UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,

Case No,: 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Defendants' Supplementary Responsive Memorandum in Opposition to Plaintiffs' Motion for Permanent impoundment

INTRODUCTION

Plaintiffs have asserted that the defendants have used every possible medium to impugn Plaintiffs' reputation and conduct. In fact the defendant has undertaken to correctly report factually challenged, incomplete and grossly inaccurately reported history relating to the actions of the Plaintiffs in the Due Process deficient suspension, leave, dismissal and elimination of the founding director, Vice President and spouse of co-founder Danny Lee Shelton. Plaintiffs have publicly asserted an unsupported charge that the spouse, Linda Sue Shelton, was guilty of "spiritual adultery". After summarily dismissing Linda Sue Shelton for unproven allegations, Danny Lee Shelton replaced her with a brother of the Plaintiff, Tommy

Shelton, who had a history of extensive allegations of child molestation while serving as a Church of God pastor.

ach of the defendants, Joy and Pickle, opened separate and independent investigative files in mid-August 2006 and discovered a host of documents from various sources demonstrating that the Plaintiffs had:

1. not been forthcoming with evidence to support their allegations;
2. that they had misrepresented the history and the facts;
3. and given clear innuendo that the spouse, Linda Sue Shelton, had run off with a doctor from Norway and was guilty of adultery, a career ending assertion within the ministry of the Seventh-day Adventist congregations, not factually supported..

The defendants were asked to give an ecclesiastical process an opportunity to address the issues prior to reporting the defendants discovery. When the ecclesiastical process was arbitrarily ended, the defendant Joy began issuing reports of his findings and established a web-page to serve as a document resource center and perpetual access point for members of

the Seventh-day Adventist church you wanted to review the facts and ask questions regarding what defendant had discovered and reported in an effort to report the truth regarding the official record with the stockholders in the pews of the Seventh-day Adventist churches, clearly demonstrating the deficiency of Plaintiffs information.

The actions of the Plaintiffs since 2004 and particularly in the first half of 2006 led many to question the 3ABN statements and records. The revelation of the documented facts and the response of the plaintiffs to the facts as the were reported, including multiple international broadcasts on the stage of 3ABN Today live in a clear attempt to impugn and malign the reputations of Linda and the various reporters, made an ever widening audience aware of the issues and an informed congregation may have responded with the only vote they had to caste; they voted their wallets.

As the plaintiffs discovered the record was causing growing difficulty with their contributions base, they desperately sought alternatives, including web-based counter-measures with various pseudonyms on several web blogs with a clear campaign to continue

to impugn and malign the characters of Linda and the various reporters, but clearly continued to loose ground.

Therefore, in a desperate attempt to stem the growing tide of no confidence votes by donors, they sought the assistance of a lawfirm in Minnesota utilized by a major contributor in the past to battle a similar publicity problem. This firm has set out to try and eliminate the defendants constitutional rights as defined in the first amendment guaranteeing the freedom of speech, freedom of the press, the right to practice our religion and the inherent right of conscience that is implicit in the right to practice ones religion. Also, in a strange dichotomy, the plaintiffs, a purported non-denominational religious organization, found itself the subject of an EEOC investigation in the State of California and quickly claimed to be exempt as a religious organization, thereby avoiding civil administrative charges brought by employees of their 3ABN Trust Services office relating to retaliation dismissal and discrimination. Yet, they have the audacity to violate the First Amendment and have sought the redress of a civil court in an effort to fraudulently silence the truth about the plaintiffs' own errors, when they knew or should have known that such an action clearly violated SLAPP statutes.

This motion is an effort to improperly impound a record the public has a right and a vital interest in accessing as the Plaintiffs are a 501-c-3 Tax Exempt organization that draws nearly all its support from the Seventh-day Adventist laymen and members of the viewing public. These donors and viewers have a right to access the court record that they may make informed decisions regarding their contributions, the only vote that they have in this closely held corporation of only thirteen members that also serve as its Danny Lee Shelton handpicked board of directors. Therefore, this American public has an economic and constitutional right to know what goes on in this very public forum.

While plaintiffs counsel alleges defendants have miscited case authority, defendants allege the plaintiffs have clearly mis-applied case law as will be demonstrated heretofore and defendants will seek appropriate redress from the honorable court.

Therefore, defendants pray the court to properly lift this unconstitutional impoundment that the American public may have its proper right to know.

ARGUMENT

The Common Law right of access is overwhelming even when there is a countervailing concern regarding collateral criminal process that may prejudice a jury. Counsellor Pucci expounded extensively on his claim that In re Providence Journal Company, 293 F.3d 1, 13 n. 5 (1st Cir. 2002).**IS** the prevailing law within the First Circuit but then admits the case establishes "Under the common law, there has been a long-standing presumption of public access to judicial records." And the court further asserted in this "prevailing Law in the First Circuit":

"5. Although the Supreme Court has not established whether the constitutional right of access attaches to civil cases in general, the common-law right of access extends to judicial records in civil proceedings. Standard Fin. Mgmt., 830 F.2d at 408 & n.4. As said, that right encompasses legal memoranda. Because none of the respondent's rationales for rendering legal memoranda presumptively nonpublic rise to the level of a compelling reason sufficient to justify the nondisclosure of those documents, our invalidation of the District of Rhode

Island's blanket nonfiling policy vis-à-vis legal memoranda applies in civil as well as criminal proceedings."

Yet again, Counsellor Pucci and team clearly misrepresent the decision In re Gitto Global Corp., 422 F.3d 1, 6 (1st Cir. 2005) which specifically addresses § 107(b)(2) of the bankruptcy code but concluded conclusively:

"To qualify for protection under the § 107(b)(2) exception for defamatory material, an interested party must show (1) that the material at issue would alter his reputation in the eyes of a reasonable person, and (2) that the material is untrue or that it is potentially untrue and irrelevant or included for an improper end."

This would be a difficult test to assert in the subject action as the Plaintiffs are the parties seeking protection from public scrutiny when they have sought redress in a US District Court, the most public of forums, and do so claiming to be a Charitable organization

pursuant to IRC 502c-3, deriving virtually every dime from public contributions in various forms giving the public absolute interest in observing the proceedings.

Further the Supreme Court clarified in the Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978) that "in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) ...Our decision in that case merely affirmed the right of the press to publish accurately information contained in court records open to the public. Since the press serves as the information-gathering agent of the public, it could not be prevented from reporting what it had learned and what the public was entitled to know. Id., at 491-492. In the instant case, however, there is no claim that the press was precluded from publishing or utilizing as it saw fit the testimony and exhibits filed in evidence. There simply were no restrictions upon press access to, or publication of, any information in the public domain. Indeed, the press - including reporters of the electronic media - was permitted to listen to the tapes and report on what was heard. Reporters also were furnished transcripts of the tapes, which they were free to comment upon and publish. The contents of the tapes were given wide publicity by all elements of the media. There is no question of a truncated flow of information to the public.

Thus, the issue presented in this case is not whether the press must be permitted access to public information to which the public generally is guaranteed access, but whether these copies of the White House tapes - to which the public has never had physical access - must be made available for copying." Thus re-affirming the constitutional right of the press to access court records. They went so far as to declare "The First Amendment generally grants the press no right to information about a trial superior to that of the general public. "Once beyond the confines of the courthouse, a news-gathering agency may publicize, within wide limits, what its representatives have heard and seen in the courtroom. But the line is drawn at the courthouse door; and within, a reporter's constitutional rights are no greater than those of any other member of the public." Estes v. Texas, 381 U.S. 532, 589 (1965) " thus inversely declaring the publics equal right to the court records.

Defendants agree that in the case, "FTC v. Standard Financial Management, the court held that the press was entitled to access sworn personal financial statements of the two principals of a closely-held corporation, statements on which the Federal Trade Commission (FTC) relied in agreeing to a settlement that would fall far short of what would be needed to make

the affected consumers whole. Id., 830 F.2d at 406. In finding that the public should have access to the personal financial statements, the court rejected the appellants' privacy argument, finding instead that the appellants waived privacy by cboosing to submit the documents to the FTC as part of the settlement process and further, that releasing the documents had worked to their advantage in persuading the FTC to agree to a desirable settlement. The appellants were not then entitled to argue that "some general notion of fairness requires the settlement to be made public but the documents to be locked away." Id. at 412...."

We disagree on the interpretation and therefore again find a compelling First Circuit opinion that the provision of documents in this litigation voids the parties right to privacy. This has the direct inference that once the plaintiffs have sought redress of their concerns in a US District court that their private interests were voided by choice of the Plaintiffs.

Therefore defendants would ask the court to conclude that the Plaintiffs assertion that "Unlike the appellants in Standard Financial Management, Plaintiffs 3ABN and Danny Shelton have never chosen to waive their privacy interests...." Is clearly defective as the

simple decision to seek redress in the US District Court constituted a waiver of His and the Other Plaintiffs privacy interests. That is if, in fact, a 501c-3 Media Entity and the very Public figures that manage and are broadcast to the entire world of satellite TV viewers can have a privacy interest at all as it relates to the issues in contention.

The Plaintifs seem concerned that "...Without impounding these documents, this Court's judicial record will become an unwitting tool that Defendants will use to spread their lies." While by their declaration the information contentiously characterized as "lies" and which the defendants state as the truth, has been and remains available for public scrutiny, the further availability in the US District Courts office is not a basis for assumption that further damage is possible or a remotely constitutional assumption.

Defendants will argue that the Plaintiffs *have sought impoundment lightly* in violation of the Courts own Rule 7.2 and in violation of the defendants First Amendment rights. Clearly the Plaintiffs have requested impoundment as a means of hiding this dispute, or the facts which underlie it, from a very discerning public with a common law right to know..

Plaintiffs have not demonstrated that impoundment would prevent further irreparable injury as the Plaintiffs affidavit fails to identify a cause and effect relationship between Mollie Steensons assertion that Plaintiffs saw a significant decline in contributions in June 2006 when the defendants reporting did not begin until September 2006. Defendant Joy's webpages were not developed until mid- January 2007. This is only a single example of the Plaintiffs clearly deficient case. Defendants will assert that in fact the Plaintiffs own actions, and or the actions of others with whom the Plantiffs contracted were the cause and effect and Defendants merely reported and disseminated the Plaintiffs deficient actions, as did thousands of other SDA's. Defendants merely exercised their constitutional rights as preserved within the First Amendment. Therefore, there would be no legal, economic or logical basis for an unconstitutional impoundment.

In fact the redacted exhibits, unlawful in their own right, do not specifically support the affiants claims for various reasons, not the least of which, they either fail to show that defendants caused the contributor to stop contributing because of the defendants actions. They also fail to establish that the parties complaining were contributors at any time. In

addition, the fact that names are redacted leaves the defendants without any basis to determine if they are impeachable, as they could be Plaintiffs' sympathizers simply planting complaints or the Plaintiffs utilizing pseudonyms in support of the Plaintiffs affidavits, a legitimate concern that the defendants would not dare eliminate from feasibility for the Plaintiff Danny Lee Shelton, based upon assertion of various victims during his administration.

The defendants further clarify the deficiency of the Plaintiffs claims as the reporting of the actions of the Plaintiffs, as news release after news release and webpage after webpage reports the actual actions based upon the reports of Plaintiffs, other witnesses, the actual documented e-mails or correspondence between Plaintiffs and victims. Therefore, it is clearly the actions of the Plaintiffs that have resulted in any claimed loss of goodwill within the Seventh-day Adventist Community. But the most egregious breach of any clear cause and effect is demonstrated in the simple fact that the Plaintiffs have failed to demonstrate any connection between postcards mailed and the defendants. And defendants have clearly

asserted that they have not mailed post cards of any kind, regardless of the defendants clear constitutional right to do so.

The Plaintiffs assertion that it was the defendants reporting alone that would result in loss of confidence of churches, conferences, unions, divisions and even the world-wide General Conference of Seventh-day Adventists have little real or factual understanding of the representative governance of the various administrative entities. Unlike the 3ABN autocracy with its mere 13 member constituency / board of directors handpicked by Danny Lee Shelton, and ejected at will by Danny Lee Shelton, the church's administrative entities have accountability to hundreds, thousands, tens of thousands, hundreds of thousands and even millions within the General Conference congregations. They are well known for adhering to *the counsel of many principle* as the General Conference Executive Committee consists of more than three hundred members and other entities have executive committees that even at the state conference level exceeds by more than double the size of the 3ABN Board of directors. Every administrative entity also has lay advisory committees, an Association Board which directly represents the various church companies within the entity, and a variety of

special constituencies that are variously represented by nominated and elected leaders within each level of church leadership. As in any bureaucracy of this width and depth, no decision is entered into lightly or easily without careful consideration of the issues and concerns represented by the decision or action of the brethren. Further, The Illinois State Conference President serves upon the 3ABN Board, ex-officio. Therefore, simply a "no-body" like the Plaintiff Gailon Arthur Joy, as described by the Plaintiff Danny Lee Shelton, reporting and exhibiting documents could not possibly get an entire world-wide congregation to moratorium an independent international media giant and supporting ministry of the Seventh-day Adventist Church that has been a long-time member and beneficiary of the General Conferences' ASI grant programs, without more than alleged "lies" and "innuendos" as the foundation for church leaderships actions. And most importantly, the Plaintiffs have not established a relationship between the church administrations actions and the defendants reporting, other than the wild and reckless assertion of Plaintiffs and their counsel.

The Plaintiffs would assert: "C. The fact that statements made during the course of a judicial proceeding are privileged will embolden Defendants and leave Plaintiffs without recourse."

The Plaintiffs would seem to assert as infamy the premise that statements made during the course of judicial proceedings are somehow privileged and therefore they assert the reporting of these statements would leave the Plaintiffs without recourse. Defendants will repeat that in Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978) the Supreme Court clarified unequivocally that "in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) …Our decision in that case merely affirmed the right of the press to publish accurately information contained in court records open to the public. Since the press serves as the information-gathering agent of the public, it could not be prevented from reporting what it had learned and what the public was entitled to know. Id., at 491-492. and in "FTC v. Standard Financial Management, the court held that the press was entitled to access sworn personal financial statements of the two principals of a closely-held corporation, statements on which the Federal Trade Commission (FTC) relied in agreeing to a settlement that would

fall far short of what would be needed to make the affected consumers whole. Id., 830 F.2d at 406. In finding that the public should have access to the personal financial statements, the court rejected the appellants' privacy argument, finding instead that the appellants waived privacy".

Therefore, Defendants would agree the Plaintiffs are left without recourse and constitutionally so. However, once again the Plaintiffs express concerns regarding "libelous statements" but have yet to demonstrate that any statement in fact has or will meet the test of libel. Defendants are clearly constitutionally protected by the First Amendment and Plaintiffs are left to their proof that their own wild, unsupported and reckless allegations of libelous statements in fact can be supported at bar. Plaintiffs have spent a great deal of time and effort to claim a defamatory purpose in the process of "indicting" Danny Lee Shelton to the public. The simple act of indicting or accusing a public figure and this supporting ministry President with wrongdoing, when he is the acknowledged face of Seventh-day Adventistism to the entire world, is no more defamatory then the public life of the President himself. It is not defamatory to simply report the documented factually deficient statements of the Plaintiffs

and the responses of accusers and witnesses. It is, in fact, the constitutional exertion of the freedom of the press.

Pkaintiffs also assert:"D. The public interest in this case does not tip the scales in favor of public access."

And again the Plaintiffs seek to pretend that the public has no right of access to court files when it is clearly established case-law that the public has an equal right to access to the court records as would any reporter or other party in interest. "The First Amendment generally grants the press no right to information about a trial superior to that of the general public." NIXON v. WARNER COMMUNICATIONS, INC., 435 U.S. 589 (1978) Page 435 U.S. 589, 610

The plaintiffs also claim that the 3ABN is an Illinois non-profit corporation, but it is also a federally recognized public 501c-3 non-profit that solicits every dime of support from the public arena, largely from the pews of the Seventh-day Adventist churches. It cannot claim to be a private foundation and in fact its Annual reports to the Internal Revenue Service via the 990s clearly demonstrate its public educational and religious charity and not a private

foundation status. The Plaintiff's own Chairman has repeatedly claimed the ministry is open and transparent in keeping with its very public charter, a fallacy at best. Therefore, they are not entitled to privacy as any contributor of sums in excess of $70.00 has the right to go to 3ABN and to ask to have the books of accounts and records of meetings made available for public inspection.

Further, the status in Illinois of the corporation as a tax exempt organization is currently denied for property tax purposes and is under appeal. Therefore, since the vast majority of funds to support this public non-profit come from the members of the Seventh-day Adventist churches, the contributing members have become defacto the *stockholders in the pews* with all the rights of a contributor to any public charity to enable donors to make informed choices. And they have an intrinsic right to be informed of issues relating to corporate governance as well as the distribution of funds given to this very public ministry. This is clearly established in two Illinios cases that wound their way into the US Supreme Court: SCHAUMBURG v. CITIZENS FOR BETTER ENVIRONMENT., 444 U.S. 620 (1980) Page 444 U.S. 620, 638 :"Efforts to promote disclosure of the finances of charitable organizations also may assist in preventing fraud by informing the public of the ways in

which their contributions will be employed.[Footnote 12] Such measures may help make contribution decisions more informed, while leaving to individual choice the decision whether to contribute to organizations….."

This is reinforced on a ciertorari from the Illinois Supreme Court ILLINOIS *ex rel.* MADIGAN, ATTORNEY GENERAL OF ILLINOIS *v.* TELEMARKETING ASSOCIATES, INC., *et al.* "(d) Given this Court's repeated approval of government efforts to enable donors to make informed choices about their charitable contributions, see, *e.g., Schaumburg*, 444 U. S., at 638, almost all States and many localities require charities and professional fundraisers to register and file regular reports on their activities…. These reports are generally available to the public and are often placed on the Internet. …. Just as government may seek to inform the public and prevent fraud through such requirements,…. these limitations do not disarm States from assuring that their residents are positioned to make informed choices about their charitable giving. Pp. 19-21."

Plaintiffs also seek proof that the defendants meet some imaginary test of being a reporter. In fact, there is no test of being a reporter. Anyone can in fact become a reporter by simply picking up a pen or pencil, asking questions and reporting the answers. In fact both

defendants have extensive background in ecclesiastical reporting and journalism. The defendant Joy has been an established ecclesiastical reporter for more than two decades and is published. Defendant Pickle is also established as a published ecclesiastical reporter and ecclesiastical apologist for more than a decade. At all times relating to this investigative reporting the Plaintiff Gailon Arthur Joy has clearly identified himself as AUReporter, an abbreviation for what began as Atlantic Union Reporter nearly two decades ago.

The issue of credentialing jounalist s or reporters was addressed by the U.S. Supreme Court in its 1972 decision *Branzburg v. Hayes.* "The administration of a constitutional newsman's privilege would present practical and conceptual difficulties of a high order," wrote Justice Byron White. "Sooner or later, it would be necessary to define those categories of newsmen who qualified for the privilege, a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods." And Justice White added:"Freedom of the press is a 'fundamental personal right' which 'is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. … The press in its historic connotation

comprehends every sort of publication which affords a vehicle of information and opinion.' ... The informative function asserted by representatives of the organized press in the present cases is also performed by lecturers, political pollsters, novelists, academic researchers, and dramatists." Therefore, Plaintiffs attempt to impose such a test is profound and an example of their improper conduct resonant in this action.

CONCLUSION: The Plaintiffs seek a Blanket Impoundment in violation of Local Rule 7.2 to include Pleadings as well as discovery. Plaintiffs proposed order grants the Plaintiffs the extraordinary position of intercepting and trying to alter the pleadings of the Defendants, a clear over-step of the rule, and could prove burdensome to the court as every pleading would become a motion battleground with the clear intent to impede the defendants right to amend answers, to add Affirmative Defenses, to state Counterclaims, to file Motions and even to impede the addition of parties. Further the Plaintiffs proposed order would even

seek to control the flow of documents entered in this courts records to be utilized in any other case and to even interfere with the subpoena power of other jurisdictions. These outrageous proposals could also most certainly spawn numerous time consuming appeals. Further the procedures outlined could be abused to add unnecessary costs to the defense of this action.

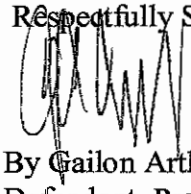
Simply put, Plaintiffs Motion and Proposed Order seeks insidious violation of the Local Rule 7.2 by imposing an *Alternative Blanket Impoundment* under the pseudonym "Standing Order", "Automatic Temporary Impoundment", "Continued Application", and Application of Order in Context with Other Actions that is designed to be oppressive and restrictive of the Plaintiffs rights, the rights of other jurisdictions and abuses the clear Local Rule 7.2 of this Honorable Court.

The right of public access to the court record is implicit and inviolate in the Constitution, in common law, and in caselaw. Impoundment of this case runs contrary to the Local Rule 7.2, is unconstitutional as a violation of the First Amendment right of Freedom of the Press, Free Speech, the Freedom to practice of our own religion, violates the common law of public

access, and is unsupported by caselaw, particularly in the First Circuit. Therefore the Plaintiffs Motion for Permanent Impoundment must be denied.

Dated: June 7, 2007

Respectfully Submitted:



By Gailon Arthur Joy
Defendant, Pro Se

CERTIFICATE OF SERVICE

I, Gailon Arthur Joy, do certify that I have this day served a copy of the foregoing document, along with any attachments, on Plaintiffs 3ABN and Danny Shelton by mailing same, first class postage prepaid to their attorneys of record, John P. Pucci, Esq., J. Lizette Richards, 64 Gothic Street, Northampton, MA 01060

Dated: June 7, 2007