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

LINDA WOODSON

Plaintiff,

vs.

ATLANTIC CITY BOARD OF
EDUCATION, JAMES KNOX, NATIONAL
ASSOCIATION OF ELEMENTARY
SCHOOL PRINCIPALS

Defendants.

CIVIL ACTION NO: 1:19-cv-14572-JHR-JS

**BRIEF OF DEFENDANT NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL
PRINCIPALS IN SUPPORT OF MOTION TO DISMISS PURSUANT
TO FED. R. CIV. P. 12(B)(6)**

On the Brief: David J. Shannon, Esquire
Jeremy J. Zacharias, Esquire

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PRELIMINARY STATEMENT

Defendant, National Association of Elementary School Principals (“NAESP”), requests an Order dismissing plaintiffs' Complaint for failure to state a claim pursuant Fed. R. Civ. P. 12(b)(6). The facts alleged in plaintiff's Complaint clearly demonstrate that plaintiff's claims for copyright infringement are out of time based on the three year statute of limitations.

Plaintiff's Complaint must be dismissed based solely upon the allegations contained in her Complaint. Plaintiff describes conduct that occurred in 2010-2011, as well as her knowledge that she was not being credited for her contributions as early as 2011. Since the statute of limitations for claims alleging copyright infringement is only three years, plaintiff's claims should have been brought at the latest by 2014. Discovery is unnecessary on this issue given the clarity of the factual allegations and the date of publication, and dismissal pursuant to Rule 12(b)(6) is required.

For the following reasons, the Complaint is unsustainable and should be dismissed with prejudice. A proposed Order is attached.

PROCEDURAL HISTORY AND FACTUAL STATEMENT

On July 1, 2019, plaintiff, Linda Woodson, filed a Complaint against defendants, Atlantic City Board of Education, James Knox and NAESP. (Exhibit “A”). In this Complaint, plaintiff alleges in Count I a claim for direct Copyright Infringement, pursuant to 17 U.S.C. §502-505, alleges in Count III¹ a claim for Vicarious Copyright Infringement, pursuant to 17 U.S.C, §§101 *et seq.*, and alleges in Count IV a claim for Contributory Infringement. (*Id.*) Additionally, plaintiff's Prayer for Relief establishes that she is seeking redress for alleged violations of 17 U.S.C, §§503 - 505, as well as 17 U.S.C. §1203. (See *Id.*)

¹ Count II is omitted from the filed Complaint.

Plaintiff alleges that she is a teacher under the employ of the Atlantic County Board of Education at the New York Avenue School where James Knox is principal. (Id. at para. 23.) Plaintiff also alleges that she created a document in 2010, which involved the discussion of extensive changes in the New York Avenue School and the progress the student body made. (Id. at 24; see also Exhibit “A” attached to plaintiff’s Complaint.) Plaintiff also alleges that she created a digital presentation to accompany this 2010 report. (Id. at para. 25.) Additionally, plaintiff alleges that James Knox wrote an article entitled, “At Risk for More Than Academic Failure” that was published in the professional journal of NAESP in its edition for January/February 2011 which borrowed heavily from Plaintiff’s work². (Id. at para. 27; see also Exhibit “D” attached to plaintiff’s Complaint.)

Plaintiff also claims that she created an application to the Panasonic National School Change Awards, which allegedly included her work and claims that she "received no credit in the application to the Panasonic National School Change Awards." (Id. at 28-29.) Plaintiff also alleges that James Knox "used the application to the Panasonic National School Change Awards in its entirety in his 'At Risk For More Than Academic Failure' article” and that she received no credit in this article. (Id. at 30-31.)

Plaintiff alleges that she was injured because of the lack of credit made in the application to the Panasonic National School Change Awards as her “salary could have increased since 2010 due to her work in creating Plaintiff’s Work along with the lack of revenue from the original publication and reproductions.” (Id. at 33.)

² At para. 44 of plaintiff’s Complaint, she alleges a Count for Vicarious Copyright Infringement against NAESP, alleging that NAESP allegedly derived a direct financial benefit from this infringement. (Id. at para. 44.)

LEGAL ARGUMENT

I. STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(6) permits a court to dismiss all or part of an action for failure to state a claim upon which relief can be granted. In ruling on a Rule 12 (b)(6) motion, the court must accept as true all well pleaded factual allegations, and must draw all reasonable inferences in favor of the plaintiff. Doe v. Delie, 257 F. 3d 309, 313 (3d Cir. 2001). Thus, a court may grant the motion "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Id. However, the court "need not credit the non-movant's conclusions of law or unreasonable factual inferences." Curay-Cramer v. The Ursuline Academy of Wilmington, Delaware, Inc., 450 F.3d 130 (3d Cir. 2006) (citations omitted). Thus, claims should be dismissed under Rule 12 (b)(6) when "it appears beyond doubt that the Plaintiff can prove no set of facts in support of her claim which would entitle her to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

Here, plaintiff alleged that she is currently a teacher employed by defendant Atlantic City Board of Education at the New York Avenue School. She explicitly states that she created the document at question in 2010, and this document was accompanied by a digital presentation. (Exhibit "A" para. 23-25.) Plaintiff's Copyright Infringement lawsuit alleges two arguments. First, she alleges that defendant Knox used her work in order to apply for the Panasonic National School Change Awards. Second, plaintiff alleged that defendant Knox "borrowed heavily from Plaintiffs Work" when he wrote an article entitled "At Risk For More Than Academic Failure" in the NAESP journal in its January/February 2011 edition. (Id. at para. 27-29.) All of plaintiff's allegations against defendants stem from a publication that occurred over eight years ago, making this Complaint untimely.

II. PLAINTIFF'S CLAIMS FOR COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. 504 ARE BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS IMPOSED ON THIS CASE

Plaintiff failed to file her alleged cause of action against defendants for alleged copyright infringement within three-years from when she discovered her alleged harm due to the publication. The Copyright Act 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." 17 U.S.C. § 507(b). Since the Plaintiff filed her Complaint on July 1, 2019, the accrual of her claims expired as of July 1, 2016. Additionally, under the discovery rule, which must be applied in copyright infringement cases such as this case, a cause of action accrues "when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim." See, Disabled in Action of Pennsylvania v. Se. Pennsylvania Transp. Auth., 539 F.3d 199, 209 (3d Cir. 2008)). To avail herself of the benefit of the discovery rule, Plaintiff must establish that she did not discover, nor in the exercise of reasonable diligence should have discovered, the basis for her claim against the Defendants until after July 1, 2016. See, William A. Graham Co. v. Haughney, 568 F.3d 425 (3rd Cir. 2009).

In William A. Graham Co., the plaintiff brokerage developed and copyrighted templates for client-specific proposals. The defendant employee retained part of the templates when he left the brokerage's employment in 1991 and went to work for the competitor's predecessor. Defendants used language from the templates in client proposals over a 13-year period and the brokerage discovered the infringement in 2004. The court of appeals agreed with the district court that the discovery rule applied to the three-year limitations period under 17 U.S.C. § 507(b). However, the Third Circuit held that the district court erred in finding that the infringement action accrued in 1991 based on warnings of possible infringement. The Third

Circuit held that evidence was sufficient to support the jury's conclusion that the brokerage was not on notice of the infringement more than three years prior to its suit.

The same is not true in the instant case. The plaintiff alleged that she is currently a teacher under the employ of the Atlantic City Board of Education and the New York Avenue School. During her employment under the Atlantic City Board of Education, plaintiff allegedly created a document in 2010 and an accompanying digital presentation thereafter, "which involved the discussion of extensive changes of the New York Avenue School" where she was employed "and the progress the student body made." (Exhibit "A", para. 23 to 25.) Additionally, plaintiff alleges that defendant James Knox wrote an article entitled, "At Risk for More Than Academic Failure" in the professional journal of NAESP in its edition for January/February 2011 which borrowed heavily from Plaintiff's work. (*Id.* at para. 27; see also Exhibit "D" attached to plaintiff's Complaint.) Plaintiff also claims that she created an application to the Panasonic National School Change Awards, which allegedly included her work and claims that she "received no credit in the application to the Panasonic National School Change Awards." (*Id.* at 28-29.) Plaintiff also alleges that James Knox "used the application to the Panasonic National School Change Awards in its entirety in his 'At Risk For More Than Academic Failure' article" and that she received no credit in this article. (*Id.* at 30-31.)

Plaintiff clearly discovered, or at least should have discovered, her alleged cause of action against the defendants in 2011, making her instant claims against NAESP six years too late. Based on the allegations presented in plaintiff's complaint, she was aware of the publication at issue as they were occurring, making the discovery rule inapplicable to this case. Based solely on the allegations of the complaint, Plaintiff's complaint must be dismissed pursuant to the three-year statute of limitation imposed on this case by 17 U.S.C. § 507(b).

CONCLUSION

For the reasons expressed above, it is respectfully requested that plaintiff's Complaint be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) based on the time periods set forth in the filed Complaint and based on the applicable statute of limitations imposed on Copyright Infringement cases.

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/s/ Jeremy J. Zacharias

BY: _____
JEREMY J. ZACHARIAS

Dated: August 29, 2019