

TD Bank, N.A. v. Hill
No. 1.12-cv-07188-RBK-JS (D. N.J. July 27, 2015)

Year	2015
Court	United States District Court for the District of New Jersey
Key Facts	<p>Defendant Hill was a founder and former Chairman, President, and Chief Executive Officer of Commerce Bancorp, LLC (“Commerce Bank”). While employed at Commerce Bank, he co-authored an unpublished manuscript entitled “<i>Fans, Not Customers: Creating Super Growth in a No-Growth Industry</i>” (the “2007 Manuscript”). Defendant separated from Commerce Bank in 2007. In 2012 he published a book entitled “<i>Fans! Not Customers: How to Create Growth Companies in a No Growth World</i>” (the “2012 Book”).</p> <p>Plaintiff TD Bank, N.A. (“TD Bank”) was the successor by merger to Commerce Bank. Shortly after defendant published the 2012 Book, plaintiff initiated a lawsuit against defendant claiming it owned the copyright in the unpublished 2007 Manuscript—which it considered a work made for hire. In district court, plaintiff filed a motion for summary judgment asking the court to find that it was the exclusive owner of the copyright in the 2007 Manuscript and that 16% of the material in the 2012 Book was copied from the 2007 Manuscript. Defendant filed a cross-motion asking the court to find that he owned the copyright in the 2007 Manuscript and that, even if the court were to determine plaintiff owned the copyright, reproduction of portions of the 2007 Manuscript in the 2012 Book was non-infringing fair use.</p>
Issue(s)	Whether plaintiff or defendant owned the copyright in the 2007 Manuscript. Whether defendant’s copying of portions of the 2007 Manuscript for use in the 2012 Book constituted fair use.
Holding(s)	The court determined that the 2007 Manuscript was created as a work made for hire and that plaintiff was the exclusive owner of the copyright in the work. Regarding fair use, the court found that defendant’s copying of portions of the 2007 Manuscript was not fair use. In reaching its conclusion, the court found that “at least three of the four” statutory fair use factors favored plaintiff. Specifically, the court found that the purpose and character of defendant’s use was commercial in nature, that defendant’s verbatim copying of portions of the 2007 Manuscript included more than mere unprotectable facts and ideas, and that the publishing of the 2012 Book would likely cause “some impairment” to the market for the unpublished 2007 Manuscript. In weighing the “amount and substantiality of the portion used in relation to the work,” the court assessed the quantitative aspects of the work (it found that 16% of the material in the 2012 Book was copied from the 2007 Manuscript) as well as the qualitative aspects of the work (it found that the portion of the 2007 Manuscript copied was “central to the telling of the Commerce Bank story”) and determined that this factor “at best” favored “each party equally.”
Tags	Third Circuit; Textual work; Unpublished
Outcome	Fair use not found