the Compositions. Finch C.A. Br. 7; *see* Pet. App. 8a. Casey never raised any authorship in issue any of the prior litigations. The vast majority of the evidence shows, and the long-lasting status quo between the parties demonstrates, that Finch was a co-author.

On September 30, 2019, Finch served a Notice of Termination (the "2019 Notice") upon EMI, Casey and Harrick, and thereafter, caused the 2019 Notice to be recorded in the United States Copyright Office on December 2, 2019 as document V9969 D353, P1 through P6. The effective date of termination for all the Compositions was October 1, 2021. Finch C.A. Br. 7; *see* Pet. App. 9a.

On November 11, 2022, Finch filed a single count lawsuit against Casey for declaratory relief pursuant to §203 of the Copyright Act. The parties conducted discovery and exchanged documents. Both parties filed motions for summary judgment. The District Court ultimately granted Casey's motion and denied Finch's motion as moot. Pet. App. 5a-24a.

On February 21, 2023, Finch filed a timely Notice of Appeal. On appeal, the Eleventh Circuit panel issued its Opinion, finding that Casey's 2015

letter caused Finch's §203 termination claim to accrue under the discovery accrual rule. Pet. App. 1a-4a.

This petition followed.

REASONS FOR GRANTING THE WRIT

I. The Effectiveness of a §203 Termination May be Nullified by A Common Practice Which is Not Contemplated by the Terms of the Copyright Act

The Copyright Act allows the author of a work to terminate an "...exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright..." for five years "...beginning at the end of thirty-five years from the date of execution of the grant." 17 U.S.C. §203(a)(3). In order to effectuate such a termination, the author must deliver a notice of termination stating an effective date of termination within §203(a)(3)'s five-year period, said notice must be served not less than two or more than ten years before that date, and said notice must be recorded with the Copyright Office. 17 U.S.C. §203(a)(4). This is all that the Act requires for an author to effectuate a Notice of Termination.

However it is often the case that the party receiving the notice of termination responds by sending a letter or written response challenging the sufficiency of the notice, thereby necessitating the terminating party's filing of a lawsuit to truly effectuate and enforce the §203 termination.

Although such a letter or written response is not authorized anywhere in the Copyright Act, Circuit courts, such as the Eleventh Circuit below, have held that 17 U.S.C. §507(b)'s three-year limitations period on the terminating party's lawsuit begins to run from the date of that written response. Such holdings are not supported by the text of the Copyright Act and, as discussed below, undermine the very purpose of statutes of limitation.

II. The Purposes for Statutes of Limitations Are Contravened by the Eleventh Circuit's Holding Below

The decades-long status quo between Finch and Casey – that each is a co-author – is the certain result which §507(b) is intended to provide. A terminating author under §203 being forced to re-litigate authorship after it has remained crystallized for thirty five years is contrary to the purpose of 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."). Casey admits that this occurred in the case below, testifying that he could have produced witnesses who allegedly would have corroborated his version of events, such as the other band members and a secretary at the publishing company, but they are all deceased. 2 C.A. App. 795 and 811. Casey also testified that he allegedly possessed documents which somehow prove his sole authorship but that the IRS "took over [the] buildings

and threw everything into dumpsters and threw it all away" in an IRS raid in 1987. 2 C.A. App. 789-790 and 794-795. Casey should have been precluded from surprising Finch, and the entirety of the music world, with his assertion of sole authorship under the guise of a statute of limitations affirmative defense.

The very circumstance whereby an established author of a work, such as Finch, must wait thirty five years in order to terminate a grant of copyright demands that §203 be considered an exception to §507(b), rather than being subject to it based upon stale, time-barred, and now unprovable out of court statements. *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."). The discovery accrual rule is misapplied in that circumstance. Moreover, a thirty five year period may span half a human lifetime – this is far too long to allow an author to persist in his belief, if another believes it to be wrong. If Casey's failure to assert his sole authorship claim for thirty five years means nothing, as was the case below, then §507(b) fails to promote the justice which it was intended to provide.

It has been sixty six years since the enactment of 17 U.S.C. §507(b) and fifty five years since the enactment of 17 U.S.C. §203. The interpretation of both such provisions requires harmonization with the more recently developed discovery accrual rule in the interest of justice.

III. The Holdings Below Were Incorrect Because Casey's Letter Did Not Cause Finch's "Discovery" of a Ripe and Non-Speculative Controversy

One notable case, which Finch relied upon below, was the Sixth Circuit's decision in *Garza v. Everly*, 59 F.4th 876 (6th Cir. 2023), involving a similar dispute between the Everly Brothers. *Garza* supports Finch's position because Phil Everly's statute of limitations affirmative defense, based on an expired claim of authorship, would disrupt the long-lasting status quo between the parties. In "an area of copyright law that calls out for certainty," this result was unacceptable. *Garza*, 59 F.4th at 881. In *Garza*, Phil relinquished his claim as co-composer in five Releases and Assignments executed in 1980. In the decades that followed, the long-lasting status quo between Phil and Don was that Don was the sole author of the works. Phil's estate in *Garza* was seeking affirmative relief, by means of a statute of limitations affirmative defense, to the extent that Phil sought to upset the status quo by asserting a time-barred authorship claim. For all practical purposes, Casey's assertion of his authorship claim as being the basis for his statute of limitations affirmative defense has completely reversed the status quo between the parties.

In this case, the decades-long status quo between Finch and Casey was that each is a co-author, and Finch never even surrendered his co-authorship status as Phil Everly did. However, the Eleventh Circuit's holding overturns that status quo because it held that Casey's assertion of his time-barred sole

authorship claim caused Finch's §203 termination claim to accrue under the discovery accrual rule. However, even applying the discovery accrual rule, there was no real discovery on Finch's part. Casey's 2015 letter did not cause Finch to discover any violation of Finch's ownership rights because it was already the status quo that Finch had assigned his ownership rights long ago. After all, §203 only applies in that circumstance.

Casey's letter also did not cause Finch to discover any violation of Finch's co-authorship rights because Casey's time to assert his sole authorship claim had long expired. In other words, Casey's 2015 letter did not create a "ripe and non-speculative" controversy, contrary to the district court's holding below based upon *Baldwin v. EMI Feist Catalog, Inc.*, No. 11-81354-CIV, 2012 WL 13019195, at *1 (S.D. Fla. Dec. 11, 2012) – particularly where Finch's claim for declaratory relief was brought pursuant to a 2019 Notice of Termination that had not yet been delivered as of the date of Casey's 2015 letter.

In sum, Petitioner believes that the discovery accrual rule should not be applied under the circumstances which §203 requires, considering the text of the Copyright Act and the interests of justice. Petitioner also believes that, even if applied, there was no accrual here because there was no discovery of a violation of Finch's authorship rights because Casey's ability to assert his sole authorship claim had expired.

CONCLUSION

Petitioner respectfully requests that certiorari be granted. Additionally, Petitioner respectfully requests that the Court consider this petition in tandem with the Court's decision 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) in order to maintain the uniformity of the Court's decisions across the multiple aspects of the Copyright Act to which the discovery accrual rule has been applied by the Circuit courts.

Respectfully Submitted,

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**APPENDIX A — OPINION OF THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT,
FILED JULY 25, 2023**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10554

Non-Argument Calendar

RICHARD R. FINCH,

Plaintiff-Appellant,

versus

EMI CONSORTIUM SONGS, INC., A NEW YORK
CORPORATION, D.B.A. EMI LONGITUDE MUSIC,

Defendant,

HARRY WAYNE CASEY, AN INDIVIDUAL,
HARRICK MUSIC, INC., A FLORIDA
CORPORATION,

Defendants-Appellees,

MATTHEW NELLES, *et al.*,

Respondents.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-20144-DPG

Appendix A

Before NEWSOM, LAGOA, and BRASHER, *Circuit Judges*.

PER CURIAM:

There’s a lot of history in this case, but only a small part of it matters. In 1983, Richard Finch transferred his copyright and royalty rights to bandmate Harry Casey. Some legal back-and-forth occurred in the interim, but we’ll jump ahead. In 2015, Casey sent Finch a letter asserting that Finch was never an “author” under the terms of the Copyright Act, 17 U.S.C. § 203, and thus didn’t retain any termination rights.¹ Four years later, in 2019, Finch sent Casey a notice of termination under § 203.

This litigation began in 2022, when Finch filed suit against Casey and others requesting declaratory judgment that his § 203 termination rights were valid. Casey asserted multiple defenses in response, including that Finch’s claim was barred by the copyright law’s three-year statute of limitations. *See id.* § 507(b) (copyright claims must be “commenced within three years after the claim accrued.”).

The district court granted summary judgment for Casey on the ground that Finch’s claims were time-barred.² Copyright-based claims that turn on ownership

1. Finch allegedly also sent a termination letter to Casey in 2012. The parties dispute whether Casey ever received the letter, but that doesn’t matter for purposes of this appeal. The relevant events begin with the 2015 letter.

2. “We review a district court’s grant of summary judgment *de novo*, viewing the evidence and drawing all reasonable inferences in

Appendix A

or authorship accrue on the date that the “plaintiff learns, or should as a reasonable person have learned, that the defendant was violating his ownership rights.” *See, e.g., Webster v. Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020). An express assertion of sole authorship or ownership—like Casey’s letter—triggers the accrual of an ownership claim. *Id.* at 1276-77. Accordingly, the district court held, the clock began to run on Finch’s § 203 claim when Casey expressly repudiated Finch’s authorship in May 2015.

Notwithstanding the district court’s straightforward ruling, Finch raises one narrow issue on appeal: whether Casey could raise the statute of limitations as a defense at all. To be clear, Finch doesn’t challenge the statute of limitations’ application; rather, he challenges the availability of the defense. Finch attempts to paint Casey’s statute-of-limitations defense as a time-barred authorship counterclaim—limited by the same three-year statute of limitations that hinders Finch here.

Despite his efforts, the two defenses are distinct. Statutes of limitations are affirmative defenses. Fed. R. Civ. P. 8(c); *see also Day v. Liberty Nat’l Life Ins. Co.*, 122 F.3d 1012, 1015 (11th Cir. 1997) (per curiam) (“A statute of limitations defense is an affirmative defense.” (citation omitted)). The Sixth Circuit case on which Finch so heavily relies to argue otherwise, *Garza v. Everly*, concerned “a defendant . . . seeking affirmative relief packaged within a defense and . . . attempting to dodge a statute of

the light most favorable to the nonmoving party.” *Salinero v. Johnson & Johnson*, 995 F.3d 959, 964 (11th Cir. 2021) (citation omitted).

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limitations.” 59 F.4th 876, 884 (6th Cir. 2023). The Sixth Circuit concluded that such a defendant couldn’t leverage an affirmative defense into affirmative relief. *Id.*

This case is different. Casey does not seek any affirmative relief, nor does he attempt to dodge a statute of limitations. If anything—ironically—Finch is the one “packag[ing]” claims and defenses to get around a statute of limitations. Casey raised an affirmative defense distinct from any authorship claim. Because the statute of limitations argument is dispositive, we need not consider the sole-authorship debate. The district court was correct to grant summary judgment.

As a final bit of housekeeping, we address Casey’s “Motion for Damages and Costs Pursuant to Rule 38.” Rule 38 sanctions are appropriately imposed against appellants who raise “clearly frivolous claims in the face of established law and clear facts.” *Farese v. Scherer*, 342 F.3d 1223, 1232 (11th Cir. 2003) (per curiam) (internal quotation marks omitted). For purposes of Rule 38, a claim is clearly frivolous if it is “utterly devoid of merit.” *Bonfiglio v. Nugent*, 986 F.2d 1391, 1393 (11th Cir. 1993). Although Finch’s appeal pushes the boundary, we will exercise our discretion to DENY Casey’s motion here.

AFFIRMED.

**APPENDIX B — OPINION OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA,
FILED FEBRUARY 7, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-20144-Civ-GAYLES/TORRES

RICHARD R. FINCH,

Plaintiff,

v.

HARRY WAYNE CASEY, AN INDIVIDUAL;
AND HARRICK MUSIC INC., A FLORIDA
CORPORATION,

Defendants.

**ORDER ON THE PARTIES' MOTIONS
FOR SUMMARY JUDGMENT**

This matter is before the Court on the parties' cross Motions for Summary Judgment filed by Harry Wayne Casey ("Casey") and Harrick Music, Inc. ("Harrick") (collectively, "Defendants") [D.E. 51], and Richard R. Finch ("Finch" or "Plaintiff") [D.E. 63]. The parties filed timely responses [D.E. 72, 73] and replies [D.E. 75, 76] to each motion therefore the motions are now ripe for disposition.¹ After careful consideration of the briefing

1. On April 1, 2022, the parties consented to the jurisdiction of the Undersigned Magistrate over all matters, including dispositive

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materials, the evidence of record, the relevant authorities, and for the reasons discussed below, Defendants' Motion for summary judgment is GRANTED, Plaintiff's Motion is DENIED as moot, and the case is dismissed with prejudice.

I. BACKGROUND

This is an action for declaratory relief pursuant to Section 203 of the Copyright Act of 1976 (the "Act"). 17 U.S.C. § 201 *et seq.* Finch filed this action on November 11, 2022, seeking a declaration that he has properly exercised his termination rights under § 203 with respect to a 1983 agreement whereby he allegedly transferred his copyright interests in ninety-nine songs to Casey. [D.E. 1]. According to Finch, the ninety-nine songs were co-written by him and Casey in the 1970s while they were members of the musical group KC & The Sunshine Band (the "Band"). [D.E. 41]. Between the mid-1970s and early-1980s, the Band, Casey, and Finch, executed several musical commercial agreements, including exclusive writer's, single song, and publishing agreements with Sherlyn Music Publishing Co., Inc. ("Sherlyn").² [D.E. 64-3; 64-6; 64-10]. In essence, these agreements transferred to Sherlyn a 50% ownership interest in the copyrights

motions, but not for trial. [D.E. 32 at 3]. Pursuant to the parties' consent, the Honorable Darrin P. Gayles referred the case to the Undersigned for a ruling on all non-dispositive and dispositive matters on November 8, 2022. [D.E. 79].

2. On April 27, 2022, Finch filed an amended complaint that dismissed Sherlyn's successor in interest, EMI Consortium Songs Inc., as a defendant from this lawsuit pursuant to private settlement. [D.E. 41; 95].

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of the Band's songs. [D.E. 64 at 2-3; 52 at 3-4]. Further, in connection with these agreements, Casey and Finch formed a Florida corporation, co-defendant Harrick Music Inc. ("Harrick"), which they designated as their "publishing designee" and which Casey and Finch co-owned on a 50/50 basis. [D.E. 64 at 3].

After several years of performing together, Casey and Finch separated in 1979 and on October 27, 1983, they formally severed all personal and financial ties through the execution of an agreement titled "Property Division Agreement" (the "1983 Agreement"). [D.E. 52-6]. With the agreement, Casey and Finch divided amongst themselves various pieces of tangible and intangible property that they had previously owned together. *Id.* Among other things, the contract provided that, in exchange for valuable consideration, Finch would transfer to Casey all his titles, rights, and interests in any of the copyrights of their music, as well as his 50% ownership interest in Harrick and other Band related enterprises. [D.E. 52-1 at 96-98; 52-6; 64-8 at 107-09]. The agreement contains an exhibit titled "INTANGIBLES ASSIGNMENTS" that expressly conveyed to Casey all of Finch's interests in any intangible assets, including copyrights and intellectual property. [D.E. 52-1 at 37]. However, soon after execution of the contract Finch sought to rescind the agreement on grounds of fraud and incapacity, but a state court rendered judgment in favor of Casey, upholding the agreement's validity and enforceability in 1986. [D.E. 52 at 5-6; 64-15].

Finch tried again. In the years following the 1986 declaratory judgment, Finch continued to challenge Casey's ownership over some of the Band's songs. To

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settle this song dispute, Finch and Casey executed a settlement agreement in 2003 (the “2003 Agreement”). [D.E. 64-19]. In 2004, Casey return to state court seeking contempt sanctions against Finch for his violations of the 1986 declaratory judgment. The court issued a sanction order against Finch and reiterated the validity of both the 1983 Agreement and the 1986 declaratory judgment. [D.E. 64-24].

Fast-forward a few years and on August 30, 2012, Finch, through his then-counsel Brent McBride, and pursuant to § 203(a) of the Copyright Act, served a notice of termination (the “2012 Notice”) on Casey and Harrick seeking to terminate the copyright grants that he allegedly made to Casey through execution of the 1983 Agreement. [D.E. 52 at 7; 64 at 9-10; 64-25]. The 2012 Notice contained an effective termination date of October 28, 2018. [D.E. 64-25 at 12]. Casey did not respond to this notice. Almost three years later, on May 7, 2015, Finch’s new lawyer, well regarded entertainment attorney Richard Wolfe, sent a letter to Casey’s counsel concerning the 2012 Notice and attaching a copy of the notice. [D.E. 52-10; 52-12 at 10-11]. This time, Casey responded to Finch’s notice in a letter drafted by his long-time attorney, Franklin Zemel, on May 26, 2015. [D.E. 52-11]. Casey’s response directly challenged the validity of the 2012 Notice and expressly repudiated Finch’s claim of authorship over any of the ninety-nine songs, denying any significant involvement by Finch in the creation of the musical compositions. *Id.*

Finch never replied to Casey’s repudiation letter and no action was taken in furtherance of the 2012 Notice or in

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opposition to Casey's challenge to its validity. Instead, fast-forward another seven years to September 30, 2019, when Finch's new counsel, Evan Cohen, served another notice of termination (the "2019 Notice") on Casey and Harrick, wherein Finch claimed entitlement, for the second time, to terminate the alleged copyright transfer of the 1983 Agreement. The 2019 Notice displayed an effective date of termination of October 1, 2021. [D.E. 64-1]. Following an October 1, 2021, response from Casey's attorney that disputed, once more, the validity of the termination notice, [D.E. 41-4], Finch filed this single-count lawsuit seeking a declaration that he has validly exercised his termination rights under § 203 of the Act.

Based on these undisputed facts, both Casey and Finch have filed cross-motions for summary judgment. As explained further below, we find that the undisputed facts warrant dismissal of Finch's claim because, as a matter of law, his copyright termination action is barred the applicable statute of limitations, which precludes this Court from adjudicating his claim.³ Accordingly, Defendant's motion for summary judgment [D.E. 51] is GRANTED and Plaintiff's motion for summary judgment [D.E. 63] is DENIED as moot.

3. Because Casey is entitled to judgment as a matter of law on his statute of limitations defense and this defense is dispositive of the case, we do not address any of the remaining arguments in Defendant's motion.

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II. APPLICABLE PRINCIPLES AND LAW

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law:

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). On summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *See Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 597, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting another source).

At the summary judgment stage, the Court's function is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 243, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In

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making this determination, the Court must decide which issues are material. A material fact is one that might affect the outcome of the case. *See id.* at 248 (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”). “Summary judgment will not lie if the dispute about a material fact is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

III. ANALYSIS

The predicate question before the Court is relatively straightforward: whether Finch’s declaratory judgment action under § 203 of the Copyrights Act falls outside the act’s three-year limitations period. Defendant’s motion argues that it does. According to Casey, the statute of limitations on Finch’s lawsuit elapsed in May 2018, which renders this lawsuit—commenced in November 2022—untimely. [D.E. 51 at 9]. Specifically, Casey highlights that copyright claims that turn on ownership, or authorship (as opposed to infringement), accrue only once. In Finch’s case the accrual point happened in May 2015, when Casey’s lawyer sent a response letter to Finch’s attorney expressly invalidating the 2012 Notice of Termination and challenging Finch’s claim of authorship over the ninety-nine songs. *Id.* at 10-11.

Finch, on the other hand, opposes summary judgment on Defendant’s statute of limitations defense, primarily on two grounds. [D.E. 72]. First, Finch argues that Casey’s

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statute of limitations defense is itself time-barred and, as such, cannot be considered by this Court. In doing so, Plaintiff essentially asks this Court to treat Casey's Rule 8(c) affirmative defense as a counterclaim that sounds on copyright ownership, as to make it subject to the Act's three-year limitations period. *Id.* at 4-6. Second, Finch asserts that, under Eleventh Circuit precedent, the May 2015 response letter that Casey sent to Finch's lawyer was not sufficient to place Finch on notice of Casey's claim of sole authorship, which means that the statute of limitations on Finch's claim could not have started ticking in 2015. *Id.* at 7-9. Implicitly, Finch seems to suggest that his § 203 claim could not have accrued prior to the effective date of termination outlined in his 2019 Notice. If that is the case, then Casey's summary judgment premised on his statute of limitations defense cannot succeed.

**A. Casey's Statute of Limitations Defense
is not Time-Barred**

We start by addressing Finch's first argument in opposition to Casey's motion for summary judgment; namely, that this Court cannot consider Casey's Rule 8(c) statute of limitations defense because this defense is itself untimely. Plaintiff asks the Court to overlook the fact that his lawsuit may fall outside the time limits prescribed by the Copyright Act, and instead focus on preventing Defendant from asserting his statute of limitations defense because it is itself time barred. Plaintiff's convoluted argument on this score, which is devoid of much supporting authority, fails to persuade us why the limitations period on his original claim has not run.

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For starters, Plaintiff’s argument misconstrues the nature of Casey’s Rule 8 affirmative defense. According to Plaintiff, “[t]he gravamen of Casey’s first ground for summary judgment is that Finch cannot prevail in his claim for declaratory relief because the Notice of Termination is invalid on the ground that Finch is not an author.” [D.E. 72 at 3]. Not so. Defendant’s first ground for summary judgment is that Plaintiff failed to file suit within three years after his § 203 claim accrued, rendering his November 2022 lawsuit untimely. *See* 17 U.S.C. § 507(b) (“No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”).

Yet, Plaintiff repeatedly, and confusingly, conflates the substance of Casey’s response letter to the 2012 Notice—which disputed authorship—with the statute of limitations defense asserted in Casey’s Answer, and then proceeds to portray Casey’s defense as a *claim* or *counterclaim* that this Court should subject to the Act’s three-year statute of limitations. [D.E. 72 at 4] (“[t]he question of whether Casey *currently* has a *timely* ‘sole authorship’ **claim** is crucial”) (third emphasis added). We find no basis to accept Finch’s self-serving description of Casey’s limitations defense as a “claim.” Casey’s motion for summary judgment is premised on his fourth affirmative defense (“Claim Barred by Statute of Limitations”), not his third one (“Not an Author”), [D.E. 42 at 6], and Finch fails to cite a single analogous case supporting this arbitrary reformulation of Casey’s statute of limitation argument. *See id.* at 4-6. As noted earlier, Casey’s limitations theory is asserted in his answer to Plaintiff’s FAC pursuant to Rule 8(c),

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and does not seek damages or any other affirmative relief from Plaintiff. [D.E. 42 at 6]. That is significant. See *Estate of Hogarth v. Edgar Rice Burroughs, Inc.*, 342 F.3d 149, 163 (2d Cir. 2003) (“A defendant who is not seeking any affirmative relief and who asserts a defense only to defeat a plaintiff’s claim is not barred by a statute of limitations”); *U.S. for Use of Bros. Builders Supply Co. v. Old World Artisans, Inc.*, 702 F. Supp. 1561, 1569 (N.D. Ga. 1988) (stressing the “common law rule that statutes of limitations do not run against pure defenses”).

While Plaintiff urges this Court to ignore the “general rule that a statute of limitations does not bar mere defenses as distinct from counterclaims,” *Everly v. Everly*, No. 3:17-CV-01440, 2020 U.S. Dist. LEXIS 173698, 2020 WL 5642359, at *9 (M.D. Tenn. Sept. 22, 2020), nothing in Finch’s brief or the available record persuasively lead us to that conclusion. Indeed, the very same cases on which Plaintiff purports to rely underscore the weakness of his arguments with respect to both the application of statute of limitations to affirmative defenses and the accrual of a copyright ownership claims.

For instance, Plaintiff cites to *Complex Systems*, a case that dealt with a copyright infringement claim where the defendant asserted a *joint ownership* defense that was predicated on an alleged ownership interests belonging to a third, non-party actor. *Complex Sys., Inc. v. ABN Ambro Bank N.V.*, 979 F. Supp. 2d 456, 473 (S.D.N.Y. 2013). Besides the glaring factual differences between that case and the one at hand, including the role of non-parties and the absence of a *statute of limitations defense*, the court

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in *Complex Systems* actually rejected Finch's theory by expressly noting that if it were the non-party asserting the joint ownership defense, the defense would be allowed to proceed even though the claim would not be allowed if it were seeking affirmative relief. *Id.* at 474 ("Put another way, if IT were the defendant to this [] case, it may very well be able to assert that it cannot infringe that which it owns. That affirmative defense may or may not prevail, but it would be allowed"); *see also Scorpio Music (Black Scorpio) S.A. v. Willis*, No. 11CV1557 BTM RBB, 2013 U.S. Dist. LEXIS 29141, 2013 WL 790940, at *3 (S.D. Cal. Mar. 4, 2013) (involving a counterclaim rather than a defense, and observing that the Act's statute of limitations bars § 203 termination claims "brought more than three years after plain and express repudiation of the ownership claim.").

This is not a case in which Casey can be deemed to be a defendant in an aggressor's posture, trying to use an affirmative defense as a sword rather than a shield to disturb some long-lasting status quo between the parties. *Cf. Donald Everly v. Everly*, 536 F. Supp. 3d 276, 283-84 (M.D. Tenn. 2021) (barring affirmative defense that mirrored defendants' ownership counterclaim, where defendants "sought to topple the status quo under which [plaintiff] had been operating since 1980"). As noted above, Casey has not pled counterclaims, nor is he seeking any damages or affirmative relief from Finch. Moreover, the underlying facts in this case indicate that it is Finch who has engaged in repeated efforts, some of which date back to the 1980s, to disturb or attack the existing state of affairs established by the parties through execution of

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their 1980 and subsequent agreements. In this respect, we are at a loss to see how this long and adversarial historical backdrop between the parties, which according to Finch imputes to Casey unclean hands that should preclude him from even asserting a statute of limitations defense, does not likewise bar Finch from continuing to prosecute this stale, protracted and long-lasting dispute.

In sum, Plaintiff's claim that this Court should not consider Casey's statute of limitations defense because this defense is itself time-barred, is legally unsound and unpersuasive. Not only does Finch mischaracterize the nature of Case's asserted defense, but it also cherry-picks authorities that, when properly read, lend more support to Casey's arguments than to Finch's. Accordingly, the Court finds no basis for preventing Casey from asserting his statute of limitations defense. We thus must address the merits of that defense based on the existing record.

B. Finch's § 203 Lawsuit is Barred by the Act's Statute of Limitations

Next, we turn to Casey's argument that Finch's lawsuit is barred by the Act's statute of limitations. Because the undisputed facts show that, as a matter of law, Finch's § 203 claim accrued no later than May 2015, this lawsuit is barred by the Act's three-year limitations period, and Defendant is entitled to summary judgment on his statute of limitations defense.

The Copyright Act provides authors with termination rights, which allow them to terminate "the exclusive or

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nonexclusive grant of a transfer or license of copyright or of any right under a copyright.” 17 U.S.C. § 203(a) (providing right to terminate post-1978 grants between thirty-five and forty years after the grant). Under the Act, authors are thus entitled to terminate certain grants and recapture ownership in their works after a period of time. § 203 provides for the effectuation of a termination by service of “an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee’s successor in title.” *Id.* § 203(a)(4). The notice must state an effective date of termination and must be served not less than two or more than ten years before that date. *Id.* “However, regardless of the effective date, under § 203(b)(2), “[t]he future rights that will revert upon termination of the grant become vested *on the date the notice of termination has been served.*” *Baldwin v. Emi Feist Catalog, Inc.*, No. 11-81354-CIV, 2012 U.S. Dist. LEXIS 201053, 2012 WL 13019195, at *2 (S.D. Fla. Dec. 11, 2012) (emphasis in original).

Furthermore, all copyright claims are subject to a three-year statute of limitations. Section 507(b) provides that “[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.” Claims for infringement and claims for ownership are subject to different accrual standards. A claim that sounds in ownership, as in this case, “accrues only once”: at the point in time when plaintiff “knew, or reasonably should have known, that his ownership rights [] were being violated.” *Webster v.*

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Dean Guitars, 955 F.3d 1270, 1276 (11th Cir. 2020); *see also Kwan v. Schlein*, 634 F.3d 224, 228 (2d Cir. 2011) (“An ownership claim accrues only once, when ‘a reasonably diligent plaintiff would have been put on inquiry as to the existence of a right.’”); *Santa-Rosa v. Combo Records*, 471 F.3d 224, 228 (1st Cir. 2006) (“[A] claim for declaratory judgment of ownership accrues when the plaintiff ‘knew of the alleged grounds for the ownership claim.’”), *cert. denied*, 550 U.S. 936, 127 S. Ct. 2265, 167 L. Ed. 2d 1094 (2007).

Given this well-established principle, we are bound to agree with Casey that the undisputed facts show that Finch’s lawsuit falls outside § 507(b)’s limitations period. As a threshold matter, we start by noting that Plaintiff fails to affirmatively dispute that Mr. Wolfe was his attorney and acted in that capacity on May 7, 2015, when he sent the termination notice to Casey’s counsel. Although Plaintiff attempts to suggest a dispute of material fact with regards to this attorney-client relationship, any purported “dispute” on this fact would be limited to Plaintiff’s alleged lack of recollection of Mr. Wolfe’s retention during his deposition. [D.E. 52-1 at 24-27] (“Q. Okay. And do you know another lawyer named Richard Wolfe? A. Vaguely. Those were not good times for me”; “Q. Okay. But you don’t remember hiring Richard Wolfe to act as you lawyer? A. Probably I don’t remember, because that whole thing was ineffective and, yeah, I don’t -- yeah, I don’t know how to answer you correctly[.]”). This non-denial denial is plainly insufficient to create a dispute of fact, particularly in light of the fact that other parts of the uncontroverted record affirmatively establish

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that Mr. Wolfe was indeed Finch's attorney. [D.E. 52-10 at 2] ("We have been asked to represent Richard Finch in connection with his 17 U.S.C. § 203 termination rights. . . . Please address all further communications relating to Mr. Finch to me."); [D.E. 52-12 at 11] ("Q. I appreciate that. But when you wrote this letter, was it your understanding you were also representing Mr. Finch? A. Yes."); [D.E. 64-8 at 174-175] (conceding that "Mr. Zemel had sent a letter back to Mr. Finch's attorney, saying 'you know what?' Finch was never an author."); [D.E. 52-12 at 6] ("MR. WEISS: We're going to be asserting the attorney/client privilege on any communications that are taking place -- that took place between Richard, and Finch, and his attorneys. MR. ZEMEL: That includes Richard Wolfe as one of his attorneys? MR. WEISS: That is correct.").

It is likewise undisputed that Casey's May 26, 2015, response to Finch's termination notice clearly and expressly disputed Finch's authorship claim, as well as his corollary termination rights under § 203. [D.E. 71 at 3]. In pertinent part, Casey's repose letter stated the following:

At no time was Finch an "author" of the music under the Copyright Act. The U.S. Supreme Court defines "author" as "the party who actually created the work, that is, the person who translates an idea into fixed, tangible expression entitled to copyright protection." Finch did not actually create the songs Casey wrote for KCSB and Finch did not contribute any significant copyrightable material to those songs. Accordingly, Finch would have the

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burden of proof of establishing his status as an “author”, not just one with whom Casey shared credit. He therefore has no termination rights under Section 203(a), as explained below.

[D.E. 52-11 at 2].

According to Finch, however, these undisputed facts were not enough to trigger the statute of limitations on his termination claim back in May 2015. Purporting to rely on the Eleventh Circuit’s holding in *Webster*, Finch claims that Casey cannot “establish that when his lawyer sent that letter [to Mr. Wolfe] in 2015 ‘repudiating’ Finch’s co-authorship, a reasonable person in Finch’s position would have ‘learned that his rights were being violated’ as required under the *Webster* accrual approach.” [D.E. 72 at 7-8]. This too is plainly incorrect as Finch’s reliance on *Webster* is utterly misplaced for several reasons.

For starters, Finch fails to understand the court’s holding. Finch suggests that under *Webster* a written and express repudiation of one’s copyright ownership, as the one in this case, will not suffice to trigger accrual of an ownership derivative claim for statute of limitations purposes. This follows from Finch’s confused reading of the court’s discussion about the two accrual approaches applied to ownership claims by different Circuit Courts. *See Webster*, 955 F.3d at 1276 (observing that the Sixth and Ninth Circuits apply the “repudiation test”, whereas the First, Second, Fifth, and Seventh apply what is known as the “discovery rule”). Although the Eleventh Circuit in *Webster* adopted the discovery rule rather than the

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repudiation approach for determining accrual in the ownership context, this does not mean, as Finch suggests, that direct statements from one party to the other claiming exclusive authorship—and, hence, repudiating ownership—cannot constitute a valid form of notice for the purposes of § 507(b) accrual.⁴ To the contrary, as *Webster* itself made clear, a communication expressly repudiating plaintiff’s ownership claim can, and does, suffice to trigger accrual of a copyright ownership derivative claim:

Webster had reason to know that his alleged ownership rights were being violated as early as 2004, when he first learned that Dean was producing DFH reissues. But if that were not sufficient to put him on notice that his rights were being violated, ***Rubinson’s email in 2007*** stating that “the consensus concerning [the lightning storm graphic] is that [Abbott’s] estate is the legal owner of it” ***was certainly sufficient***.

4. Without exploring what the “repudiation rule” means, Finch improperly conflates this with any means of repudiation, including direct and express statements of exclusive authorship from one party to the other. [D.E. 72 at 7-8]. However, to say that *Webster* forecloses all forms of repudiation in general from triggering accrual of an ownership related claim completely distorts the ruling. Instead, it is more accurate to say that in bypassing the “repudiation rule”, the court simply steered away from less straightforward methods of repudiation that have been deemed sufficient under that rule in other jurisdictions. *See, e.g., Aalmuhammed v. Lee*, 202 F.3d 1227, 1231 (9th Cir. 2000) (authorship sufficiently repudiated when movie credits listed plaintiff far below the more prominent names).

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Webster, 955 F.3d at 1276 (finding that ownership claim was barred by the statute of limitations, and reaffirming grant of summary judgment in favor of defendant) (emphasis added).

As in *Webster*, the record here indicates that Casey sent a letter in response to Finch’s notice of termination to Finch’s attorney in May 2015, and that such response letter expressly and directly called into question Finch’s claim of authorship over the songs, as well as his right to effectuate termination under § 203. That was “certainly sufficient” to place Finch on notice that Casey was affirmatively challenging his authorship and termination rights over these songs. *See id.*;⁵ *see also Caracol Television, S.A. v. Telemundo Television Studios, LLC*, No. 18-CV-23443, 2021 U.S. Dist. LEXIS 13017, 2021 WL 243695, at *6 n.7 (S.D. Fla. Jan. 25, 2021) (Gayles, J.), *aff’d*, No. 21-10515, 2022 U.S. App. LEXIS 2050, 2022 WL 202546 (11th Cir. Jan. 24, 2022) (“it is likely that Caracol’s copyright claims [] are barred by the Copyright Act’s three-year statute of limitations. See 17 U.S.C. § 507(b). Caracol learned that Telemundo claimed complete ownership in the copyright of the Subsequent Seasons and Spinoff in August 2014, [via letter sent to plaintiff’s attorney, which repudiated plaintiff’s ownership claim], but did not file this action until August 23, 2018.”).

5. Something that Plaintiff seemed to concede in his original complaint, but omitted from his FAC. *See* [D.E. 1 ¶ 33] (observing that with their responses “Casey and Harrick have stated their clear intent to not honor the Notice served by Finch, regarding any works, and Casey and Harrick have thereby **created an actual** and **immediate** disagreement with Finch”) (emphasis added).

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Turning to Finch's implied suggestion that an action for termination rights under § 203 cannot accrue prior to the notice's effective date of termination, our review of the law shows otherwise. Indeed, this argument was expressly rejected by this district court in *Baldwin v. Emi Feist Catalog, Inc.*, No. 11-81354-CIV, 2012 U.S. Dist. LEXIS 201053, 2012 WL 13019195, at *1 (S.D. Fla. Dec. 11, 2012). In *Baldwin*, the court refused to grant a motion to dismiss for lack of ripeness in a lawsuit seeking declaratory judgment under § 203. The defendant in *Baldwin* argued that plaintiff's declaratory action was subject to dismissal because "claims based on a notice of termination under § 203 do not 'accrue' until the effective date of the notice," and, since the effective date of the relevant notices had not yet passed, plaintiff did not have an actionable cause of action. 2012 U.S. Dist. LEXIS 201053, [WL] at *2. The court rejected defendant's argument, and found that as soon as defendant repudiated plaintiff's notice of termination in writing, plaintiff was provided with an actionable lawsuit regarding the validity of his notices, and this lawsuit was one the court had jurisdiction to adjudicate:

By purporting to serve a valid § 203 notice upon Defendant, which notice Defendant has repudiated, Plaintiffs have created a controversy as to whether "[t]he future rights that will revert upon termination of the grant [have] become vested," as provided by the statute. 17 U.S.C. § 203(b)(2). This controversy is therefore ripe and non-speculative, and the Court has jurisdiction to adjudicate it.

Id. at *3.

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Based on these precedents and the undisputed facts, it is evident that Finch's claim for termination under § 203 accrued in May 2015, when Casey sent a response letter to Finch's lawyer expressly challenging Finch's claim of authorship over all ninety-nine songs, as well as his corollary right to termination. However, because Finch did not file this lawsuit until November 11, 2022, his claim is barred by the Act's three-year statute of limitations. And Finch has not pointed us to any holding, in this Circuit or elsewhere, that undermines this established principle.

In sum, having found no genuine issues of material fact, we hold that Casey is entitled to judgment as a matter of law because Finch's original declaratory judgment action is now time-barred. As such, we grant summary judgment in Casey's favor.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Defendants' Motion for Summary Judgment on the statute of limitations defense [D.E. 51] is **GRANTED**, and Plaintiff's cross Motion for Summary Judgment [D.E. 63] is **DENIED as moot**.

DONE AND ORDERED in Chambers at Miami, Florida, this 7th day of February, 2023.

/s/ Edwin G. Torres

EDWIN G. TORRES
United States Magistrate Judge