

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-CAP
:
Plaintiff, :
:
v. :
:
HOUGHTON MIFFLIN COMPANY, :
:
Defendant. :
:
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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

Preliminary Statement

Pursuant to Fed. R. Civ. P. 26(c) and L.R. 79.1(C) (2), N.D. Ga., Plaintiff 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") has moved the Court for a Protective Order with respect to the filing of a literary work that is the subject of this copyright infringement action -- "The Wind Done Gone," a book believed to soon be released by Defendant Houghton Mifflin Company ("Houghton Mifflin").

Statement of Facts

Plaintiff owns copyrights in the famous novel "Gone With the Wind" and various related works. Plaintiff alleged in this action that Defendant's publication and offer for sale of a book entitled "The Wind Done Gone" infringes Plaintiff's copyrights.

Plaintiff has moved the Court for temporary and preliminary injunctive relief restraining and enjoining further publication or distribution of the allegedly infringing work, which apparently has not yet been distributed to the general public.

Any filing of "The Wind Done Gone" (the "Work") on the public record without restrictions limiting public access and photocopying of the Work would present several unacceptable risks, including without limitation the risks that the Work will be obtained and reproduced by the public from Court files and distributed without authority on a mass scale via the media, Internet, electronic mail or other unauthorized means; that Plaintiff will suffer diminution of the commercial value of "Gone With the Wind" by virtue of such unrestricted access and photocopying; and that Plaintiff will suffer a competitive disadvantage as a result of such unrestricted access and photocopying of such Work. (Affidavit of Paul H. Anderson, March 23, 2001, at ¶ 3, attached hereto as "Exhibit A.")

Plaintiff seeks, among other things, temporary, preliminary and permanent injunctive relief to prevent the dissemination of "The Wind Done Gone." (Id. at ¶ 4.)

Argument

To protect Plaintiff's valuable rights in "Gone With the Wind" and its derivative works, restrictions on public access and photocopying from the public record of the Work that is the subject of this action are essential. (Id. at ¶ 2.)

The right to access judicial records is a common law right of access rather than a First Amendment right. See Nixon v. Warner Comm., Inc., 435 U.S. 589 (1978); In re Four Search Warrants, 945 F. Supp. 1563 (N.D. Ga. 1996). The decision to deny access to this document is within the sound discretion of the Court. See Four Search Warrants, 945 F. Supp. at 1566.

While the media has access to "Gone With the Wind," it has not had substantial access to "The Wind Done Gone." It has not been generally released, and thus, may be a trade secret to Houghton Mifflin. Moreover, Plaintiff seeks injunctive relief prohibiting, among other things, dissemination of "The Wind Done Gone." If unrestricted access and/or photocopying of "The Wind Done Gone" from the public record is permitted, any dissemination of "The Wind Done Gone" resulting from such activity would frustrate or impair the effectiveness of any

injunctive relief ultimately obtained by Plaintiff. (Anderson Aff. at ¶ 4.) The balance of the interests favors sealing "The Wind Done Gone," and denying public access and reproduction of this Work.

Plaintiff's counsel is in the process of seeking Defendant's consent to entry of the attached protective order, which has not as yet been obtained.

Conclusion

For the foregoing reasons, and the reasons stated in the Affidavit of Paul H. Anderson attached hereto as "Exhibit A," Plaintiff's Motion for Protective Order should be granted. A proposed Protective Order is attached hereto as "Exhibit B."

DATED this 23rd day of March, 2001.



William B. B. Smith
(Ga. Bar No. 664637)
Ralph R. Morrison
(Ga. Bar No. 525145)
Anne M. Johnson
(Ga. Bar No. 392229)
JONES, DAY, REAVIS & POGUE
3500 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 521-3939
(404) 581-8330 (facsimile)

OF COUNSEL:

Maura J. Wogan, Esq.
(New York Bar No. MW 9589)
(pro hac application pending)

Jessie F. Beeber, Esq.
(New York Bar No. JB 3129)
(pro hac application pending)

Thomas D. Selz, Esq.
(New York Bar No. TDS 7676)
FRANKFURT GARBUS KURNIT KLEIN & SELZ, P. C.
488 Madison Avenue
New York, New York 10022
(212) 980-0120
(212) 758-7954 (facsimile)

COUNSEL FOR PLAINTIFF

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

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Mitchell,                     :      CASE NO. 1:01-CV-701-CAP
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:
:      Defendant.              :
:
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**AFFIDAVIT OF PAUL H. ANDERSON, IN SUPPORT OF PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

Paul H. Anderson, who before the undersigned authority duly authorized to administer oaths in the state of Georgia, and after being sworn, deposes and states as follows:

1.

I am an attorney admitted to practice before this Court and one of two surviving members of the committee (hereinafter the "Committee") established by the trust instruments to direct the plaintiff SunTrust Bank, as Trustee of the four Stephens Mitchell trusts f/b/o Eugene Muse Mitchell and Joseph Reynolds Mitchell (the "Mitchell Trusts") with respect to all decisions relating to the exploitation of the Mitchell

Trusts' interest in the renewal copyright of "Gone With The Wind." I have personal knowledge of those facts described herein which are not the subject of common knowledge or matters of public records and submit this affidavit in support of the Mitchell Trusts' motion for a protective order to file "The Wind Done Gone" ("the Work") under seal to prevent access and photocopying by the public.

2.

To protect Plaintiff's valuable rights in "Gone With the Wind" and its derivative works, restrictions on public access and photocopying from the public record of the Work that is the subject of this action are essential.

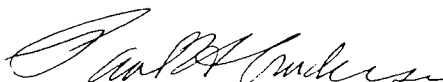
3.

Any filing of the Work on the public record without such restrictions would present several unacceptable risks, including without limitation the risks that the Work will be obtained and reproduced by the public from Court files and distributed without authority on a mass scale via the media, Internet, electronic mail or other unauthorized means; that Plaintiff will suffer diminution of the commercial value of "Gone With the Wind" by virtue of such unrestricted access and photocopying; and that Plaintiff will suffer a competitive disadvantage as a

result of such unrestricted access and photocopying of such Work.

4.

Plaintiff seeks, among other things, temporary, preliminary and permanent injunctive relief to prevent the dissemination of "The Wind Done Gone." If unrestricted access, photocopying of "The Wind Done Gone" from the public record is permitted, any dissemination of such Work resulting from such activity would frustrate or impair the effectiveness of any injunctive relief ultimately obtained.

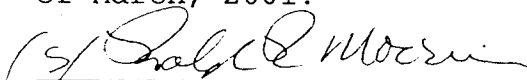


Paul H. Anderson

STATE OF GEORGIA :

COUNTY OF FULTON :

Sworn to and subscribed
before me this 23 day
of March, 2001.



Notary Public in and for
the State of Georgia

My commission expires:

(SEAL)

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 13, 2002

2. Plaintiff has moved the Court for temporary and preliminary injunctive relief restraining and enjoining further publication or distribution of the allegedly infringing work, which apparently has not yet been distributed to the general public;

3. Plaintiff has further moved the Court for a Protective Order directing the Clerk to accept for filing the entirety of "The Wind Done Gone" that is the subject of this action under seal and subject to restrictions on access and photocopying.

4. The Court finds that the imposition of restrictions on public access and photocopying of "The Wind Done Gone" to be filed in this action is reasonable and necessary to protect the parties' rights in and to such works, and to reduce the risks:

(a) of "The Wind Done Gone" being obtained and reproduced from Court files by the public and distributed without authority on a mass scale via the media, Internet, electronic mail or other unauthorized means;

(b) that one or both parties will suffer a competitive disadvantage or diminution of the commercial value of the works involved in this action by virtue of unrestricted access and photocopying of such works; and

(c) that unrestricted access and photocopying of such works from the public record could impair or frustrate the

effectiveness of any injunctive relief ultimately obtained by Plaintiff in this action.

5. Failure to impose the restrictions sought by Plaintiff would interfere with the administration of justice. The parties' interests outweigh any public interest in photocopying and access to the subject works.

6. Except upon further Order of the Court, any and all copies of "The Wind Done Gone" filed with the Court shall be filed under seal, in an opaque envelope, with a cover sheet bearing the caption of this action, the title of the enclosed book, and a notice stating that "The contents of this envelope are CONFIDENTIAL -- PURSUANT TO PROTECTIVE ORDER" and shall not be reproduced by, shown to or distributed to anyone except the Court and Court personnel.

7. Nothing contained in this Protective Order shall preclude a party from seeking and obtaining, on appropriate showing, additional protection with respect to the confidentiality of any information, documents or other material.

DATED this _____ day of _____, 2001.

Charles A. Pannell, Judge
United States District Court
Northern District of Georgia

Consented to for Plaintiff By:

Consented to for Defendant By:

William B. B. Smith
(Ga. Bar No. 664637)
Ralph R. Morrison
(Ga. Bar No. 525145)
Anne M. Johnson
(Ga. Bar No. 392229)
JONES, DAY, REAVIS & POGUE
3500 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 521-3939
(404) 581-8330 (facsimile)

Miles J. Alexander
(Ga. Bar No. _____)
Jerre B. Swann
(Ga. Bar No. _____)
Joseph M. Beck
(Ga. Bar No. _____)
KILPATRICK STOCKTON LLP
1100 Peachtree Street, N.E.
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500
(404) 815-6555 (facsimile)

COUNSEL FOR DEFENDANT

OF COUNSEL:

Maura J. Wogan, Esq.
(New York Bar No. MW 9589)
(pro hac application pending)
Jessie F. Beeber, Esq.
(New York Bar No. JB 3129)
(pro hac application pending)
Thomas D. Selz, Esq.
(New York Bar No. TDS 7676)
FRANKFURT GARBUS KURNIT KLEIN & SELZ, P. C.
488 Madison Avenue
New York, New York 10022
(212) 980-0120
(212) 758-7954 (facsimile)

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that I have this 23rd day of March, 2001, caused a true and correct copy of the MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PROTECTIVE ORDER to be hand delivered, addressed to counsel for Defendant as follows:

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



An Attorney for Plaintiff