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Board of Education & James Knox

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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LINDA WOODSON,	:	
	:	
Plaintiff,	:	Civil Action No.:1:19-cv-14572 (JHR/JS)
	:	
vs.	:	
	:	
ATLANTIC CITY BOARD OF	:	
EDUCATION, JAMES KNOX,	:	
NATIONAL ASSOCIATION OF	:	
ELEMENTARY SCHOOL PRINCIPALS,	:	
	:	
Defendants.	:	

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**REPLY BRIEF IN FURTHER SUPPORT OF DEFENDANT’S  
ATLANTIC CITY BOARD OF EDUCATION AND JAMES KNOX  
MOTION FOR SUMMARY JUDGMENT**

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## **LEGAL ARGUMENT**

### **I. PLAINTIFF FAILED TO COMPLY WITH F.R.C.P. 56(C)(1)**

On November 21, 2022, the Plaintiff filed opposition to Defendants', Atlantic City Board of Education and James Knox Motion for Summary Judgment. Despite the Plaintiff's representation that the document is a brief in opposition, the submission to the Court is nothing more than what "Plaintiff has summarized the undisputable facts" to be. Pursuant to F.R.C.P. 56(c)(1), "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 the 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."

Plaintiff listed what is deemed to be eleven (11) undisputable facts. Plaintiff failed to cite to any materials in the record for each of these eleven (11) facts that supports any of the assertions filed as "opposition".

Pursuant to F.R.C.P. 56(c)(3), the Court only needs to consider the cited materials. Therefore, it is the Defendant's position that her opposition brief should not be considered by this Court.

**II. PLAINTIFF RECEIVED AN EMAIL IN 2010 INFORMING HER THAT KNOX INTENDED TO PUBLISH THE ARTICLE, AND SHE PROVIDED HIM WITH HER NARRATIVE IN RESPONSE TO THAT EMAIL TO SPECIFICALLY BE USED IN THE ARTICLE, HER 2019 COMPLAINT IS OUT OF TIME.**

Pursuant to 17 U.S.C. §507(b), the statute of limitations in the Copyright Acts, states in no uncertain terms, “No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”

If the Court elects to take into consideration each of the eleven (11) points submitted as an opposition brief, a review of each of these points reveals that Plaintiff does not deny that she received an email in 2010 advising her of the publishing opportunity. Simply because she cannot. On July 6, 2010 at 10:58, Plaintiff directly responded to the email with the subject line “Publishing opportunity with *Principal Magazine*.” The Plaintiff’s response to this email, “Attached is the narrative for the article.” (Exhibit C, R&R Woodson 147-148, 165 and 173) Plaintiff does not deny that she sent this email. Simply because she cannot.

Plaintiff elects to addresses the statute of limitations in another way. At point 9, “Plaintiff is not out of time to bring this claim because the Court has already held that the federal discovery rule is applicable and supersedes 17 U.S.C. 507 and its three-year statute of limitations.” In an Order and an opinion issued by the Honorable Joseph H. Rodriguez on March 23, 2020, the Court commented as follows as to the Plaintiff’s Complaint:

“In fact, not only does Plaintiff fail to allege that she discovered the infringement in 2018, but the proposed Amended Complaint fails to allege when she discovered the alleged harm at all.” [Dkt. 19, page 8]



The Court provided the Plaintiff with the opportunity to file a Second Amended Complaint within thirty days.

Plaintiff filed a Second Amended Complaint. In an Order and an opinion issued again by the Honorable Joseph H. Rodriguez on December 18, 2020, the Court commented as follows as to the Amended Complaint:

“Plaintiff’s Second Amended Complaint adds that she first learned of Knox’s publication in 2018, and “did not discover, nor in the exercise of reasonable diligence could or should have discovered, the basis for her claim against the Defendants prior to 2018.”

[Dkt. 29, page 3]

The Court at this time, accepted the facts alleged by the Plaintiff as true. However, during the course of discovery as cited and attached to the Defendants Motion for Summary Judgment, these facts did not prove to be true. The Plaintiff in this case had “sufficient knowledge of possible wrongdoing to satisfy inquiry notice or to excite storm warnings of culpable activity” as referenced in Benak ex rel. All. Premier Growth Fund v. All. Capital Mgmt. L.P., 435 F.3d 396, 400 (3d Cir. 2006) quoting In re NAHC, Inc. Sec. Litig., 306 F.3d 1325 (3d Cir. 2002). Plaintiff, Linda Woodson had actual notice and put herself right in the “storm” when she responded to an email with the subject line, “RE: Publishing opportunity with Principal magazine”. Not only does this refute the fact that she alleges she did not open the email as originally alleged, but she also responded to it. When Plaintiff responds to Defendant Knox and copies a co-worker, Jennifer Wells she provides the original document used for the submission of the grant in a word format. This allows the document to be changed and/or modified. (Exhibit C, R&R 173)

Plaintiff now seeks to take advantage of this Court's ruling by alleging that the federal discovery rule "is applicable and supersedes 17 U.S.C. 507 and its three-year statute of limitations". This is yet another attempt by the Plaintiff to manipulate the process and this Court. Plaintiff clearly had direct knowledge of the publication and failed to file her Complaint within the three-year statute of limitations.

**III. PLAINTIFF IS NOT ENTITLED TO DAMAGES, AS THE UNDISPUTED FACTS REVEAL THAT SHE MADE ONLY PARTIAL CONTRIBUTIONS TO THE WORK THAT SHE CLAIMS WAS HER OWN.**

Regardless of whether an individual obtains a copyright from the Copyright Office, "[a] plaintiff in a copyright infringement action must prove... that the copyright upon which it rests its claims is valid." Don Post Studios, Inc. v. Cinema Secrets Inc., 124 F. Supp. 2d 311, 315 (E.D. Pa. 2000) Our Motion for Summary Judgment establishes that the Plaintiff's entire case is based on the idea that she was exclusively responsible for drafting the "written materials to apply for the Panasonic National School Change Award". There are multiple examples and cited sources in Defendants original brief establishing that too was not true.

If the Court elects to take into consideration each of the eleven (11) points submitted as an opposition brief, a review of each of these points reveals that Plaintiff does not deny that she made only partial contributions to the work that she now claims was her own. Therefore, the facts established and undisputed in Defendant's brief should be deemed as admitted.

**IV. PLAINTIFF HAS NOT DEMONSTRATED ANY ENTITLEMENT TO DAMAGES, STATUTORY OR OTHERWISE.**

Based on the undisputed facts, 17 U.S.C. §412(2) prohibits statutory damages or attorneys' fees . Defendants rely on their prior submission to support this point. Defendants further rely on the Plaintiff's failure to refute the position of the Defendants as outlined in the moving brief.

If the Court elects to take into consideration each of the eleven (11) points submitted as an opposition brief, I direct the Courts attention to point 11 that addresses damages. Specifically, "Plaintiff is entitled to damages for willful copyright infringement, contributory copyright infringement and vicarious copyright infringement, legal costs and attorney fees, beginning at \$300,000." Plaintiff is once again, making it up as she goes along. There has been no discovery provided in this case to support any attorney's fees from her prior counsel. There has been no discovery provided in this case to support any legal costs that have been incurred. There has been absolutely no discovery provided to support Plaintiff's claims of any damages.

**V. CONCLUSION**

For the reasons expressed above and for the reasons set forth in Defendants Motion for Summary Judgment, it is respectfully requested that Plaintiff's Second Amended Complaint be dismissed with prejudice.

Respectfully submitted,  
**LAW OFFICES OF RILEY & RILEY**

By:

  
Tracy L. Riley, Esquire

Dated: November 28, 2022