UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiffs,

Case No. 07-40098-RWZ

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR LEAVE TO FILE TWO SUPPLEMENTAL EXHIBITS

INTRODUCTION

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton ("3ABN") oppose the motion of the *pro se d*efendants, Gailon Arthur Joy and Robert Pickle ("Pickle and Joy"), to file two supplemental exhibits consisting of (A) warrants for the arrest of Tommy Shelton, and (B) press release issued by Fairfax County Policy Department (Doc. 245). Their motion should be denied because the exhibits are irrelevant to any pending issue.

Pickle and Joy should be sanctioned for filing the exhibits as part of their motion, thus depriving this Court of the power to meaningfully decide whether these documents should be part of the district court record. As a Minnesota federal judge recently observed, "This is akin to lighting a cigar and then asking, 'Is it okay if I smoke?' It

betrays a lack of respect for the rules of this Court …." *Hartford Fire Ins. Co. v. Clark*, Case No. 03-CV-3190 (PJS/JJG) (Schiltz, J.). The Court should be aware that Pickle and Joy did the same thing in the First Circuit Court of Appeals by attaching these same exhibits to an unauthorized and uninvited "status report." A motion to strike the exhibits and sanction Pickle and Joy is pending in that Court. The present motion should be denied, and sanctions imposed on Pickle and Joy including an order striking the exhibits, cautioning Pickle and Joy against filing unauthorized exhibits, and awarding Plaintiffs their reasonable attorneys' fees incurred to write this brief.

BACKGROUND

The history of this case is easy to explain up to the point when Plaintiffs asked Judge Saylor to dismiss it because they felt they had achieved all of their non-monetary objectives, and it was clear that the defendants' financial condition made them judgment-proof. But after Judge Saylor granted the motion, the litigation took a bad bounce. Pickle and Joy commenced a campaign to resurrect 3ABN's claims against them by filing motion upon motion and appeal after appeal seeking to undo Judge Saylor's order granting dismissal. If they had succeeded, their prize would have been exposure to a claim for damages. Their claim that they hope to use the forum of this litigation to prove the truth of their allegedly defamatory statements "beyond a reasonable doubt" is specious. Their best-case-outcome was a judgment of non-liability, not a finding that their statements were true.

In the 19 months from the inception of this case to its dismissal in November of 2008, there were 129 electronic court filings in this matter. But since then, Pickle and

Joy have managed to keep this case alive for an additional 17 months and over 200 electronic court filings in this Court and the First Circuit Court of Appeals. They have literally doubled the size, and nearly doubled the length, of this litigation by their meritless, duplicative and seemingly endless motions, motions to reconsider, motions to supplement, objections to rulings of the magistrate, and appeals when their motions are denied. Their efforts have achieved exactly nothing, unless the point was to waste an enormous amount of judicial and party resources and smear the reputations of everyone who comes into contact with them and this case.

The convoluted events that lead to the present motion can be summarized as follows. In an early phase of this case, Pickle and Joy had served an out-of-district subpoena on MidCountry Bank, seeking Plaintiff Danny Shelton's private financial information ostensibly to help them prove the truth of statements that 3ABN claimed were defamatory. The Minnesota court ordered the records be produced for *in camera* review directly to Magistrate Judge Hillman, in order for him to make the determination on relevancy and conditions of disclosure. Before anything was done with the records, Judge Saylor dismissed the case. (Doc. 129). As part of his order, pursuant to a motion by Plaintiffs, Judge Saylor ordered return of Danny Shelton's bank records. (Electronic Clerk's Notes dated 10/20/2008). Pickle and Joy did not ask for a stay of the order, so on December 16, 2008, the records were turned over to 3ABN's counsel and Pickle and Joy were electronically notified of that fact. (Doc. 160). Their contention that they did not realize that the MidCountry records had left the Court's possession is disingenuous – their brief opposing the motion to dismiss argued that Plaintiffs had no standing to make

the request and indicates quite clearly that they understood that Plaintiffs were seeking custody of the documents. (*See* Doc. 126 at p. 15). They received the electronic notice indicating that the records had been retrieved and signed for by counsel for the Plaintiffs. (Doc. 160).

A full *year* later, on December 9, 2009, professing surprise that Judge Saylor's order had been executed and that counsel for Plaintiffs now had the MidCountry records, Pickle and Joy filed a motion demanding that the MidCountry Bank records be forwarded to the First Circuit Court of Appeals as part of the district court record. (Doc. 204). Plaintiffs opposed the motion. (*See* Doc. 207). The question of what to do with the MidCountry records had been litigated and decided by Judge Saylor 14 months before. Both sides had made their arguments and Judge Saylor had ordered that the records be returned, which in the context of a motion to turn the records over to Plaintiffs meant that the records should be delivered to counsel for the Plaintiffs. Thus, Pickle and Joy collaterally attacked a prior order of Judge Saylor a year after it had been executed.

Judge Saylor referred the motion to Magistrate Judge Hillman on December 18, 2009, and subsequently recused himself because Pickle and Joy had filed a judicial misconduct complaint against him. Judge Hillman denied the motion without comment on January 29, 2010. Clearly, this was within his discretion given that the very same issue had been litigated and decided more than year before.

Pickle and Joy then filed objections to Magistrate Judge Hillman's order on February 3, 2010. (Doc. 229). Pickle and Joy now seek to file two exhibits in further support of their objections to Magistrate Judge Hillman's order denying their motion to

forward the MidCountry Bank records to the First Circuit Court of Appeals. (*See* Doc. 245). The exhibits consist of arrest warrants issued in Virginia for Tommy Shelton and a press release from the police agency that issued the warrants. Plaintiffs oppose the motion to file these exhibits because they are not relevant to the pending motion.

LEGAL ARGUMENT

I. The Motion Should be Denied Because the Exhibits are Irrelevant.

The authority to present evidence in connection with motions derives from Fed. R. Civ. P. 43(c) ("When a motion relies on facts outside the record, the court may hear the matter on affidavits…."). But to be admissible, evidence must be relevant. Fed. R. Evid. 402. Evidence is relevant if it makes "the existence of fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. The arrest warrants and related press release involving Tommy Shelton do not meet this requirement because they do not make a fact which is "of consequence" more or less likely to be true.

The issue that the exhibits are supposed to relate to is whether Judge Hillman abused his discretion when he denied Pickle and Joy's motion to forward the MidCountry Bank records, which contained Danny Shelton's private financial information, to the First Circuit Court of Appeals. Careful analysis of Pickle and Joy's brief fails to reveal any explanation of why recently-issued arrest warrants for Tommy Shelton would make it more or less likely that the MidCountry Bank records should be made part of the district court record. The MidCountry Bank records were sought on the theory that they would help Pickle and Joy prove the truth of their allegations of financial improprieties, not

because they related to Tommy Shelton's alleged criminal conduct. Tommy Shelton's conduct was not addressed in the Complaint, and was never part of the litigation as framed by the Plaintiffs.

To the extent that the arrest warrants are offered to prove the truth of the assertions within them, i.e., that Tommy Shelton is guilty of the charges, the warrants are rank hearsay and not admissible for that purpose. Fed. R. Evid. 802. They are non-hearsay evidence only of the fact that warrants were issued on February 25, 2010. So the narrow issue of relevancy comes down to this: Is it relevant to the motion regarding the MidCountry Bank records that Tommy Shelton had warrants issued for his arrest a few weeks ago? Pickle and Joy do not articulate why this fact would make it more or less likely that the MidCountry Bank records should become part of the appeal record.

Instead, Pickle and Joy say the exhibits refute a sentence in a brief submitted by the Plaintiffs which states that Defendants' allegations against the Plaintiffs was "uncorroborated and unfounded." (Doc. 246 at p. 2). Pickle and Joy say that the undersigned made this "outrageously fallacious assertion" in bad faith, and should be sanctioned. (Doc. 246 p. 2). This is pretty typical rhetoric for Pickle and Joy, believe it or not.

But setting aside the inflammatory adjectives, the sentence authored by the undersigned that Pickle and Joy say merits this Court's disapprobation and justifies the introduction of Tommy Shelton's arrest warrants is simply this: "Pickle and Joy have long made uncorroborated, unfounded allegations against Danny Shelton and 3ABN, including claims that they covered up allegations of child molestation against a 3ABN

employee, financial mismanagement, and other misconduct that framed the original basis for Plaintiffs' lawsuit against them." (Doc. 246 at p. 2).

This challenged statement appeared in a section labeled as "Legal Argument," and accurately states Plaintiffs' position throughout this litigation, as articulated in the Complaint and elsewhere. The statement is supported by the facts that are of record. First, Pickle and Joy admit in their brief that they have long made allegations of the type described. (Doc. 246 p. 1). As for the rest of the statement, it is a matter of record that Pickle and Joy refused to provide evidence in support of their contentions on the grounds of "journalistic privilege." (Doc. 9 at ¶ 50). And finally, the fact that Tommy Shelton had arrest warrants issued in February of 2010 does not prove that the statement quoted above, made before the warrants were issued, was false. Even if the warrants were not hearsay and were thus considered "corroboration" of Pickle and Joy's allegations, they do not corroborate Pickle and Joy's allegations that 3ABN covered up *previous* accusations against Tommy Shelton. The warrants did not exist at the time Pickle and Joy made their allegations, nor did they exist when Plaintiffs wrote the sentence that Pickle and Joy contend makes the warrants relevant.

The issue before the Court, once again, is whether Tommy Shelton's recent arrest warrants make it more or less probable that the MidCountry Bank records are part of the appeal record. Merely framing the issue correctly answers it: Of course not.

CONCLUSION

For the reasons stated herein, Plaintiffs request that the Court deny Pickle and Joy's motion to file supplemental exhibits. Plaintiffs also request that an appropriate

sanction be imposed on Pickle and Joy for filing the exhibits prior to obtaining leave of the Court to do so, and for bringing this obviously frivolous motion. Plaintiffs submit that an appropriate sanction would include a strongly-worded caution to the Defendants against filing unauthorized exhibits, an order striking the exhibits, and an order to reimburse Plaintiffs for their attorneys' fees incurred to draft this memorandum. The fees necessary to draft this memorandum will exceed $1,000.

Respectfully submitted,

Dated: April 15, 2010

s/ M. Gregory Simpson

M. Gregory Simpson, Esq., MN # 204560
Meagher & Geer, P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Telephone: (612) 338-0661

John P. Pucci, Esq., BBO #407560
J. Lizette Richards, Esq., BBO #649413
Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060
Telephone: (413) 584-8067
Facsimile: (413) 585-0787

Attorneys for Plaintiffs Three Angels Broadcasting Network and Danny Lee Shelton

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