

Sheeran Song-Theft Case Could Let Jury Hear for Itself, at Last

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Robert J. Burger

A Led Zeppelin copyright win may let Ed Sheeran prevent a jury next month from hearing the recording of his hit song “Thinking Out Loud” in a side-by-side comparison with Marvin Gaye’s 1973 soul classic “Let’s Get It On,” which Sheeran allegedly infringed. But although the Led Zeppelin case initially appears to support Sheeran by limiting the jury evidence to the sheet music registration of older songs, the case does not address what would happen if an older song was re-registered with the actual sound recording rather than the sheet music — which is exactly what the Sheeran plaintiff, Structured Asset Sales, did in 2020. If the newly registered sound recording of “Let’s Get It On” is allowed to be entered into evidence for the jury to hear, that could make the Sheeran case very different from the Led Zeppelin case. The jury would be able to compare the sound recordings — something that had been effectively precluded previously.

Structured Asset Sales CEO David Pullman has said Sheeran is “petrified” of the audio sound recording reaching a jury in its case. Copyright attorney Robert J. Burger of McCarter & English LLP said that fear would be justified.

“Once the sound recording gets in and you line it up against the Marvin Gaye song, the rhythm section is almost identical,” Burger said. “It wouldn’t be too hard for a jury to find infringement, even without going through all the gymnastics that the experts go through.”