

## “Disturbia” Decision: Not Just a Remake of “Rear Window” Case

It looks as though Steven Spielberg has succeeded where Alfred Hitchcock and Jimmy Stewart failed. In 1990, the United States Supreme Court held that the classic 1954 film *Rear Window* infringed the copyright of Sheldon Abend, a literary agent who purchased the renewal rights to *It Had to be Murder*, the short story on which *Rear Window* was based. The landmark decision, *Stewart v. Abend*, 495 U.S. 207 (1990), articulated what is now known as the *Abend Rule*, which applies to older works where there was an original and renewal term of copyright protection.<sup>1</sup> Under that rule, the grant of the right to create a derivative work did not extend into the renewal term of copyright if the grantor died before the renewal term began.

Some twenty years later, Hollywood geared up for a sequel. The Sheldon Abend Revocable Trust (Sheldon having died in 2003) sued Spielberg and other producers of the film *Disturbia* for copyright infringement of the same short story. The 2007 hit film stars Shia LeBeouf (Hollywood’s go-to actor for the role of “unwitting-youth-in-peril”) as a troubled teenager who relieves the tedium of house arrest by spying on his neighbors and uncovers a serial killer, played by the incomparable David Morse (Hollywood’s go-to actor for the role of “creepy-guy-who-may-or-may-not-be-evil”). Although, comparisons between *Disturbia* and *Rear Window* abounded at the time, few reviewers mentioned the original short story.

*Disturbia*’s producers recently won summary judgment in *The Sheldon Abend Revocable Trust v. Spielberg*, No. 08 Civ. 7810 (S.D.N.Y. Sept. 21, 2010).<sup>2</sup> The court held that, despite similarities between the works, *Disturbia* did not infringe *It Had to be Murder*, because none of the short story’s “protectible elements” were appropriated.

After summarizing each of the plots, the court succinctly described their similarities:

[B]oth works tell the story of a male protagonist, confined to his home, who spies on neighbors to stave off boredom and in doing so, discovers that one of his neighbors is a murderer. The voyeur is himself discovered by the suspected murderer, is attacked by the murderer, and is ultimately vindicated.

Those similarities were not only obvious, they were intentional: the producers of *Disburbia* admittedly had access to the original work and copied certain elements. Thus, the only question for the court was whether there was a “substantial similarity between *protectible elements* in the two works.” (emphasis added). As the court explained, although plots can be

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<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=495&page=207>

<sup>2</sup> <http://www.scribd.com/doc/37936220/Sheldon-Abend-Revocable-Trust-v-Spielberg-S-D-N-Y-Sept-21-2010>

summarized so that “they appear indistinguishable, such similarity is not, standing alone, indicative of substantial similarity.” Specifically, the “broad plot idea, or premise, is not a protectible element.” After analyzing the characters (including the protagonist, antagonist, and supporting characters), the setting (New York apartment building vs. California suburb), and the “total concept and feel” of the two works, the court concluded that none of these elements were substantially similar.

Ironically, the plaintiff attempted to rely “heavily” on Hitchcock’s film, *Rear Window*, to support “its claims of substantial similarity and copyright infringement” against *Disturbia*’s producers. The court rejected that evidence, along with reams of expert reports, previous drafts of the *Disturbia* screenplay, and other documents the court deemed irrelevant to the substantial similarity analysis. According to the court, “the proper inquiry” is whether “a lay observer” viewing the two works as they “were presented to the public” would consider them “as a whole substantially similar to one another.”

Because several media reports have mischaracterized the result in *Abend v. Spielberg*, it should be emphasized that the ruling relates only to the original short story, not to the film *Rear Window*. Nevertheless, the court’s analysis suggests that the result would likely be the same, since *Rear Window* contains many of the same elements that distinguished *It Had to be Murder* from *Disturbia*.

Although the *Disturbia* decision may not have the same far-reaching implications of the *Abend* Rule, it will be interesting to see whether it will embolden producers to resurrect more old plotlines, or whether the litigation risk alone will have a chilling effect on this trend.

### **Update:**

Like a classic horror film villain, the *Rear Window* litigation just won’t stay dead. On October 28, 2010, The Abend Trust filed another lawsuit in Los Angeles Superior Court against Universal and the Hitchcock Estate claiming that, by distributing and advertising *Disturbia*, they breached licensing and settlement agreements with the Abend Trust.<sup>3</sup> The agreements, which the parties entered into after the Supreme Court’s 1990 ruling in the original *Rear Window* lawsuit, permitted defendants to continue distributing the film. The Trust claims the defendants violated those agreements by incorporating elements of *Rear Window* into *Disturbia*.

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<sup>3</sup> <http://www.hollywoodreporter.com/blogs/thr-esq/exclusive-decades-old-legal-battle-33649>

