

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

ROD MARQUARDT,

Plaintiff,

v.

STEPHEN KING and  
SIMON & SCHUSTER, INC.,

Defendants.

Civil Action No.  
1:10-CV-03946-JEC

**DEFENDANTS STEPHEN KING AND SIMON & SCHUSTER, INC.’S  
MOTION TO DISMISS THE COMPLAINT**

Defendants Stephen King (“King”) and Simon & Schuster, Inc. (“Simon & Schuster”) respectfully move, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss with prejudice all counts of the Complaint of plaintiff Rod Marquardt, a/k/a Rod Morgan (“Marquardt” or “Plaintiff”).

As grounds for the motion, King and Simon & Schuster state that the only similarities between Marquardt’s novel *Keller’s Den* and the novel *Duma Key*, written by King and published by Simon & Schuster, are abstract ideas, stock elements and random similarities isolated from the expressive context in which they appear, none of which are protected by copyright. It is plain from a review of

these books, and can be decided as a matter of law, that there is no substantial similarity in protected expression between these two novels. Since “substantial similarity” of protected expression is an essential element of a copyright claim, Plaintiff’s copyright claim must be dismissed.

Accordingly, as the sole count of the Complaint fails to state a claim upon which relief may be granted, King and Simon & Schuster are entitled to dismissal of the Complaint with prejudice.

WHEREFORE, Defendants Stephen King and Simon & Schuster move that the Court dismiss the Complaint *with prejudice*, and award Defendants their costs, attorneys’ fees and such other and further relief as this Court deems just and proper.

Dated: February 14, 2011

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/s/ Elizabeth A. McNamara  
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**PETER HERBERT, ESQ**

*/s/ Peter A. Herbert*

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Peter A. Herbert, *pro hac vice*

*Co-Counsel for Stephen King*

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the within and foregoing  
**DEFENDANTS STEPHEN KING AND SIMON & SCHUSTER, INC.'S**  
**MOTION TO DISMISS THE COMPLAINT** by electronic notification through  
the Court's CM/ECF system as follows:

S. Quinn Johnson, Esq.  
Johnson P.C.  
3348 Peachtree Road, N.E.  
Suite 700  
Atlanta, Georgia 30326

This 14th day of February, 2011.

*/s/ Christopher B. Freeman*

Christopher B. Freeman