[GB] “Da Vinci Code” Not an Infringing Copy of “The Holy Blood and The Holy Grail”

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In 1982, a book described as a historical conjecture, “The Holy Blood and The Holy Grail” (HBHG), was published. It suggests that Jesus and Mary Magdalene had children, and that Mary Magdalene fled to a Judaic Community in the South of France after Christ’s demise. Their putative offspring continued the bloodline from the Tribe of Benjamin to the Merovingian dynasty and from there to Godfroi de Bouillon. Two of the three authors of HBHG contended before the courts that in writing the novel “The Da Vinci Code” (DVC), Dan Brown had produced an infringing copy of their original work for which his publisher, The Random House Group Ltd, is responsible.

The Claimants argue that although there is no copyright in facts or ideas, the architecture or structure or way in which they are presented can be protected. By section 16(3) of the Copyright, Designs and Patents Act of 1988, reproducing a copyright work is an infringement if the work or “a substantial part of it” has been copied. In order to support their claim of non-textual copying, the authors of HBHG had identified features in their work which, according to them, make up the Central Theme appropriated by DVC. However, referring to existing case law, the High Court judge dismissed the Claimants’ action.

It is first recalled that, in assessing whether there has been copying, the differences between the two copyright works are not relevant. Also, while the copied features must be a substantial part of the Copyright work relied upon they need not form a substantial part of the Defendant’s work. The Claimants had initially put forward a Central Theme broken down into 19 points which were at a later stage reduced to 15 points. These points, they argued, were to be found in both the HBHG and DVC and served the purpose of proving that a substantial portion of HBHG had been introduced in Dan Brown’s work.

The judge rejected the notion of a Central Theme in HBHG asserting he could not find one, but rather a collection of factual events presented in a chronological order which is in itself too general to justify protection against copying. He also pointed to the confusion in putting forward the Central Theme, as the Claimants had several times amended it and seemed unable to properly formulate it. This was, he believed, mainly due to the fact that such a Central Theme had to be artificially created to serve as a platform for litigation. In reaching the final decision to dismiss the Claimants’ action, the judge reminded the parties that

Copyright protects the skill and labour employed by an author to produce a work, it does not protect against the borrowing of an idea contained in a work. However, in deciding each case, “the line to be drawn is to enable a fair balance to be struck between protecting the rights of the author and allowing literary development”.

High Court of Justice, chancery division, Baigent & Leigh v Random House, 7 April 2006

http://www.hmcourts-service.gov.uk/images/judgment-files/baigent_v_rhg_0406.pdf