

15-375 KIRTSAENG V. JOHN WILEY & SONS, INC.

DECISION BELOW: 605 Fed.Appx. 48

LOWER COURT CASE NUMBER: 14-344-cv

QUESTION PRESENTED:

Section 505 of the Copyright Act provides that a "court may ... award a reasonable attorney's fee to the prevailing party" in a copyright case. 17 U.S.C. § 505. The Ninth and Eleventh Circuits award attorneys' fees when the prevailing party's successful claim or defense advanced the purposes of the Copyright Act. The Fifth and Seventh Circuits employ a presumption in favor of attorneys' fees for a prevailing party that the losing party must overcome. Other courts of appeals primarily employ the several "nonexclusive factors" this Court identified in dicta in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994). And the Second Circuit, as it did in this case, places "substantial weight" on whether the losing party's claim or defense was "objectively unreasonable." *Matthew Bender & Co. v. W. Publ'g Co.*, 240 F.3d 116, 122 (2d Cir. 2001).

The question presented is:

What is the appropriate standard for awarding attorneys' fees to a prevailing party under § 505 of the Copyright Act?

CERT. GRANTED 1/15/2016