

United States Court of Appeals For the First Circuit

No. 09-2571

SAMUEL BARTLEY STEELE, ET AL.,

Plaintiffs, Appellants,

v.

TURNER BROADCASTING SYSTEM, INC., ET AL.,

Defendants, Appellees,

THE AMERICAN SOCIETY OF COMPOSERS, ET AL.,

Defendants.

Before

Boudin, Howard and Thompson,
Circuit Judges.

JUDGMENT

Entered: February 10, 2012

Plaintiff-Appellant Samuel Bartley Steele ("Steele") appeals from the judgment of the district court granting summary judgment to the defendants on his copyright infringement claims.

After our own independent review of the record and the briefs of the parties we conclude that, essentially for the reasons stated by the district court in its August 19, 2009 memorandum and order, no reasonable juror could find either substantial similarity of expression sufficient to support an infringement claim or probative similarity of expression sufficient to support an inference of actual copying, even taking the evidence in the light most favorable to plaintiff. To the extent that there are similarities between the works at issue, many of them relate to stock scènes à faire naturally stemming from both works' subject matter, which are not subject to copyright protection. Mattel, Inc. v. Goldberger Doll Mfg. Co., 365 F.3d 133 (2d Cir. 2004) ("similarity of expression .

.. which necessarily results from the fact that the common idea is only capable of expression in more or less stereotyped form will preclude a finding of actionable similarity.") citing 1 Nimmer on Copyright s 143.11 at 626.2. The remaining similarities are not substantial, and the differences between the works are fundamental and extensive.

Accordingly, entry of summary judgment with regard to Steele's copyright infringement claim was appropriate. Steele's remaining claims of error are unconvincing, and the judgment of the district court is affirmed.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Christopher D. Hunt

Clifford M. Sloan

Kenneth A. Plevan

Matthew Joseph Matule

Christopher G. Clark