

The Rook vs. Deschain: Superficial Similarities or Superhero Copycat?

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by Lindsey Sadler



In the 1970s, William DuBay created the comic book character, Restin Dane, also known by his superhero alter ego, “The Rook.” Dane, a wealthy scientist and inventor residing in an Arizona house shaped like a rook chess piece, is a time traveler who “will go anywhere—any time—in search of adventure!” Similar to other famous superheroes, Dane is a “traditional comic book hero”—a handsome, masculine, and honorable man who battles villains for the greater good. The Rook first appeared in a horror and fantasy comic magazine called *The Eerie* in 1977, but by 1983, the character had an entire comic book series dedicated to his saga that sold more than five million copies.

In a 2017 lawsuit, The Rook’s arch nemesis derives from Stephen King’s “magnum opus”:

The Dark Tower series. The series is comprised of eight novels and a novella, published between 1982 and 2012, the first novel of which is *The Gunslinger*, which introduces *The Dark Tower*’s protagonist, Roland Deschain. Throughout the series, Deschain searches for an elusive structure that holds the secrets to the space-time continuum, the Dark Tower. Unlike the traditional superhero archetype, Deschain is a brooding loner who places his own mission and self-interest above the lives of others. Between 2007 and 2017, Marvel Comics licensed the publication rights to graphic novels based on *The Dark Tower* novels, and Deschain’s battle with external and internal demons jumped from the page to the big screen in a 2017 motion picture adaptation.

In March of 2017, Benjamin DuBay—William DuBay’s nephew and the assignee of William’s copyright in *The Rook* following William’s death in 2010—filed suit against King

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for copyright infringement, alleging the similarities between the superheroes were “shocking and extraordinary.” Such strong similarities could only be the result of King copying The Rook’s artistic expression, claimed DuBay’s nephew. King moved for summary judgment on DuBay’s copyright infringement claim, and ultimately, the U.S. District Court for the Middle District of Florida granted King’s motion for summary judgment, holding that the characters were not substantially similar.

On appeal, the 11th Circuit Court of Appeals considered the “substantial similarity” standard, which plaintiffs must prove as part of their copyright infringement claim. Recognizing that substantial similarity exists “when an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work,” the Court of Appeals pitted The Rook against Deschain in a side-by-side battle of the similarities. Most of the perceived similarities—time-traveling capabilities, knightly heritages, and knife-wielding superhero bravado—were characterized as *scènes à faire*, a French term used to describe elements of a book or film that are obligatory for a book or film in that genre. These elements, like shootout scenes between cowboys and bank robbers in the American West, are not worthy of protection because they are “too general to merit copyright protection.” The appellate court then looked to more specific and unique elements of the superheroes’ stories for infringement-worthy similarities. However, while some components of The Rook and Deschain’s stories parallel each other—both characters have a bird companion, they each save a young boy from an alternate time, and each has an all-encompassing relationship with a mysterious, time-bending tower—the overall elements are portrayed in distinct ways, casting the subject heroes in different moral lights.

As a whole, The Rook is a traditional comic book hero—a courageous, time-traveling gunslinger and honorable man trying to make the world a safer place by “doing the right thing.” Conversely, Deschain is “far more complex”—while equally skilled with a gun, he lacks the idealism and moral integrity common to most superheroes, and is consumed by his own self-interest. Any similarities, the Court of Appeals held, are “superficial,” and the grant of summary judgment in favor of King was affirmed.

While the battle between The Rook and Deschain may be over for now, the 11th Circuit decision provides a roadmap for future heroes looking to avoid a copyright fight—superficial similarities are common amongst all superheroes, but it’s the details, nuances of characters, differences in narrative arc, and how all of these elements are combined in a holistic work, that could be a hero’s legal kryptonite or its greatest victory.