
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Case No. _____

Plaintiffs,

07-40098FDS

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' *EX PARTE*
MOTION FOR PRELIMINARY IMPOUNDMENT AND REQUEST
FOR A HEARING ON THE ISSUE OF PERMANENT IMPOUNDMENT**

I. Introduction

Plaintiffs Three Angels Broadcasting Network, Inc. (hereinafter "3ABN") and Danny Lee Shelton (hereinafter "Shelton") (collectively "Plaintiffs") submit this Memorandum in support of their *Ex Parte* Motion for Preliminary Impoundment and Request for a Hearing on the Issue of Permanent Impoundment. By this Motion, Plaintiffs seek to have their Complaint as well as Defendants' Answers or other responsive pleadings preliminarily impounded pursuant to Local Rule 7.2. Plaintiffs seek preliminary impoundment of these materials in advance of serving the Complaint on Defendants and until such time as this Court has an opportunity to conduct a hearing with all parties present on the issue of permanent impoundment. If this preliminary relief is granted, Plaintiffs will serve the Complaint, the *Ex Parte* Motion for Preliminary Impoundment and Request for a Hearing on the Issue of Permanent Impoundment and this Memorandum on Defendants, all subject to the Preliminary Order of Impoundment. At the

hearing, Plaintiffs will seek an order permanently impounding these materials until the conclusion of this litigation, at which time the materials may be retrieved by the parties or their respective counsel.

Plaintiffs' claims can be categorized generally into two groups with one group alleging trademark violations and the other defamation. Plaintiffs seek impoundment in order to prevent Defendants Gailon Arthur Joy (hereinafter "Joy") and Robert Pickle (hereinafter "Pickle") (collectively "Defendants") from using this litigation as a vehicle to further defame Plaintiffs.

II. Factual Background

3ABN is a non-profit corporation, the primary business of which is to operate and manage a Christian television and radio broadcast ministry. Plaintiff Shelton was an original founder of 3ABN and has been continuously involved in the ministry and its operations since its inception. Today, Shelton serves as President of 3ABN and is one of 3ABN's on-air ministry and music presenters. Although many of 3ABN's employees and volunteers, including Plaintiff Shelton, are members of the Seventh-Day Adventist faith, 3ABN is a non-denominational Christian ministry, which is not owned by, affiliated with, or financed by any specific church, denomination or organization. As a provider of religious, spiritual and ministerial program services, 3ABN depends upon its reputation for theological integrity, operational capability, and financial soundness, in order to attract new viewers and listeners, retain current viewers and listeners, and sustain financial support for the ministry. 3ABN relies extensively and almost exclusively on the donations of its television viewers and radio listeners for its continued operation.

III. Defendants' Campaign to Defame Plaintiffs

As set out in Plaintiffs' Complaint, Defendants have conspired in a campaign of defamation, slander and disparagement designed to embarrass, discredit and defame 3ABN and Shelton and to vitiate, dishonor and impair the reputation and goodwill of 3ABN and Shelton. Upon information and belief, Defendants are motivated by a desire to weaken the ministry to the point of forcing the resignation of Danny Shelton and the current 3ABN board of directors and, if possible, to force the reinstatement of Linda Shelton, Danny Shelton's ex-wife, as a 3ABN employee and director. Defendants believe they can force Plaintiffs' hand in this regard by draining 3ABN's financial support through the dissemination of false allegations of legally and morally reprehensible conduct by Shelton and 3ABN. Defendants have utilized numerous forums in their conspiracy to defame Plaintiffs, including Defendant Joy's websites, www.save3ABN.com and www.save3ABN.org, and other websites and chatrooms that are frequented by members of the Seventh-Day Adventist Church (e.g. www.blackstda.com, www.maritime-sda-online.org, and the Yahoo Prophecy Board forum).

Defendants have made every effort to publicize their defamatory statements as widely as possible in order to inflict the most harm on Plaintiffs' reputations by jointly marketing, advertising and promoting the www.save3ABN.com website by posting electronic links to the website on numerous electronic bulletin boards and websites frequented by members of the Seventh-Day Adventist Church, by mailing postcards to Seventh-Day Adventist Churches across the United States directing Church Members to the www.save3ABN.com website, and by encouraging Internet users to visit the www.save3ABN.com website to "learn the truth" about 3ABN and its President, Danny Shelton.

The subjects of Defendants' defamatory, disparaging and slanderous statements regarding Plaintiffs are many and varied, but can largely be broken down into three categories: (1) that 3ABN and Shelton have committed financial improprieties with donated ministry funds; (2) that 3ABN and Shelton have committed administrative and operational improprieties at 3ABN and that the organization is not properly or competently managed by its managers, officers and directors; (3) and that 3ABN and Shelton acted without grounds in removing Linda Shelton from the 3ABN board of directors, that Danny Shelton had no grounds for divorcing Linda Shelton, that 3ABN and Danny Shelton conspired to hide evidence and information concerning her removal and their divorce, and that 3ABN and Shelton have lied and made otherwise purposeful misstatements concerning the Shelton's divorce and Danny Shelton's remarriage. Defendants' defamatory statements are libelous, refer to Plaintiffs' trade, business and profession, impute serious misconduct to Plaintiffs and contain false accusations of the commission of a crime by both Plaintiffs and are, therefore, defamatory *per se*. See e.g. Ravnikar v. Bogojavlensky, 438 Mass. 627, 630 (2003).

IV. Argument

Every time Defendants publish these defamatory statements, Plaintiffs' reputations are tarnished further. The continued erosion of Plaintiffs' reputations and the goodwill they have built over the last 20 years directly impairs their ability to carry on the very mission of 3ABN, insofar as 3ABN relies almost exclusively on the donations of viewers and listeners for carrying out of its ministry. If their reputations are destroyed by Defendants' orchestrated efforts, Plaintiffs will no longer be able to count on this continued support. Therefore, Plaintiffs seek to avoid having Defendants turn this litigation into yet another opportunity to defame them, increasing Plaintiffs' damages at every step.

There is every reason to believe that, absent impoundment, Defendants will repeatedly republish the defamatory statements enumerated in the Complaint and will make additional defamatory statements concerning Plaintiffs in their Answers or other responsive pleadings in order to further their conspiracy to discredit and disparage Plaintiffs in the eyes of the religious and spiritual community. As an initial matter, Defendants are quite likely to post the entirety of the Complaint, as well as their Answers or other responsive pleadings on the www.save3ABN.com website, along with color commentary further defaming Plaintiffs and further tarnishing Plaintiffs' reputations in the eyes of the very community where their reputations matter most. Defendants have a history of doing exactly this.¹ For example, within days of receiving the cease and desist letter sent by Plaintiffs' counsel, Joy posted the letter on the www.save3ABN.com website despite the fact that Plaintiffs made clear that the letter was a confidential legal communication, not for publication. See Attachment 1.² Similarly, Defendant Joy posted in its entirety a Financial Affidavit filed by Plaintiff Shelton in the divorce proceeding with his ex-wife, Linda Shelton. See Attachment 2. In connection with the Financial Affidavit, Joy authored a "Comments" section in which he raises a number of questions, ultimately concluding Plaintiff Shelton was untruthful in the Affidavit. See Attachment 3. Since the Affidavit was filed under the pains and penalties of perjury, Joy is, in essence, accusing Shelton of a crime.

Moreover, Defendants Joy and Pickle have repeatedly published other highly sensitive information with impunity. Even a cursory review of the www.save3ABN.com website reveals

¹ In this regard, Plaintiffs will be seeking a protective order pursuant to Fed. R. Civ. Pro. 26(c) regarding discovery materials in order to avoid having every piece of discovery published wholesale on Defendant Joy's website or otherwise.

² All of the Attachments to this Memorandum were printed from the www.save3ABN.com website. Because the attachments are merely illustrative of Plaintiffs' points, Plaintiffs have not included every single page of each posting. Rather, Plaintiffs have simply included the pertinent pages. (E.g., as can be seen on the top right hand corner or Exhibit 1, the actual posting is 9 pages, but Plaintiffs are only submitting the first 2 pages to the Court.) Plaintiffs have also highlighted certain portions of the Attachments that are particularly relevant.

that it is rife with personal emails of which neither Defendant was the sender or recipient. These include emails sent between Plaintiff Shelton and his ex-wife, Linda Shelton, and concern highly confidential matters of their marriage and divorce. Nevertheless, Defendants apparently felt no compunction about publishing them on the web for the world to see and adding defamatory commentary allegedly interpreting them, always in Linda Shelton's favor of course. See, e.g., Attachments 4—6.

Lastly, the site is home to numerous other attacks on Plaintiffs by Defendants. By way of example, Plaintiffs attach to this Memorandum Defendants' "Financial Allegations Against Danny Shelton." See Attachment 7. The import of this posting is clear—that Plaintiff Shelton is committing financial fraud with respect to 3ABN as well as tax fraud against the United States Government.

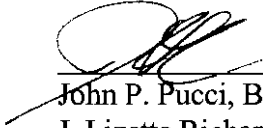
The attachments to this Memorandum, all of which have been taken from the www.save3ABN.com website, are by no means exhaustive of the defamatory statements Defendants are publishing. Rather, they are merely illustrative of the breadth of Defendants' campaign to defame and disparage Plaintiffs. This case is not about one or two defamatory remarks uttered to a limited audience. It is a concerted, pervasive and ongoing effort by Defendants to literally destroy Plaintiffs' reputations in the unlimited audience available on the web.³ Given this background and Defendants' track record, it is obvious that, absent a Court order, Defendants will utilize this litigation as yet another opportunity to further their campaign to defame Plaintiffs. Therefore, Plaintiffs seek a preliminary order impounding the Complaint and Defendants' Answers or other responsive pleadings in advance of serving the Complaint on Defendants and request that the preliminary order of impoundment last until such time as the

³ Of course, Defendants have been able to greatly increase the likelihood that their defamatory statements will reach their intended audience, i.e. 3ABN's current and potential viewers and listeners, by misuse of 3ABN's trademarks. See Complaint, ¶¶ 25—37.

Court has the opportunity to examine the pleadings and conduct a hearing with all parties present on the issue of permanent impoundment. At that hearing, Plaintiffs will seek an order permanently impounding these materials until the conclusion of this litigation, at which time they may be retrieved by the parties or their respective counsel.

RESPECTFULLY SUBMITTED,
For the Plaintiffs Three Angels Broadcasting
Network, Inc. and Danny Shelton,
By their attorneys,

Dated: April 5, 2007



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