

## Rapper Fat Joe Accused of Denying Rights in Hit Single *Elliott v. Cartagena, No. 22-225 (October 17, 2023, 2d Cir.)*

By: Mike Bregenzer & Alexa Tipton | October 24, 2023

Nothing can stop Fat Joe, he's all the way up...except perhaps, the Second Circuit. On October 17, the Second Circuit overruled the S.D.N.Y.'s dismissal of a songwriter's authorship claim to Fat Joe's "All the Way Up" before any discovery could take place, based solely on the defendants' assertion that a written agreement assigned the rights to the song, even though the agreement could not be found.

Plaintiff Eric A. Elliott claimed he created the song "All the Way Up" with performer and defendant Shandel Green in 2015 who later recruited defendant Joseph Cartagena (known in the industry as Fat Joe) to perform the song that was released on March 2, 2016. The parties agree that Elliott and Fat Joe met at an IHOP in Miami Beach on March 14, 2016, that Fat Joe gave Elliott a \$5,000 check, and that Elliott signed but was not provided a copy of a document. This document has since been lost, and thus, the parties disagree over the contents of the document and the rights that Elliott maintained in the song. Defendants produced a draft version of the document that assigns all of Elliott's rights in the song to R4 So Valid, LLC, Cartagena's publisher, and claim that it is identical in substance to the version that Elliott signed.

But Elliott remembers the document differently. Per Elliott, Fat Joe told him that he would be paid some money up front for his contributions to the song, more money later as the song produced income, and that he would have an "incredible relationship" with Fat Joe going forward. Elliott claims that the document stated that he was going to be "compensated and credited as a writer" and that Fat Joe told him the document memorialized his representations.



The Second Circuit found that the District Court abused its discretion when, despite competing declarations regarding the contents of the signed document, it treated the draft document as direct evidence under Federal Rule of Evidence 1003, even though FRE 1003 requires that there is "no genuine issue of authenticity" before it can be admitted. However, Second Circuit also found that the district court did not abuse its discretion when it admitted the draft document under FRE 1004, which does not require such high guarantees of authenticity. Further, the Second Circuit found that the District Court abused its discretion in denying discovery and granting summary judgment because even though Elliott's counsel's declaration did not precisely state the information that he might learn during discovery, Elliott cannot be faulted for this when the defendants have exclusive possession over the facts, discovery has not occurred, and there is a genuine dispute of material facts.

To effect a valid assignment of copyright ownership under the Copyright Act, there must be a signed, written document memorializing the agreement. More often than not in the music industry, there is either no record of copyright assignments or the documents are lost. The Second Circuit's ruling prevents recording and publishing companies that fail to properly maintain records of these agreements from simply asserting that they exist and earning quick dismissals on any suits brought by other musicians.