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An Examination of *Community for Creative Non-Violence v. Reid*

On March 29, 1989, In *Community for Creative Non-Violence v. Reid*, the Supreme Court listened as lawyers argued stances on whether a sculptor was a work for hire or not. Community for Creative Non-Violence, also known as CCNV, ensures that "the rights of the homeless and poor are not infringed upon, and that every person has access to life's basic essentials – food, shelter, clothing, and medical care" (*Washington DC's Community for Creative Non-Violence*). The non-profit organization prides itself on focusing the public's attention on the homeless to cultivate a more caring environment in the heart of Washington, D.C. In 1985, CCNV was eager to produce a statue for an annual Christmas pageant in the metro area. Respondent Reid, a sculptor, was hired by CCNV to create the sculpture to depict the homeless population in Washington, D.C. After the pageant came to an end, CCNV wanted to take the art piece for a "traveling tour." However, Reid believed that the sculpture was not strong enough to withstand the ambitious agenda. When Reid took his sculpture back, CCNV sued him. CCNV claimed it had the copyright, as they believed Reid was a work for hire. Reid argued that he was not working for hire, and therefore, he owned the copyright. The following text examines *In Community for Creative Non-Violence v. Reid* and highlights why it is vital to know the "work made for hire" provisions of the Copyright Act of 1976, 17 U.S.C. §§ 101 and 201(b) as an artist or hired hand.

Before the case reached the Supreme Court, CCNV filed an action in a United States district court against Reid, who claimed to have copyright ownership. The district court "expressed the view that the association was the exclusive owner of the copyright on the sculpture, on the ground that the sculptor had been an employee because the association was the motivating force in the sculpture's production" (*LexisNexis*). Respondent Reid disagreed with the ruling and appealed. In his favor, the Court of Appeals for the District of Columbia Circuit reversed the ruling, expressing "the view that the association could not claim ownership on the basis of the work for hire doctrine, where (a) the work was not prepared by an employee because the sculptor was an independent contractor under agency law, and (b) no written agreement existed between the parties" (*LexisNexis*). Because both parties were adamant about having the copyright, the case passed through the lower courts and made its way to the Supreme Court.

Concerning Reid's "agreement" in making the sculpture, CCNV also agreed that the project would cost under $15,000. Reid received "an advance of $3,000 […] At Snyder's request, Reid sent CCNV a sketch of a proposed sculpture […] Reid testified that Snyder asked for the sketch to use in raising funds for the sculpture. Snyder testified that it was also for his approval" (*Oyez*). Because 17 U.S. Code § 101 states a work made for hire is "a work prepared by an employee within the scope of his or her employment," Snyder, a trustee member of CCNV, emphasized that Reid reported to him. He emphasized this point to paint the picture that Reid worked for him during the six months and not as a freelancer.

However, because no there was no written agreement between CCNV and Reid, Reid argued that he was not an employee of CCNV and, thus, owned the sculpture's copyright. The United States Copyright Office, states that immediately upon creating artwork of any sort, the copyright "becomes the property of the author who created it" (*Copyright*, United States

Copyright Office). Reid was the sole designer and creator of the sculpture. Continuing into the Supreme Court, CCNV remained firm in its opinion that Reid was a hired hand. Even if CCNV agreed that Reid was an independent contractor, to receive an artwork's copyright from an independent contractor, the work must fall into one of the nine categories in § 101 and have a written agreement between both parties specifying that the work is made for hire. Neither which are true of Reid's relationship with CCNV and artwork. To be considered an employee regarding copyright, one must be under the general law of common agency.

During the case's time at the Supreme Court, the Supreme Court explained to CCNV what is considered an "employer-employee" relationship in agency law. The Supreme Court stated that to be considered an employee, the employer must have control over the work, control over the employee, and provide the employee benefits or a withholding of tax from payments. The Court was "unclear [in] which of these factors must be present to establish the employment relationship under the work-for-hire definition. Moreover, it held that supervision or control over the creation of the work alone is not controlling" (*Copyright*, United States Copyright Office). Because supervision or control over a creation does not constitute an employer-employee relationship, and CCNV did not have a written agreement with Reid, there was nothing to support the claim that Reid was a work for hire.

The Supreme Court agreed with the Court of Appeals that Reid was not an employee of CCNV but an independent contractor. With an extensive examination of § 101, the Court defined an employee under the general law of common agency of law with these factors: the skill required, the source of the instrumentalities and tools, the location of the work, the duration of the relationship between the parties, whether the hiring party has the right to assign additional projects to the hired party, the extent of the hired party's discretion over when and how long to

work, the method of payment, the hired party's role in hiring and paying assistants, whether the work is part of the regular business of the hiring party, whether the hiring party is in business, the provision of employee benefits, and the tax treatment of the hired party. Because Reid was not defined as an employee but an independent contractor with no written agreement with CCNV, Reid was deemed ownership of the copyright for his sculpture, "Third World America."

In *Community for Creative Non-Violence v. Reid*, there were no concurring or dissenting opinions like in the lower courts. In a unanimous decision, written through Thurgood Marshall, the Court agreed that Reid's independent status was evident because of the following reasons under the Act:

"he supplied his own tools, worked in his own studio in another city, was retained for less than two months, decided his own work schedule, received salary that was contingent on the sculpture's completion, and had sole discretion over hiring and paying assistants. Moreover, CCNV did not pay social security taxes for Reid nor did it provide him any employee benefits" (*Oyez*).

CCNV argued with The Supreme Court through the end. At one point in the oral argument, Robert Alan Garrett, the representative for CCNV, told the Supreme Court that CCNV deserves the statue because CCNV would use the funds for it to give to the homeless. Judge Antonin Scalia argued that Mr. Reid could come into the room and say the same thing. With suspicion to CCNV's core argument, Scalia asked, "Your legal position would be unchanged if you were going to use the money to... whatever... for any other purpose, right?" After Garrett agreed, Scalia answered, "okay." At this moment, CCNV's intentions were made clear; CCNV was asserting its entitlement to the sculpture because of the money CCNV could make on it for the homeless. CCNV downplayed Reid's credit of the art and accentuated his inability to assist

the homeless like CCNV. CCNV based its argument on testing whether Reid was an employee or not based on the historic right-to-control test. However, Scalia argued that CCNV could not control Reid, specifically telling him what chisel to use. Reid had creative freedom with the absence of a written agreement and with the definition of an employee under the general law of common agency of law, was not enslaved to a contract nor an agreement of CCNV.

Businesses or creators can look at the ruling from the Supreme Court in a few ways. A business should never forego a contract but take every opportunity to write down desires and expectations when in an agreement. Snyder mentioned in the oral argument that he and Reid "shook on it." However, there is no evidence of that shaking; exchanging words and shaking on an agreement without a written agreement is entirely informal and amateur. Businesses should also remember that under § 101, there are criteria for one to be considered an employee. Therefore, businesses should assume paid help is independent work unless necessary criteria outlined in § 101 are secured to dismantle the standing of freelancer work.

Creators, anyone who creates a work, should be adamant in requesting a written agreement from a business. If not, the business could assume the creator is a work for hire, and a protracted legal fight will be enacted upon for both parties. Creators should also know their rights, that way, they do not create something taken away from them. Although the brain is an independent, creative machine, the ideas it produces can be owned by another party when the creator is a work for hire.

The law is black and white in many areas, but also gray. The gray area in the Community for *In Community for Creative Non-Violence v. Reid* was what constitutes an "employee" under § 101. CCNV would have had a solid case if there was any written agreement and documentation

of Reid's duties and "employment." Because there were no legal documents, CCNV had no right to constitute Reid as an employee. One can wear the badge of a business and work alongside a business, but until a signature of the creator is received from the business, that person is not working for a business.

Work Cited

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