

**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.*

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**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.<sup>1</sup> After careful consideration of the briefing 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.

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<sup>1</sup> On April 1, 2022, the parties consented to the jurisdiction of the Undersigned Magistrate over all matters, including dispositive 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].

## *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”).<sup>2</sup> [D.E. 64-3; 64-6; 64-10]. In essence, these agreements transferred to Sherlyn a 50% ownership interest in the copyrights 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

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<sup>2</sup> 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].

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 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 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.<sup>3</sup> 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.

## *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

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<sup>3</sup> 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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