

United States Court of Appeals,
Eleventh Circuit.

**SUNTRUST BANK, as Trustee of the Stephens Mitchell trusts f.b.o. Eugene Muse
Mitchell and Joseph Reynolds Mitchell, Plaintiff-Appellee,**
v.
HOUGHTON MIFFLIN COMPANY, Defendant-Appellant.

No. 01-12200.

May 25, 2001.

Owners of copyright in novel "Gone With the Wind" brought action under Copyright Act, seeking temporary restraining order (TRO) and preliminary injunction to prevent publication and distribution of allegedly infringing book "The Wind Done Gone." The United States District Court for the Northern District of Georgia, No. 01-00701-CV-CAP-1, Charles A. Pannell, Jr., J., granted preliminary injunction, and appeal was taken. The Court of Appeals held that unwarranted grant of preliminary injunction amounted to unlawful prior restraint in violation of First Amendment.

Vacated.

West Headnotes

[1] Injunction k135
212k135

District court's discretion to grant preliminary injunction is not unbridled.

[2] Injunction k132
212k132

[2] Injunction k138.1
212k138.1

Preliminary injunction is extraordinary and drastic remedy that should not be granted unless movant clearly shows: (1) that there is substantial likelihood plaintiff will prevail on merits; (2) that there is substantial threat plaintiff will suffer irreparable injury if injunction is not granted; (3) that threatened injury to plaintiff outweighs threatened harm injunction may do to defendant; and (4) that granting preliminary injunction will not disserve public interest.

[3] Constitutional Law k90.1(1)
92k90.1(1)

[3] Copyrights and Intellectual Property k85
99k85

Unwarranted grant of preliminary injunction, preventing publication of book by copyright infringement defendant, amounted to unlawful prior restraint in violation of First Amendment. U.S.C.A. Const.Amend. 1.

***1165** Joseph M. Beck, Miles J. Alexander, Jerre Bailey Swann, Kilpatrick Stockton ***1166** LLP, Atlanta, GA, for Defendant-Appellant.

Martin Garbus, Richard Kurnit, New York City, William B. Smith, Ralph R. Morrison, Anne Moody Johnson, Jones, Day, Reavis & Pogue, Atlanta, GA, for Plaintiff-Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

Before BIRCH, MARCUS and WOOD [FN*], Circuit Judges.

FN* Honorable Harlington Wood, Jr., U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

PER CURIAM:

It is manifest that the entry of a preliminary injunction in this copyright case was an abuse of discretion in that it represents an unlawful prior restraint in violation of the First Amendment.

[1][2] While it falls within the district court's discretion to grant a preliminary injunction, *see Mitek Holdings, Inc. v. Arce Eng'g Co., Inc.*, 198 F.3d 840, 842 (11th Cir.1999), "[t]he district court does not exercise unbridled discretion." *Canal Authority of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir.1974); *Nnadi v. Richter*, 976 F.2d 682, 690 (11th Cir.1992). Plainly, it must exercise that discretion in light of what we have termed the "four prerequisites for the extraordinary relief of preliminary injunction." *West Point-Pepperell, Inc. v. Donovan*, 689 F.2d 950, 956 (11th Cir.1982) (quoting *Canal Authority*, 489 F.2d at 572.). The prerequisites are: (1) that there is a substantial likelihood plaintiff will prevail on the merits; (2) that there is a substantial threat plaintiff will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to the defendant; *and* (4) that granting the preliminary injunction will not disserve the public interest. *See Warren Publ'g, Inc. v. Microdos Data Corp.*, 115 F.3d 1509, 1516 (11th Cir.1997). We add that a preliminary injunction is an extraordinary and drastic remedy that should not be granted unless the movant clearly carries its burden of persuasion on each of these prerequisites. *Canal Authority*, 489 F.2d at 573.

[3] After thorough review of the entire record, we have concluded that Appellee Sun Trust has failed to make this critical showing, that the district court abused its discretion by granting a preliminary injunction, and that its ruling amounts to an unlawful prior restraint in violation of the First Amendment. Accordingly, we VACATE forthwith the preliminary injunction of the district court. A comprehensive opinion of the court will follow.

It is so ORDERED.

END OF DOCUMENT