

**James Castle Collection and Archive, LP v. Scholastic, Inc. and Allen Say
No. 1:17-CV-00437-BLW (D. Idaho Oct. 30, 2017)**

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| Year | 2017 |
| Court | United States District Court for the District of Idaho |
| Key Facts | Plaintiff James Castle Collection and Archive, LP is the exclusive owner of all copyrights to the relevant works of renowned Idahoan artist James Castle. Defendant Allen Say wrote and illustrated a children’s book on Castle’s life, which Scholastic, Inc. published. The book is an “imagined biography,” written from the perspective of Castle’s fictional nephew, and includes approximately 150 illustrations, all drawn by Say. About 28 of those illustrations are imitations of Castle’s works by Say, “while the other illustrations are Say’s own depictions of various events in Castle’s life, drawn in a style similar to that of Castle.” After the book was distributed to book sellers, but before it was released to the public, Plaintiff sued Scholastic and Say for copyright infringement and moved for entry of a temporary restraining order to prevent the sale and distribution of the book. |
| Issue | Whether the unauthorized copying of artwork for use in a fictional biography of the original artist constitutes a fair use. |
| Holding | After conducting the four-step analysis, the court concluded that Defendants were likely to prevail on a fair use defense and thus denied the motion for temporary restraining order. As to the first factor, the purpose and character of the use, the court found that the book was transformative since Say used the illustrations to create his own version of Castle’s life. Accordingly, the fact that the book was commercial in nature was “of little significance.” With regard to the second factor, the nature of the copyrighted work, the court found that Castle’s works were “within the core of intended copyright protection” and that this factor favored the Plaintiff. However, the court stated, “in cases of transformative use, the nature of the work carries less significance.” As to the third factor, the amount and substantiality of the use, the court found that “the copying was necessary to enhance the biographical narrative, told largely through Say’s own illustrations that were not exact copies, but mimicked Castle’s style.” Therefore, the court found that this factor favored Defendants. Lastly, the court held that the fourth factor, the effect on the potential market for the copyrighted work, likely weighed in favor of the Defendants because the Plaintiff “dislikes the way Castle is portrayed in the Book and would not have licensed his art for that use.” |
| Tags | Ninth Circuit; Painting/Drawing/Graphic; Textual work |
| Outcome | Preliminary ruling, fair use found |

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