

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SUNTRUST BANK as Trustee of)	
the Stephens Mitchell trusts f/b/o Eugene)	
Muse Mitchell and Joseph Reynolds Mitchell)	
)	
Plaintiff,)	Civil Action File No.
)	1:01 CV-701-CAP
)	
v.)	
)	
HOUGHTON MIFFLIN COMPANY,)	
)	
Defendant.)	
_____)	

DECLARATION OF FRANK PRICE

1. My name is Frank Price. I have fifty (50) years of experience in the entertainment industry. I have held numerous positions throughout my career. (A true and accurate summary of my resume is attached hereto as Exhibit A.) I began my career as a story analyst with CBS Television. After rising through the ranks, I eventually became the President of Universal Television in 1973. I later served as Chairman and Chief Executive Officer of Columbia Pictures, and as President of Universal Pictures. I founded my own production company, known as Price Entertainment, in 1988.

2. I have considerable experience in producing and marketing films, television series, and made-for-TV films that have been adapted from novels. I produced *Out of Africa*, which was based on the book by Isak Dinesen, and which won eight (8) Academy Awards, including Best Picture. Other novel-to-motion picture adaptations I have supervised are *Kramer vs. Kramer* by Avery Corman, *Bram*

Stoker's *Dracula*, and *Prince of Tides* by Pat Conroy. I produced *Rich Man, Poor Man*, the first television miniseries to be successfully adapted from a novel. I also produced the series *The Virginian*, which was adapted from a novel by Owen Wister. Other novel-to-television adaptations I supervised included *Once an Eagle*, *Captains & Kings*, *The Rhinemann Exchange* (based on the Robert Ludlum novel), *The Bastard* (based on the John Jakes novel), and *Centennial* (based on the James Michener novel).

3. I am intimately familiar with marketing works that combine motion picture or television versions with book versions. I have experience with the relative market performance of books, television, and films, and with the ways in which marketing in one of these media affects market performance of the version of the same work being marketed in the other media.

4. Much of my production and marketing experience has involved sequels. Examples of my experiences with sequels include *The Six Million Dollar Man / Bionic Woman*, *The Blue Lagoon / Return to the Blue Lagoon*, *The Karate Kid I and II*, the *Psycho III* sequel to *Psycho*, and the sequel to *Rich Man, Poor Man* entitled *Rich Man, Poor Man: Book Two*.

5. I have considerable experience in developing, writing, and producing comedies. Among the comedies I have been responsible for are *Tootsie*, *Stir Crazy*, *Stripes*, *Fletch*, *Ghostbusters*, and *Groundhog Day*. My experience includes the use of parody. For example, the "Stay-Puff Marshmallow Man" in the film *Ghostbusters* was intended as a parody of the Pillsbury Doughboy. I have considerable experience in marketing films and television shows. This experience includes marketing

entertainment products that appeal to a wide range of audiences, including African-American audiences, as well as marketing works that appeal to broad cross-sections of the public.

6. Because of the diverse market appeal of the many films, television series, and other works I was involved in producing, I developed a great deal of experience in analyzing the relative appeal of certain styles of entertainment, including humor, to various segments of the population. I planned, supervised, participated in, and reviewed extensive amounts of market research for scores of productions with varying market appeals. Recognizing that I needed to check what I personally found to be humorous in analyzing the potential market appeal of my works, I always surrounded myself with a broadly diverse staff. I relied on my staff, as well as the market research that I commissioned and supervised, to alert me to perspectives that I might miss. But in the final analysis, it was my personal judgment that determined what films got made and how they were marketed.

7. I have read the book *The Wind Done Gone* by Alice Randall. I have also read the novel *Gone With the Wind*, and seen the movie. In my opinion, *The Wind Done Gone* will not be perceived by the public as a sequel to *Gone With the Wind*. *The Wind Done Gone* is unlikely to have any discernible effect on the market for sequels other than, possibly, through its criticism. *The Wind Done Gone* will not supplant the market position of *Gone With the Wind* or any imaginable licensed derivatives.

8. In contrast to the contentions of Plaintiff's witnesses (e.g., Alan Lelchuk) *The Wind Done Gone* reads to me as an intelligent and clever parody. I

believe it will be regarded as such by its targeted audience of consumers. The work's parodic intent will be obvious to consumers from the title itself, which uses deliberately ungrammatical English to mock the idealized, romantic image that is associated with the title *Gone With the Wind*. In this and many other respects, *The Wind Done Gone* brilliantly turns the tables on *Gone With the Wind* by portraying, for example, a world in which the slaves are actually the ones who are largely in control of events. A contemporary, younger, urban audience will find *The Wind Done Gone*'s parody of a dated, iconic work to be fresh and appealing.

9. Overall, the market appeal of *The Wind Done Gone* will differ markedly from that of *Gone With the Wind*. Audience members with a deep affection for *Gone With the Wind* are unlikely to be drawn to *The Wind Done Gone*. *The Wind Done Gone* appeals to a distinctly contemporary sensibility for fresh, irreverent, realistic works of fiction that turn old ideas upside down. In sharp contrast, *Gone With the Wind*'s market appeal is anything but fresh. It is based primarily on its romantic melodrama, and its depiction of the Old South is highly idealized. As such, it does not appeal to audience segments whom I would expect to be attracted to *The Wind Done Gone*. These market segments would include African-Americans, urbanites, empathetic white liberals, and younger audience members. The characters in *The Wind Done Gone* that these audience segments would find compelling would be those who do not appear at all in *Gone With the Wind*, especially the character Cynara/Cinnamon. Similarly, the events portrayed in *The Wind Done Gone* that would be most compelling to a contemporary audience would be those – like the somewhat graphic recollections of encounters between R.B. and Cinnamon at pp. 28-

30 – that are completely different in focus and detail from the portrayal of romantic encounters in *Gone With the Wind*.

10. I do not believe that *The Wind Done Gone* will in any sense supplant the market for *Gone With the Wind* or any derivatives of *Gone With the Wind* that would conceivably be licensed by the Mitchell Trusts. *The Wind Done Gone* will be regarded by the public as a wholly unique creation. *Gone With the Wind* simply is not appealing to the same contemporary audience that will find *The Wind Done Gone* appealing and would regard *Gone With the Wind*'s glorified, romanticized version of the Old South as ridiculous. In sum, I believe that *The Wind Done Gone*'s recasting of *Gone With the Wind* will be experienced by audiences as fresh, humorous and, at times, hilarious. It is a brilliantly handled example of dry, deadpan humor, and social and political criticism. Audiences will be amused, in light of the portrayal of the subservient African-American characters in *Gone With the Wind*, by the revelation that Garlic and Mammy arranged the marriage of Planter and Lady specifically so that they could wield power over Tata. Audiences will also appreciate the humor of Dreamy Gentleman, *The Wind Done Gone*'s parody of the quintessential Southern gentleman Ashley Wilkes, turning out to be a homosexual who is having an affair with a male slave. Audiences will find it funny that, instead of Rhett famously leaving Scarlett with the phrase "frankly, my dear, I don't give a damn," the mulatto protagonist Cynara/Cinnamon actually leaves R. for a black Congressman. Ultimately, audiences will be enticed by *The Wind Done Gone*'s premise, obvious from the title, of debunking the romanticized, idealized and totally unreal portrait of

the antebellum South conveyed by *Gone With the Wind*. And after they read the book, they will not be disappointed.

11. I have reviewed the Affidavit of Hope Dellon, filed by Plaintiff on April 12, 2001. I do not quarrel with Ms. Dellon's highly general definition of the market characteristics of sequels. See, e.g., Dellon Aff. at ¶ 6. I note, however, that Ms. Dellon never expresses an opinion that *The Wind Done Gone* is a sequel. Nor would such an opinion be correct, since *The Wind Done Gone* is, in my opinion, a classic parody from the perspective of its impact on the market for *Gone With the Wind*, and it will not serve any of the market functions that a sequel to *Gone With the Wind* would serve.

12. The market functions that a sequel serves are to continue the story of the original work in a way that will be understandable and pleasing to audience members familiar with the earlier work. Part of this function is served, as Ms. Dellon states, by satisfying the public's "appetite" for knowing what happened to the characters in the original story after the story ended. In my opinion, however, *The Wind Done Gone* will not satisfy any "appetite" among members of the public for learning more about what happened to the characters in *Gone With the Wind*. Instead, characters such as Cynara/Cinnamon will appeal to the considerable public appetite that exists for strong, leading, sometimes defiant female and/or African-American characters who shape their own destiny. In this regard, I see the character of Cynara/Cinnamon as tapping into a somewhat similar public desire as the title characters in the film *Thelma and Louise*. The realism in *The Wind Done Gone* as a

whole will appeal to an educated, urbanite, multi-racial audience of today for whom *Gone With the Wind* would have no narrative credibility.

13. I have reviewed the Affidavit of Alan Lelchuk, filed by Plaintiff on April 12, 2001. As stated above, I disagree with Mr. Lelchuk's contention that *The Wind Done Gone* is not a parody or a satire. Lelchuk Aff. at ¶ 8. I agree with his statement that "there is no consistency . . . of style, tone, or attitude" between *Gone With the Wind* and *The Wind Done Gone*, but I disagree with his apparent conclusion that *The Wind Done Gone* does not engage in "critical mockery" of *Gone With the Wind*. *Id.* at ¶ 9. A multiracial contemporary audience -- especially younger audience members -- would immediately recognize, just from the title alone of *The Wind Done Gone*, that it seeks to ridicule and to parody *Gone With the Wind*. Reading the book would simply confirm this fact for such an audience.

14. I also disagree with Mr. Lelchuk's contention that *The Wind Done Gone* has "no substantial . . . character to remember." Lelchuk Aff. at ¶ 9. In my opinion, a contemporary audience would find several of the characters in *The Wind Done Gone*, especially Cynara/Cinnamon, the leading woman, to be highly intriguing and memorable. The characters who do have analogues to characters in *Gone With the Wind* would appear to a contemporary audience as fundamentally different characters because of their transformation, including the different roles, motivations, and characteristics they take on.

15. Furthermore, I disagree with Mr. Lelchuk's contention that *The Wind Done Gone* is "parasitical." Lelchuk Aff. at ¶ 9. I believe a contemporary audience would view *The Wind Done Gone* as having a substantial amount of original creative

lifeblood, drawing from *Gone With the Wind* only for the purpose of ridiculing and parodying it, and creating a wholly fresh perspective and experience for the audience.

16. In short, although it is apparent that Mr. Lelchuk does not “get” *The Wind Done Gone*’s brand of humor, my experience in the entertainment industry leads me to the opinion that a diverse cross-section of contemporary audience members would easily recognize the humor in *The Wind Done Gone*, and would be intrigued both by its critical parody of *Gone With the Wind*, and its compelling new characters.

17. I have reviewed the Affidavit of Alex Holtz, filed by Plaintiff on April 12, 2001. In response to paragraphs 4 through 6 of Mr. Holtz’s affidavit, I would point out that *Scarlett*, which as far as I know is the only authorized sequel to *Gone With the Wind*, and which was first published as a novel and then adapted into a television miniseries, was widely considered in the entertainment industry to have been a critical and commercial failure. Much of the harm that Mr. Holtz speculates would be done to *Gone With the Wind* as the result of a future “a weaker offering” has already been done by *Scarlett*. The experience of *Scarlett*’s poor performance – as evidenced in part that it could only be adapted into a television miniseries rather than a far more lucrative motion picture -- has revealed that there is no discernible market for a derivative motion picture work based on *Gone With the Wind*. By contrast, I believe the story in *The Wind Done Gone* very possibly could be of substantial interest to major motion picture studios. *The Wind Done Gone* will be appealing to a contemporary audience because it perfectly captures contemporary culture’s

irreverent attitude towards icons and images of bygone eras, and would be seen as a long overdue answer to the overtly racist elements of the parodied work.

18. I have reviewed the Affidavit of Kevin J. Anderson, filed by Plaintiff on April 12, 2001. Mr. Anderson's experience, as indicated in his affidavit, appears to have been entirely in the area of science-fiction. In my experience with science fiction works, the market for sequels operates very differently from the market for sequels of historical romances like *Gone With the Wind*. I do not believe that the experience of creating a sequel in the science fiction context is at all analogous to the context of sequels to historical romances. This is because the "sequel" element to a science fiction work generally consists in transporting the same characters to a different part of the "universe" – to use Mr. Anderson's term -- created by the original work, where they will encounter new challenges and new enemies. By contrast, any market appeal to a romance sequel depends upon maintaining the focus on the evolving relationship between the central protagonists – in the case of *Gone With the Wind*, a focus on Scarlett and Rhett and their relationship. One of the reasons consumers will not consider *The Wind Done Gone* to be a sequel to *Gone With the Wind* is because it does not focus at all on Scarlett and Rhett and their relationship. Instead, it introduces an entirely new leading character in place of the central protagonists in the earlier work, and focuses on her complex relationships with a multitude of people, notably her mother (Mammy) and Congressman, with whom she eventually has a child.

19. I understand that the argument has been made in the above-captioned lawsuit that the Mitchell Trusts will be "irreparably harmed" by the fact that *The*

Wind Done Gone refers to the death of the character "Other," an analogue to Scarlett O'Hara. Based on my experience with sequels and with the deaths of fictional characters, I do not believe this is a valid concern. First of all, I do not believe that the audience of any future sequel to *Gone With the Wind* will consider Scarlett to have been "killed" in *The Wind Done Gone*. Since the people likely to read or see *Gone With the Wind* or its licensed sequels are likely to be a very different segment of the market than people who read *The Wind Done Gone*, audience members are highly unlikely to transpose the death of "Other" in *The Wind Done Gone* into their understanding of any future sequels to *Gone With the Wind*. Moreover, even if there were any such confusion, it could be easily remedied by simply bringing Scarlett back to life. The letter in which Cynara/Cinnamon learns of Other's death could turn out to have been mistaken, or some other simple plot convenience could be utilized. The audience could be easily persuaded to forget that "Other" had ever "died." The "Other" character in *The Wind Done Gone* is never called "Scarlett," and Other's death is never dramatized in a scene, but is reported in a letter.

20. I had exactly that experience with *The Six Million Dollar Man* and the *Bionic Woman*. Jamie Sommers, the "Bionic Woman" character, was originally introduced to the public in a two-part season finale of *The Six Million Dollar Man*. At the time, we did not intend to create a sequel based on the Bionic Woman character, and at the conclusion of the two-part season finale, Jamie Sommers was killed. The public reception to the episode, and to the Jamie Sommers character, was so positive that the network airing the *Six Million Dollar Man* series approached me about creating a new series based on the Bionic Woman. The fact that Jamie

Sommers had been killed in the previous year's season finale was not an impediment to creating the new series in which she was the leading character. We simply created a minimal explanation: that the government had not revealed to Steve Austin (the Six Million Dollar Man) that Jamie had in fact not been killed in the accident which appeared to have led to her death. The public had no difficulty accepting this explanation, and *The Bionic Woman* went on to become a very successful television series in its own right.

21. I point this out as proof of how easy it is to "resurrect" fictional characters. In fact, I do not believe that the Mitchell Trusts would have to go through this exercise in order to convince its audience that Scarlett is "still alive," because, as I have stated previously, it is my opinion that the view of the audience of any future *Gone With the Wind* sequels as to whether Scarlett is alive or dead would be unaffected by anything that happened in *The Wind Done Gone*.

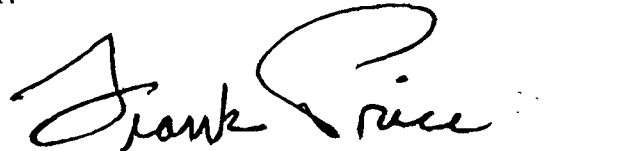
22. From the perspective of storytelling, a parody must include periodic references to the original throughout the new work in order to keep the object of the parody in focus for the audience. In general, simply mentioning the original work is insufficient to create a successful parody. The ability of *The Wind Done Gone* to parody *Gone With the Wind* would have been severely hampered had it not periodically referred to details from *Gone With the Wind* throughout the book. In my reading of *The Wind Done Gone*, every detail that recalled *Gone With the Wind* did so in a way that furthered its effort to parody *Gone With the Wind*. Each scene and each character is seen differently as the "real" story -- not the idealized, romantic story of *Gone With the Wind* -- emerges.

23. I have considerable experience in producing and marketing films with a significant political message. Examples include the motion pictures *Boyz n the Hood*, *A Soldier's Story*, *Cry Freedom*, and *The China Syndrome*. I agree with the statements in the Declarations of Henry Louis Gates, Jr., Barbara McCaskill, and John Sitter, which I have reviewed, that *The Wind Done Gone* contains a potent political message. *Boyz n the Hood* was a film containing strong political messages about race relations, racial identity, police brutality, and black power in late-Twentieth Century America. The film, which was the first work by the now-famous African-American writer-director John Singleton, was released in 1991 to critical acclaim, in part due to its timely political message of black empowerment. The film became an important work in the renaissance of black filmmaking that began in the years prior to 1991. Aside from its considerable commercial success, the film also had an important political and cultural impact. It became a significant voice in the national political debate on racial and social issues. The widespread nature of the film's impact was due in considerable measure not only to the enormous marketing resources we poured into the film, but also, I believe, to the political climate in the United States at that particular time. Had its release been delayed, even briefly, the political and cultural effect that *Boyz n the Hood* had on American society would likely have been reduced.

24. I believe that the political message of *The Wind Done Gone* is well-attuned to these times. It is capable of achieving its maximum impact only if it is released as part of a coordinated marketing campaign. In my experience, I have seen public attitudes and tastes change measurably over short periods of time. If *The Wind Done Gone* is prohibited from being published during the time it takes for the Court

to reach a final decision in this case, which I understand could take a year or more, the publisher's extensive marketing investments would be wasted, the public's receptiveness to *The Wind Done Gone*'s political and social commentary may change, and the chances that *The Wind Done Gone* would achieve its maximum potential impact would be curtailed and possibly eliminated.

25. I swear under penalty of perjury that the foregoing statements are true and correct, this 15 day of April, 2001.


Frank Price

FRANK PRICE

I am chairman and chief executive officer of Price Entertainment, Inc., an independent producer of films for motion pictures and television. My company's productions have included "Shadowlands" starring Anthony Hopkins, "Circle of Friends" starring Chris O'Donnell and Minnie Driver, "A Bronx Tale", starring Robert De Niro, and "The Tuskegee Airmen", starring Lawrence Fishburne and Cuba Gooding Jr. "Tuskegee", made for HBO, won three Emmys, the NAACP Image award, and a George Foster Peabody Award.

My initial experience in the entertainment field came in television. After working as a story analyst, story editor and writer for such companies as CBS, Screen Gems, and NBC, I was hired as a producer and writer by Universal Television, a subsidiary of MCA, Inc, in 1959. I developed and personally produced such successful and long-running shows as "The Virginian," "It Takes A Thief," and "Ironside." I also helped pioneer two major new forms for television: the movie made directly for television (I personally produced Rod Serling's "The Doomsday Flight") and the novel for television ("Rich Man, Poor Man").

In 1973, I was appointed president of Universal Television, a subsidiary of MCA, Inc. I was also made a vice president of MCA and a member of MCA's board of directors. In my capacity as president of Universal Television, I had responsibility for all creative and financial decisions of what became the largest and most successful supplier of television programming to all three major networks. My job was to develop new series and sell them to the networks and make sure the ones we sold stayed on the air and became successful. All this had to be done while making sure the series we sold for showing in the U.S. would have sales appeal in enough of the rest of the world to help our cost and profit picture. Among the series I had responsibility for were: "Kojak," "The Six Million Dollar Man," "Quincy," "Rockford Files," "Owen Marshall," "Bionic Woman," "Columbo" and "Baretta." We also produced about 15 movies for television a year, often award winners like "A Case of Rape," starring Elizabeth Montgomery, or to introduce promising new talent like "Duel," directed by Steven Spielberg. We produced many novels for television, including James Mitchener's "Centennial."

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Some of the socially conscious movies I managed to sell the networks on and get produced: "Farewell to Manzanar" dealing with the internment of Japanese Americans in World War II, "That Certain Summer" dealing with homosexuality, "Tail Gunner Joe: Portrait of a Scoundrel" about the life of Senator Joe McCarthy, and "The Execution of Private Slovak" the story of the only soldier executed for desertion in WWII.

In 1978, I left MCA to join Columbia Pictures Industries. I became chairman and chief executive officer of the motion picture division, Columbia Pictures, later joining the board of directors. Reporting to me were all domestic and international production, marketing and distribution. Under my administration, we swept the Academy Awards twice with "Kramer vs Kramer" and "Gandhi." Other box office successes include "Tootsie," "Ghostbusters," "Stripes," "Das Boot," "Stir Crazy," "Educating Rita," "Absence of Malice." Columbia was acquired by the Coca Cola Company in 1982. The remarkable success we had achieved led them to believe the entertainment business would hold great promise for them.

MCA asked me to return in 1984 and become chairman of the MCA Motion Picture Group, President of Universal Pictures, and a member of the MCA board. My responsibilities included supervision of all motion picture production, marketing and distribution. With "Out of Africa", starring Robert Redford and Meryl Streep, we once again swept the Academy Awards. And "Back to the Future" was a giant box office success. Chevy Chase in "Fletch", Cher in "Mask" and "Breakfast Club" were among our other highly successful pictures.

I left MCA in 1988 to form Price Entertainment. Price Entertainment was financed fully by Columbia-TriStar. Some of my production plans were delayed by a prolonged writers' strike but I acquired a French made picture called "The Bear" which became our first release.

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When Sony acquired Columbia Pictures in 1989, I agreed to become chairman of Columbia once again. We produced and marketed such diverse pictures as "My Girl" , "Bram Stoker's Dracula", Barbara Streisand's "Prince of Tides", Penny Marshall's "A League of Their Own" and John Singleton's "Boyz 'N the Hood." I developed and greenlighted "Groundhog Day" starring Bill Murray, but left Columbia in 1991 before its release. I then restarted Price Entertainment.

I am Chairman of the Board of Councilors of the School of Cinema-Television of the University of Southern California. I am also a Trustee of the University of Southern California. I serve on the board of directors of the American Ireland Fund. I have been a member of the Writers Guild of America, West since 1957.

Additional boards I have served on:

Governor, Academy of Motion Picture Arts and Sciences

Director, Motion Picture Association of America

Trustee, American Film Institute

Trustee, Sundance Film Institute

Trustee, Pomona College

Honors:

Motion Picture Pioneer Award

National Association of Theater Owners Award as Motion Picture Executive of the Year.

Brandeis Community Service Award

Personal Bio:

I was born in Decatur, Illinois, May 17, 1930. My father lost his business manufacturing movie theater marquees early in the Great Depression and worked either as a sign painter or electrician for the rest of his life. Since he had to go where the work was, I attended the public schools of Minneapolis, Minn.; Decatur, Ill.; Glendale, Calif.; Texarkana, Tex.; Ventura, Calif.; Provo, Ut.; Bearden, Tenn.; and Flint, Mich. While we lived in Glendale, my mother worked as a waitress in the Warner Bros. Commissary. She worked there from 1937 until 1942 during a period that my parents were separated.

Fortunately my high school years (10th thru 12th grades) were spent in an excellent high school in Flint, Michigan. I flourished. I became editor of the school paper, president of the drama club, president of the junior class and generally went wild on extracurriculars. I also got a job as a copy boy at the Flint Journal in my senior year and progressed to doing night police-and-fire reporting.

Needing money to attend college, I joined the Navy on a special one year enlistment, where I served on an aircraft carrier and edited the ship's newspaper. After the Navy, I attended nearby Michigan State University and was able to support myself by working summers on the assembly line at Chevrolet Motor Plant #2 in Flint (where the famous sit-down strikes of the 30's occurred).

A professor in a playwriting class suggested that I had talent and should be at another school. He suggested Yale or Columbia. I tried Columbia and was admitted, so I moved to New York and enrolled. I had planned to work full time and go to school. It didn't work. But I did find a job in the CBS story department and dropped out of Columbia. I've been employed in the entertainment business since.