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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL GREGORY ALLEN, TRUSTEE OF THE	:	
ESTATE OF ADRIAN JACOBS,	:	
	:	
Plaintiff,	:	10 Civ. 5335 (SAS)
	:	
- against -	:	DECLARATION OF COURTNEY
	:	SCHNEIDER IN SUPPORT OF
	:	SCHOLASTIC INC.’S MOTION TO
	:	DISMISS
	:	
SCHOLASTIC INC.,	:	
	:	
	:	
	:	
Defendant.	:	
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I, Courtney Schneider, declare as follows:

1. I am an associate with the law firm of Kirkland & Ellis LLP, counsel of record for the Defendant Scholastic Inc. I am licensed in the State of New York and admitted to practice before this Court. I submit this declaration in support of Defendant’s Motion to Dismiss.

2. I have read the works at issue in this matter, including Plaintiff’s book *The Adventures of Willy the Wizard: No 1 Livid Land* (“WTW”) and J.K. Rowling’s book, *Harry*

Potter and the Goblet of Fire (“*Goblet*”), as well as book one of the *Harry Potter* series, *Harry Potter and the Sorcerer’s Stone* (“*Sorcerer’s Stone*”), book two, *Harry Potter and the Chamber of Secrets* (“*Chamber of Secrets*”), and book three, *Harry Potter and the Prisoner of Azkaban* (“*Prisoner of Azkaban*”).

3. In its Complaint, dated July 13, 2010 (the “Complaint”), Plaintiff alleges that numerous similarities exist between *WTW* and *Goblet*. The similarities alleged in paragraphs 33 through 52 of Plaintiff’s Complaint are discussed below in the order they are addressed in the Complaint.

I. Plaintiff’s Alleged “Similarities”

4. Plaintiff alleges that *WTW* and *Goblet* “contemplate completion” of a contest “in one year.” Complaint, ¶33. To support this, Plaintiff points to a scene in *WTW* where Willy attends a wizards’ conference and a wizard makes the statement that, “[w]e are here today for me to inaugurate the year of the wizards’ contests.” (Declaration of D. Cendali, dated Sept. 16, 2010, (“Cendali Dec.”), Ex. 1, p. 3).¹ This language, however, does not tell the reader when Willy’s contest begins, how long it lasts, or how long it would take Willy to actually complete. (*Id.*). Plaintiff claims that this scene is similar to *Goblet*, citing Professor Dumbledore’s announcement of the Triwizard Tournament (“Tournament”) “this year at Hogwarts.” (Cendali Dec., Ex. 2, p. 184).² The Tournament, however, is a contest that was first established “seven hundred years ago,” which the “three largest European schools of wizardry” took turns hosting once every five years. (*Id.* at p. 187). It begins in October and continues throughout the school

¹ A copy of *Willy the Wizard* is annexed to the Declaration of Dale Cendali as Exhibit 1.

² The book *Goblet of Fire* is annexed to the Declaration of Dale Cendali as Exhibit 2.

year, and consists of a series of three tasks, with the first task taking place on November 24th, the second task taking place on February 24th, and the third task taking place on June 24th. (*Id.* at pp. 281, 361, 507). Each of the three tasks is completed in the course of a day. (*Id.*)

5. Plaintiff claims that in *WTW* and *Goblet*, “the competition is announced in a castle, and in both cases it is the ‘Great Hall’ of that castle.” (Complaint, ¶34). In *WTW*, however, beyond the vague reference to “Napoleon’s Castle,” which Willy visits to attend a wizards’ conference, no description is provided of that castle except that it is “a marvelous edifice,” nor is any description provided with respect to the “great hall” beyond the fact that it “revealed a dramatic scene.” (Cendali Dec., Ex. 1, pp. 1-2). Moreover, at the wizards’ conference, a wizard simply “inaugurate[s] the year of the wizards’ contests,” however, no reference is made beyond that to explain the details of the competition. (*Id.* at p. 3). Although Plaintiff tries to compare Napoleon’s Castle to Hogwarts castle in *Goblet*, that castle, in contrast, is the home of a wizard boarding school, and is where Professor Dumbledore, the headmaster of Hogwarts, announces all of the details of the Tournament. (Cendali Dec., Ex. 2, pp. 173, 255-56). Moreover, the Great Hall is decorated with “[g]olden plates and goblets” that “gleamed by the light of hundreds and hundreds of candles, floating over the tables in midair.” (*Id.*). It is also where the students enjoy their “start-of-term feast.” (*Id.*). Hogwarts castle is first introduced in book one, *Sorcerer’s Stone*, and is described as a “vast castle” “[p]erched atop a high mountain” with many “turrets and towers.” (Cendali Dec., Ex. 3, p. 13).³

6. Plaintiff claims that both “competitions are subject to a form of regulatory control in which the regulators can detect any misuse of magic and impose punishment.” (Complaint,

³ Excerpts from the book *Sorcerer’s Stone* are annexed to the Declaration of Dale Cendali as Exhibit 3.

¶35). To support this, Plaintiff points to a scene in *WTW* where Willy reads a sign while attending the wizards' conference, which states that: "IT IS FORBIDDEN TO CAST SPELLS WHILE YOU VISIT THIS CASTLE. PENALTY FOR THE THOUGHT . . . WILL BE BANISHMENT TO TREATMENT ISLAND." (Cendali Dec., Ex. 1, p. 2). This message, however, only refers to practicing magic at the castle and says nothing of the contest, during which Willy does use magic. (*Id.* at p. 16). In contrast, although Plaintiff tries to cite to a page of *Goblet* vaguely referencing the "Ministry of Magic," the government of the wizarding community, later in the story, the reader is told that, with respect to the rules governing the Tournament, "the Heads of the participating schools, along with the Ministry of Magic, have agreed to impose an age restriction on contenders," and competitors are also not permitted to seek the help of others. (*Id.* at pp. 188, 281). There is no mention of any such restrictions in *WTW*.

7. Plaintiff also alleges that the "punishment contemplated in each work is to send the offending wizard to wizard prison." (Complaint, ¶36). In *WTW*, however, there is no reference to a "wizard prison." Rather, as referred to above in paragraph six, while at Napoleon's Castle, wizards are forbidden from "cast[ing] spells" and the "penalty for the thought" is "banishment to Treatment Island." (Cendali Dec., Ex. 1, p. 2). As "Treatment Island" is not referred to beyond this single mention, it is impossible to know what it even is. Although Plaintiff tries to allege that Treatment Island is similar to the prison discussed in *Goblet*, "Azkaban," in contrast, is a "terrifying wizard jail guarded by creatures called dementors, sightless, soul-sucking fiends." (Cendali Dec., Ex. 2, p. 23). Moreover, *Goblet* does

not suggest that the use of magic will result in being sent to Azkaban. In any case, Azkaban is first introduced in book two of the *Harry Potter* series. (*Chamber of Secrets*, Ex. 1, p. 3).⁴

8. Plaintiff claims that both “competitions involve competitors from real-world countries.” (Complaint, ¶37). In *WTW*, however, there is no discussion of Willy’s “competitors,” let alone where they are from. To support its claim, Plaintiff points to a scene from *WTW* where Willy, while attending the wizards’ conference, notes that “[t]here were wizards of all races. Chinese, with massive Mandarin hats beautifully hand painted with peasant scenes. Black and brown wizards from the Ivory Coast and Delhi.” (Cendali Dec., Ex. 1, p. 3). However, none of these wizards are ever identified as Willy’s competitors. In fact, no competitors of any kind are mentioned in *WTW*. In *Goblet*, however, Harry has three specific competitors -- Cedric Diggory, Victor Krum, and Fleur Delacour. (Cendali Dec., Ex. 2, pp. 269-70). Moreover, although the reader is told that Harry’s competitors are from three different schools in Europe, the reader is not told where each of these competitors is from. (*Id.*).

9. Plaintiff argues that both works include a French wizard who arrives in a “fantastical, animal-drawn carriage and plays a senior role in administering the competition.” (Complaint, ¶38). In *WTW*, however, a wizard named “Duke Wizard Louis Dix-Sept,” who has a cockatoo perched on each of his shoulders, arrives at the wizards’ conference in a “carriage drawn by two large green panthers The carriage had been built with huge nugget diamonds.” (Cendali Dec., Ex. 1, p. 3). Duke Louis Dix-Sept’s head is hidden from view as his “head was not to be exposed at a gathering of more than twenty,” so as to prevent the “uncontrollable assassination spell.” (*Id.*). Duke Louis Dix-Sept’s only role with respect to the

⁴ Excerpts from the book *Chamber of Secrets* are annexed to this declaration as Exhibit 1.

competition is to announce that he “‘inaugurate[s] the year of the wizards’ contests.’” (*Id.*). This is the last mention of Duke Louis Dix-Sept in *WTW*. In contrast, in *Goblet*, a half-giant witch named “Madame Maxine,” the headmistress of one of the three competing schools, Beauxbatons, arrives at Hogwarts in a “gigantic, powder-blue, horse-drawn carriage, the size of a large house . . . pulled through the air by a dozen winged horses, all palominos, and each the size of an elephant.” (Cendali Dec., Ex. 2, pp. 242-43). Her head is clearly visible and she is described as having an “olive-skinned face; large, black, liquid-looking eyes; and a rather beaky nose,” and serves as one of the five judges of the Tournament. (*Id.* at pp. 243, 254). Madame Maxine becomes a romantic interest for Hagrid throughout the book. (*Id.* at pp. 325, 328).

10. Plaintiff alleges the works use “substantially identical systems of scoring and reward.” (Complaint, ¶39). In *WTW*, however, Willy can receive 40 points for each prisoner rescued (there are 10 prisoners in total) and, according to the prize list, “Wizards achieving more than 1000 stars would receive life membership of Stellar Land. Every wizard’s dream retirement.” (Cendali Dec., Ex. 1, pp. 8, 16). In *Goblet*, on the other hand, the first two tasks of the Tournament are scored out of 50 points by a panel of five judges, and the third task is judged based on who reaches the Triwizard Cup first. (Cendali Dec., Ex. 2, pp. 359-60, 506, 551). Moreover, the students compete, not for a retirement in “Stellar Land,” but rather for the “Triwizard Cup, the glory of their school, and a thousand Galleons personal prize money.” (*Id.* at p. 188).

11. Contrary to Plaintiff’s claim that both “Willy and Harry receive instructions for the task in a form they are not able to understand initially,” (Complaint, ¶41), there is no indication in *WTW* that the contest details Willy is given are unintelligible. (Cendali Dec., Ex. 1, p. 8). Rather, Willy simply feeds the contest details into a “selector mechanism,” which appears

to be a flat screen television of some kind, in order to magnify them and read them while comfortably lying in his bathtub. (*Id.*). Harry, on the other hand, struggles to figure out how to uncover a clue locked within a golden dragon egg. (Cendali Dec., Ex. 2, pp. 361, 434).

12. Plaintiff also alleges that Harry and Willy “decode the instructions in order to learn what they must do.” (Complaint, ¶42). To support this, Plaintiff points to a scene where Willy goes home to his “bathroom-cum-study” and feeds the contest details into a “selector mechanism” so that they are magnified on a screen, where he then reads them. (Cendali Dec., Ex. 1, p. 8). Thus, Willy, does not “decode” the instructions to his competition, but rather, simply reads them. In contrast, Harry cannot decipher the incomprehensible shrieking sounds from the dragon egg, from which he is supposed to obtain a clue. (Cendali Dec., Ex. 2, p. 365). It is not until he realizes, with the help of others, that he must place the egg underwater that he is able to even hear the clue for the second task of the Tournament. (*Id.* at pp. 431, 462-65).

13. Plaintiff argues that “Willy and Harry are in special bathrooms when they learn the nature of the task.” (Complaint, ¶44). Willy, however, is at home in his yellow “bathroom-cum-study” where he reads the contest details off a screen. (Cendali Dec., Ex. 1, p. 8). There is no indication that the bathroom is special. In contrast, in *Goblet*, the prefects’ bathroom, in which Harry figures out the clue in the dragon egg, is made of white marble with “what looked like an empty, rectangular swimming pool sunk into the middle of the floor.” (Cendali Dec., Ex. 2, p. 459). In addition, “[a]bout a hundred golden taps stood all around the pool’s edges, each with a differently colored jewel set into its handle. There was also a diving board.” (*Id.*).

14. Plaintiff also claims that Willy and Harry use a similar “tool available in the special bathroom to uncover the nature of the central task.” (Complaint, ¶45). To support this, Plaintiff points to a scene in *WTW* where Willy adds a water additive to his bath that “had the

ability to drain all superstar mind-clogging pressures and re-charge the system for endurance, excitement contests.” (Cendali Dec., Ex. 1, p. 8). Harry, however, does not use any “re-charging” water additive. Rather, Harry pours several bubble-bath mixtures into the bath water. (*Id.* pp. 459-60). Although they make the bath enjoyable, the bubble bath mixtures do not unclog his mind or re-charge his system. (*Id.*).

15. Plaintiff alleges that in both works, “access to the special bathroom, or magical supplies it contains, is available only to higher status wizards.” (Complaint, ¶46). To support this, Plaintiff points to the same bathroom scene discussed above in paragraphs 13 and 14, where Willy simply uses his bathroom at home. (Cendali Dec., Ex. 1, p. 8). Thus, there is no concept of Willy having access to a “special bathroom.” There is a reference to the idea that a water additive is available to wizards with “5 stars,” however, no explanation is provided as to the significance of having “5 stars.” (*Id.*). In any case, this relates to access to a water additive, not a bathroom. In contrast, Harry uses the prefects’ bathroom, not his normal, personal bathroom. (Cendali Dec., Ex. 2, pp. 458-59). The prefects’ bathroom can be accessed by wizards who do not have this higher status as Harry himself is not a prefect. (*Id.*). In addition, there is no mention in *Goblet* of needing “5 stars” to use any water additive.

16. Plaintiff claims that Willy and Harry “are able to use colored water additives with magical properties that allow them to focus more clearly on decoding the instructions.” (Complaint, ¶47). To support this, Plaintiff points to the scene in *Goblet* where Harry uses bubble-bath mixtures in the prefects’ bathroom “to swim in hot and foamy water with clouds of different-colored steam wafting all around him.” (Cendali Dec., Ex. 2, p. 460). Although Harry finds this enjoyable, the bubble bath does not help him decode the clue within the dragon egg. (*Id.*). In contrast, Willy does not even have to “decode” anything, but rather reads the contest

details off a screen. (Cendali Dec., Ex. 1, p. 8). Moreover, the water additive that Willy uses is not a foamy bubble-bath mixture that creates clouds of colorful steam, but rather serves the purpose of “re-charg[ing] the system.” (*Id.*).

17. Plaintiff alleges that when Willy and Harry “employ their proper method of decoding, the previously unintelligible instructions are presented to the wizard in a comprehensible language.” (Complaint, ¶48). As discussed above in paragraphs 12, 13, and 16, however, Willy’s instructions, as opposed to Harry’s, are never “unintelligible,” nor is he forced to “decode” anything. (Cendali Dec., Ex. 1, p. 8).

18. Plaintiff claims that Willy and Harry “have friends who conduct library research in order to assist with the task.” (Complaint, ¶50). To support this, Plaintiff points to one vague mention in *WTW* of “library reference books on uncharted lands and rivers.” (Cendali Dec., Ex. 1, p. 9). Beyond this, there is no mention of any characters conducting library research. Plaintiff tries to compare this to a scene where Harry “sat with Hermione and Ron in the library as the sun set outside, tearing feverishly through page after page of spells, hidden from one another by massive piles of books on the desk in front of each of them.” (Cendali Dec., Ex. 2, pp. 485-86).

19. Plaintiff argues that Willy and Harry “rely on elves and others who obtain key pieces of information by eavesdropping.” (Complaint, ¶51). To support this, Plaintiff points to a scene where Willy’s elves, upon his order, position themselves on Livid Land to discover the password to access the island. (Cendali, Ex. 1, pp. 11-12). Plaintiff also points to a scene where Willy’s apprentice informs him that “[a]ll of the internal rivers and streams were . . . used by all Kangas for their drinking water.” (*Id.* at p. 15). Plaintiff compares these scenes to *Goblet* where Harry receives unsolicited help from a ghost named Moaning Myrtle, who, after seeing his schoolmate Cedric Diggory place the golden egg under the water to listen to a clue, instructs

Harry to do the same. (Cendali Dec., Ex. 2, p. 462). Moaning Myrtle then helps Harry locate the merpeople in the Hogwarts lake. (*Id.* at p. 496). In addition, Plaintiff points to the scene where Harry receives help, again unsolicited, from Dobby the house elf, who supplies Harry with a substance called gillyweed after he hears that it will be helpful to Harry in the second task. (*Id.* at p. 491). As such, beyond the idea of providing information to others, no similarities exist.

20. Plaintiff claims that Willy and Harry “receive last-minute intelligence that proves crucial in completing the task.” (Complaint, ¶52). Plaintiff cites a scene in *WTW* where, upon Willy’s request, Willy’s apprentice informs him that the “the guard at the prison compound was not a Kanga native,” but an “indoctrinated Italian sailor, who invariably flirted with any female who encouraged him.” (Cendali Dec., Ex. 1, p. 16). Plaintiff argues that a similarity exists in *Goblet* by pointing to a scene where Dobby the house elf unexpectedly tells Harry what the second task really involves -- retrieving his friend Ron from Hogwarts lake. (Cendali Dec., Ex. 2, pp. 490-91). As such, beyond the idea of providing information to others, no similarities exist.

21. I declare under penalty of perjury that the foregoing is accurate to the best of my knowledge.

Dated: September 16, 2010

Respectfully submitted by:



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