

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.)	
_____)	

**DEFENDANT ROBERT PICKLE’S MEMORANDUM IN SUPPORT OF HIS
OPPOSITION TO PLAINTIFFS’ MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

The Plaintiffs’ Motion for Protective Order is overly broad and burdensome, would seal that which legislation declares to be open to public inspection, prevents preparation of the Defendants’ defense, is contrary to the public interest, is contrary to Local Rule 7.2(e), is unconstitutional, and leaves the Defendants with no recourse in the public arena against the defamatory statements of the Plaintiffs. Additionally, this Court has already addressed multiple times the attempts of the opposition to impound this case.

FACTS

Contrary to the claims of Attorney Hayes in ¶ 4 of her Affidavit, no proposed Protective Order was ever filed with the Plaintiffs’ Rule 26(f) report. See Document #18 of the instant case.

No counsel for the Plaintiffs has ever personally conferred with Defendant Pickle in regards to the matter of donor names, donation information, financial statements, auditor’s

reports, documents produced to the Federal Communications Commission or the Department of Justice, airtime rates, or Plaintiff Shelton's tax returns. And no requests were made to Defendant Pickle for a discovery conference concerning any of these documents or information. See Affidavit of Robert Pickle at ¶ 1 (hereinafter "Pickle Aff. at ¶ ___").

Contrary to the claims of Mollie Steenson in ¶ 11 of her Affidavit, the financial statements and auditor's reports of Plaintiff Three Angels Broadcasting Network, Inc. (3ABN) are required by law to be open for public inspection, and, along with Form AG990-IL, are filed annually with the Illinois Attorney General's office. See 225 ILCS 460 § 2(f), § 4(a), and the search results for "Three Angels" at <http://IllinoisAttorneyGeneral.gov/charities/search/>.

The Plaintiffs continually allege that donations have declined due to actions by the Defendants, and yet attempt to prevent the Defendants from verifying such a claim by seeking a prohibition against the discovery of any and all donation information.

Reported donations plummeted in 2003 but reached an all time high in 2006. See Pickle Aff. at ¶ 2. But what donations actually have been since 2003 is difficult to determine because 3ABN has been reporting gross sales revenue and shipping charges as "contributions" since 2004. See Pickle Aff. at ¶¶ 3-4.

The Plaintiffs' motion and proposed Protective Order is quite broad in its language, contrary to the instructions of this Court in the status conference of December 14, 2007. Since the proposed order allows the party seeking confidentiality to place under seal whatever it wishes, without further order of the Court, such language as "other trade secret information of the Plaintiffs," "otherwise confidential business or commercial information," and "all documents of a highly sensitive nature" may be expected to be broadly interpreted by the Plaintiffs. See Motion for a Protective Order at ¶¶ 1-2, and that motion's Exhibit A at ¶ 3. The language is such that unpublished documents received by the Defendants from various third-party sources prior to

the filing of the instant case, and which the Defendants included in their Rule 26(a)(1) materials, could be declared confidential by the Plaintiffs, and would have to be surrendered to the Plaintiffs after the “final termination of this action.” See the motion’s Exhibit A at ¶¶ 5, 20.

The Plaintiffs’ complaint accuses the Defendants of defamation *per se*. See Plaintiffs’ Complaint at ¶ 75. Specifically, the complaint accuses the Defendants of a) accusing Plaintiff Shelton of perjuring “himself through the course of court proceedings relating to his divorce from Linda Shelton,” and of b) accusing “3ABN Board members” of personally enriching “themselves as officers and directors of 3ABN in violation of the Internal Revenue Code.” See Plaintiffs’ Complaint at ¶¶ 46g, 50i. While the Plaintiffs do not seek a prohibition against discovery of information relevant to these allegations, they do seek a prohibition against the use of relevant information outside of the instant case.

The Plaintiffs’ complaint also accuses the Defendants of alleging that there was some sort of collusion between Plaintiff Shelton and Adventist-laymen’s Services and Industries (ASI) to prevent certain issues and individuals from being considered or involved in a fact-finding tribunal. See Plaintiffs’ Complaint ¶¶ 50a–b.

The Plaintiffs and their allies have repeatedly maligned and defamed the critics of Plaintiff Shelton and the Defendants using globally televised broadcasts, email, internet postings, and word of mouth. See Pickle Aff. at ¶¶ 11–12.

3ABN is a 501(c)(3) corporation that routinely solicits support from the general public. The public therefore has an interest in all aspects of 3ABN’s operation, particularly the source and use of their donations.

ARGUMENT

I. LOCAL RULES 7.1(a)(2) and 37.1

Since counsel did not confer with Defendant Pickle about donor names, donation

information, financial statements, auditor's reports, documents produced to the Federal Communications Commission or the Department of Justice, airtime rates, or Plaintiff Shelton's tax returns, and since no request was made for a discovery conference, Local Rules 7.1(a)(2) and 37.1 were not followed. Attorney Hayes' blanket designation of "extremely sensitive, confidential business and commercial information" to all Rule 26(a)(1) materials did not make sense given some of the non-confidential and non-business claims that the Plaintiffs must substantiate. See Pickle Aff. at ¶ 7. Defendant Pickle's objection to such a designation for those materials could hardly be considered a fulfillment of Local Rules 7.1(a)(2) and 37.1 when the present motion concerns a broad range of specific documents and information not previously discussed.

II. LOCAL RULE 7.2(e)

Local Rule 7.2(e) states:

The court will not enter blanket orders that counsel for a party may at any time file material with the clerk, marked confidential, with instructions that the clerk withhold the material from public inspection. A motion for impoundment must be presented each time a document or group of documents is to be filed.

The motion under consideration would have a similar effect as to what this Local Rule disallows. Plaintiffs' counsel would have a blanket order that allowed them to declare just about anything they wish to be confidential. Presumably, any later filings by any party that incorporated any such material would be withheld from public inspection.

III. PROPER DEFENSE REQUIRES DISCOVERY OF DONATION INFORMATION

Federal Rule 26(b)(1) states:

Unless otherwise limited by court order, the scope of discovery is as follows:
Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense

In order for the Defendants to prepare their defense, they must conduct adequate discovery to a) differentiate donations from gross sales revenue and shipping charges, b) identify

the reasons why donors have ceased giving since January 1, 2003, and c) verify that donors have ceased donating due to the actions of the Defendants rather than the actions of the Plaintiffs.

Otherwise, one of the basic elements of the instant case will not be able to be tried.

This is all the more pertinent given the facts that frequency of critical posts on the internet, predating Defendants' involvement by more than two years, are linkable to specific issues of the Plaintiffs' conduct. See Pickle Aff. at ¶ 15. It is likely that donors ceased donating prior to the involvement of the Defendants and for the very same issues being complained about in these posts.

IV. STATE AND FEDERAL LAW REQUIRES DISCLOSURE

Plaintiff 3ABN is a 501(c)(3) organization that solicits tax-deductible contributions from the general public. As such it is required to file IRS Form 990's with the Internal Revenue Service in accordance with 26 U.S.C. §6033, and its financial statements and auditor's reports are required by 225 ILCS 460 §2(f), §4(a) to be open to public inspection, and to be filed annually with the Illinois Attorney General's office. The financial statements and auditor's reports should therefore not be placed under seal.

V. PUBLIC INTEREST

It logically follows that if the information in documents open to public inspection is incorrect, the public has a right to know what the correct information should be.

Inasmuch as the Form 990 asks 3ABN to report any section 4958 excess benefit transactions (see line 89b), the public has a right to know whether 3ABN failed to disclose such transactions, and what those transactions were. The public has a right to know whether their donations are inuring to the benefit of any private person.

That such transactions exist is a matter of public record. In 1998 Plaintiff Shelton purchased a house from 3ABN for \$6,139 and sold it one week later for \$135,000, but 3ABN's

Form 990 denied that any section 4958 excess benefit transaction had taken place. See Pickle Aff. at ¶ 9.

The Plaintiffs have made specific, extremely public claims regarding the present lawsuit not being paid by regular donor funds. See Pickle Aff. at ¶ 8. There have also been allegations that 3ABN has not properly reported its expenses, including the actual figures attributable to corporate jet expenses. See Pickle Aff. at ¶ 10. The public has an interest in knowing whether or not their regular donations are paying for this lawsuit, and whether the manner in which their donations are being expended has been properly reported.

VI. DEFENDANTS' INTEREST IN DEFENDING THEIR REPUTATIONS

The Plaintiffs and their allies have engaged in a public campaign to malign and defame their critics, including the Defendants, and have repeatedly accused them of lying, and have declared them to be “enemies of the gospel.” See Pickle Aff. at ¶¶ 11–12. The Plaintiffs through their proposed Protective Order seek to prevent the Defendants from demonstrating in the public arena that they weren't lying after all, while allowing the Plaintiffs and their allies to continue to disparage the Defendants in globally televised broadcasts, internet postings, and email.

VII. INTEREST OF THIRD PARTIES

In some cases third parties may have an interest in some of the information produced in discovery. As one example, if Plaintiff Shelton really did perjure himself in his case with Linda Shelton in regards to his expected income, she has a right to know what the correct figures for his income should have been. See Pickle Aff. at ¶ 5. But the Plaintiffs seek to prevent any such disclosure.

VIII. FIRST AMENDMENT RIGHTS

The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or

the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Let us first consider how the motion would restrict the Defendants' right to petition the government.

Senator Charles Grassley is investigating a number of prominent televangelists. The information collected by the Defendants could aid Senator Grassley in writing new legislation to help prevent future abuses by 501(c)(3) organizations, but the Plaintiffs' proposed Protective Order, by prohibiting the disclosure of any information outside of the instant lawsuit which they choose to declare confidential, would remove this First Amendment right from the Defendants.

Additionally, a broad interpretation of the language of the proposed Protective Order would also prohibit the disclosure to the proper authorities of unpublished evidence of child molestation on the part of Tommy Shelton, or of the cover up on the part of Plaintiff Shelton of such evidence. This too would restrict the Defendants' right to petition the government.

Inasmuch as the proposed Protective Order could place under seal any heretofore unpublished documents received from third parties and placed in the Defendants' Rule 26(a)(1) materials, it would place an unconstitutional restriction upon Freedom of the Press by prohibiting the publishing or retention of materials received from their sources.

If Plaintiff Shelton's divorce or other conduct was unbiblical by Seventh-day Adventist standards, and is generally considered by that faith to disqualify one from holding leadership positions in Seventh-day Adventist denominational or supporting ministries, the First Amendment's Free Exercise and Free Speech clauses give the Defendants the right to bring this information to the attention of their faith community. This fact again makes the Plaintiffs' overly broad Protective Order unconstitutional.

IX. PLAINTIFFS' ARGUMENTS REBUTTED

A. COMPETITIVE DISADVANTAGE

While the Plaintiffs seek to prohibit disclosure of financial information on the basis that giving the current donor list and airtime rental rate information to competitors would injure 3ABN, they do not limit their proposed Protective Order to non-disclosure of such information, thus failing to narrowly tailor their proposed order.

Further, discovery may demonstrate that 3ABN and ASI on an ongoing basis give each other preferential treatment in the matter of broadcast fees and grants, or that ASI has looked the other way when 3ABN has accepted tithes contrary to ASI's membership requirements. While the disclosure of this information would support the contention of some that ASI could not oversee an objective, fact-finding tribunal, it would hardly result in a competitive disadvantage to 3ABN. More specifically, if 3ABN routinely airs ASI events free of charge, 3ABN's "competitors" could hardly bid to air the same at a cheaper rate. Thus, while the public has an interest in knowing whether ASI had a conflict of interest in objectively overseeing a fact-finding tribunal, no competitive disadvantage would result in the disclosure of such information.

B. "CIVIL CASES ... BETWEEN PRIVATE PERSONS"

The Plaintiffs cite *Moore's Federal Practice* in regards to "civil cases in federal court between private persons," but the relevancy of this quote is highly suspect, for both Plaintiffs are arguably public persons, not private persons. 3ABN is on the television channel lineup of millions of people around the globe, and it routinely solicits donations from the general public. Plaintiff Shelton has routinely appeared on most 3ABN Today LIVE weekly programs, has been the main personality at promotional events and rallies, and had his picture appear on every page of 3ABN's website. He thus is a globally known television personality, and a public figure.

C. "DEFENDANTS' HISTORY"

The Plaintiffs have thus far failed to demonstrate or prove that the Defendants have told any lies about the Plaintiffs, or that the Defendants have attached any misleading commentary to

any documents they have published. While they have repeatedly asserted such, they have thus far failed or refused to demonstrate or prove their claims. At the same time, they and their allies have continued their campaign to malign and defame the Defendants via global broadcasts, internet postings, and email. See Pickle Aff. at ¶¶ 11–12.

Additionally, while Mollie Steenson in her affidavit makes the vague allegation that the Defendants are “contacting current and former employees and ... current and former supporters,” “making veiled threats to involve them in the instant litigation or subjecting them to deposition,” she gives no dates or names, and provides no affidavits of any individuals so contacted. See Affidavit of Mollie Steenson at ¶ 7. Thus it has been since the beginning of this saga, long before the instant case was filed, with the Plaintiffs making unsubstantiated claims and the Defendants citing documentation for their statements.

And yet the Defendants are in possession of sensitive documents and have chosen not to publish them. See Pickle Aff. at ¶¶ 13–14. Thus the Defendants have demonstrated restraint in the matter of what they publish.

CONCLUSION

Contrary to the instructions of this Court as given in the status conference of December 14, 2007, the Plaintiffs seek a broadly tailored Protective Order which would allow the Plaintiffs without further order of this Court to place under initial seal a wide range of documents and information. Such a motion is contrary to Local Rule 7.2(e). The Defendants would be prohibited from verifying the claims of the Plaintiffs that they have caused a decline in donations. Financial statements and auditor’s reports required to be open to public inspection by Illinois state law would be placed under seal. The public would be prohibited from knowing the type of information that federal and state law says they have a right to know. The Defendants would be hindered in defending their reputations in the public arena, while the Plaintiffs would be

permitted to continue maligning and defaming them on a global scale. The rights of third parties would not be respected. First Amendment freedoms of religion, speech, press, and petitioning the government would be infringed. The production or unsealing of any information Plaintiffs designate a “trade secret” or “confidential,” including information obtained prior to the filing of the instant case that Defendants placed in their Rule 26(a)(1) materials, would require the Defendants to file motions to that effect, making the whole process unnecessarily burdensome.

For these various reasons, the Plaintiffs’ Motion for a Protective order should be denied.

Respectfully submitted,

Dated: December 28, 2007

/s/ Robert Pickle, pro se

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AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, do certify that I am over the age of 18 years of age and on this day I have caused service of this document to the Court and have served by first class mail, postage prepaid, a copy of this document and this Certificate of Service to Plaintiffs’ counsel at Siegel, Brill, Greupner, Duffy & Foster, and Fierst, Pucci & Kane, LLP, and by email to Gailon Arthur Joy.

Dated: December 28, 2007

/s/ Bob Pickle