

Seeking Harmony: Supreme Court to Consider Retrospective Relief for Timely Copyright Claims Under Discovery Rule

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The Supreme Court of the United States agreed to consider whether a copyright plaintiff's timely claim under the discovery rule is subject to retrospective relief for infringement occurring more than three years before the suit was filed. *Warner Chappell Music, et al. v. Nealy*, Case No. 22-1078 (Supr. Ct., Sept. 29, 2023) (*certiorari* granted). The specific question presented is as follows:

Whether, 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.

Music Specialist and Sherman Nealy (collectively, Nealy) filed a copyright infringement suit against Warner alleging that Warner was using Nealy's musical works based on invalid third-party licenses and in violation of 17 U.S.C. § 501. The alleged copyright infringement occurred as early as 10 years before Nealy filed the lawsuit. The district court denied Warner's motion for summary judgment on statute of limitation grounds, finding that there was a genuine dispute of material fact regarding when Nealy's claim accrual occurred. In a separate

order, the district court certified for interlocutory appeal whether “damages in this copyright action are limited to the three-year lookback period as calculated from the date of the filing of the Complaint pursuant to the Copyright Act and *Petrella*.” Warner appealed.

The US Court of Appeals for the Eleventh Circuit agreed with the district court, issuing a **decision** that where a copyright plaintiff has a timely claim for infringement occurring more than three years before the filing of the lawsuit, the plaintiff may obtain retrospective relief for that infringement.

The Eleventh Circuit’s approach specifically disagreed with the Second Circuit’s approach to the application of the discovery rule, thereby creating a circuit split.

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