

COPY

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

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	:	
SUNTRUST BANK as Trustee of	:	
the Stephens Mitchell trusts	:	
f/b/o Eugene Muse Mitchell	:	
and Joseph Reynolds Mitchell	:	CASE NO. 1:01 CV- 701
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HOUGHTON MIFFLIN COMPANY,	:	
	:	
Defendant.	:	
_____	X	

**AFFIDAVIT OF MAURA J. WOGAN, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

MAURA J. WOGAN, ESQ., who before the undersigned authority authorized to administer oaths in the State of New York, and after being duly sworn, deposes and states the following:

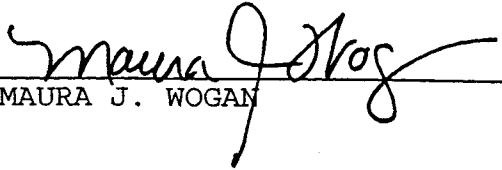
1. I am a member of the law firm of Frankfurt Garbus Kurnit Klein & Selz, PC, counsel for plaintiff in this action, SunTrust Bank, as Trustee of inter vivos and testamentary trusts created by Stephens Mitchell f/b/o Eugene Muse Mitchell and Joseph Reynolds Mitchell (hereinafter "Plaintiff" or the "Mitchell Trusts"). I have personal knowledge of the facts described herein and submit this affidavit in support of Plaintiff's motion for a temporary restraining order and

preliminary injunction preventing defendant Houghton Mifflin Company ("Houghton Mifflin") from any further publication and distribution of a book entitled "The Wind Done Gone" by Alice Randall.

2. Attached as Exhibit A is a true and correct copy of a letter, dated March 16, 2001, which I sent, with an enclosed copy of the Complaint that was filed in this action on that same date, to Paul Weaver, Esq., Senior Vice President and General Counsel of Houghton Mifflin. In that letter, I asked Mr. Weaver to confirm that Houghton Mifflin would cease all publication and distribution of "The Wind Done Gone." I also informed Mr. Weaver that if Houghton Mifflin did not withdraw the book, the Mitchell Trusts would seek preliminary relief.

3. On March 19, 2001, Mr. Weaver telephoned me and stated that Houghton Mifflin would not agree to withdraw "The Wind Done Gone" from the market and that it was proceeding with

the publication of the book relying on a fair use defense that
"The Wind Done Gone" is a parody of "Gone With the Wind."


MAURA J. WOGAN

STATE OF NEW YORK)

 ss. :

COUNTY OF NEW YORK)

Sworn to before me this
22nd day of March, 2001.


Notary Public

LINDA J. WANK
Notary Public, State of New York
No. 02WA6007233
Qualified in New York County
Commission Expires May 18, 20 02

Frankfurt Garbus Kurnit Klein & Selz, PC

Attorneys at Law

488 Madison Avenue
New York, New York 10022
Tel: (212) 980-0120
Fax: (212) 593-9175

March 16, 2001

Maura J. Wogan
Direct: (212) 826-5523
email: mwogan@fgks.com

By Federal Express

Paul D. Weaver, Esq.
Senior Vice President and
General Counsel
Houghton Mifflin Company
222 Berkeley Street
Boston, MA 02116

Re: Gone With the Wind/The Wind Done Gone (1295-0300)

Dear Mr. Weaver:

We represent the Stephens Mitchell Trusts, the owners of the copyright and other rights to and associated with Margaret Mitchell's famous novel "Gone With the Wind" and certain derivative works of that book, including two authorized sequels.

It has come to our attention that, without the Mitchell Trusts' permission, Houghton Mifflin has published an unauthorized sequel to "Gone With the Wind". That book, "The Wind Done Gone" by Alice Randall, which purports to be the "diary" of the illegitimate daughter of Scarlett O'Hara's father and Mammy, blatantly copies the title, characters, character traits, setting, plot lines and other copyrighted elements of "Gone With the Wind". Based on what we have seen of Houghton Mifflin's promotion of the book, it is clear that Houghton Mifflin is unlawfully trading on the phenomenal success and goodwill associated with "Gone With the Wind" and its authorized sequels. Houghton Mifflin's actions in this regard constitute copyright infringement and unfair competition under state and federal law.

This letter is to inform you that the Mitchell Trusts have commenced an action against Houghton Mifflin in the United States District Court for the Northern District of Georgia, Atlanta Division, seeking preliminary and permanent injunctive relief and monetary damages in excess of \$10,000,000 (plus treble damages). We enclose a copy of the Complaint, which was filed today.

It is unfortunate that the Mitchell Trusts have had to take such action in order to protect their rights. Of course, the Mitchell Trusts would prefer to resolve this matter amicably, and in that regard are prepared to dismiss the Complaint if Houghton Mifflin confirms, **by no later than end of business Monday, March 19**, that it will recall all copies of "The Wind Done Gone" that have been distributed, destroy all remaining copies of the book and agree not to publish, sell or

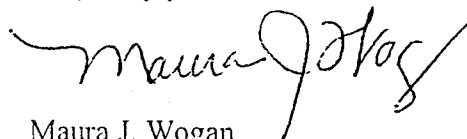
Frankfurt Garbus Kurnit Klein & Selz, PC

Paul D. Weaver
March 16, 2001
Page 2

otherwise distribute the book in the future and otherwise reach an amicable resolution of this matter. If we do not receive such confirmation, however, we have been authorized by our client to apply to the Court for a temporary and preliminary restraining orders.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maura J. Wogan", written in a cursive style.

Maura J. Wogan

MJW:nh.140046
Enclosure

cc: Lois Wasoff, Esq. (by facsimile)
Thomas D. Selz, Esq.
Mr. Paul Anderson (by facsimile)
Thomas Hal Clarke, Esq. (by facsimile)

CERTIFICATE OF SERVICE

This is to certify that I have this day caused a true and correct copy of the within and foregoing **AFFIDAVIT OF MAURA J. WOGAN, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** to be delivered by hand to counsel for the Defendant as follows:

Miles J. Alexander
Jerre B. Swann
Joseph M. Beck
KILPATRICK STOCKTON LLP
1100 Peachtree Street, N.E.
Suite 2800
Atlanta, Georgia 30309-4530

This 23rd day of March, 2001.



An Attorney for Plaintiff