UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-FDS

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

INTRODUCTION

The Plaintiffs are doing whatever they can to impede discovery and "the just, speedy, and inexpensive determination of every action and proceeding" (Fed. R. Civ. P. 1). The instant motion is but one of their tactics and, for sundry reasons, must be denied.

STATEMENT OF FACTS

The instant suit was filed on April 6 and papers were served on April 30, 2007. A scheduling conference took place on July 23 and initial disclosures were made on August 3, 2007. Defendant Pickle has served a combined total of 80 Requests to Produce upon the Plaintiffs. See Affidavit of Jerrie Hayes, Ex. A–B.

The Plaintiffs have thus far not produced one single document, whether as part of their initial disclosures or in response to Requests to Produce, and it is now March 3, 2008. The Plaintiffs have taken the extreme position that every document is either privileged, confidential,

or irrelevant. See Affidavit of Robert Pickle at ¶¶ 1, 10 (hereafter "Pickle Aff.").

In regards to safeguarding 3ABN's trade secrets, it should be mentioned that Derrell Mundall, ex-son-in-law of Plaintiff Shelton, and marketing director of 3ABN till about 2004, has since worked for HopeTV and does work for LLBN, the two main "competitors" of 3ABN. See Pickle Aff. at ¶ 17.

The instant complaint contains references to allegations that Danny Shelton enriched himself due to his 3ABN activities in violation of the Internal Revenue Code, that he hid his royalties from 3ABN, and that donations to 3ABN have declined. See ¶¶ 46g–46h. Accordingly, Defendant Pickle caused to be issued and served subpoenas *duces tecum* on MidCountry Bank, N.A. ("MidCountry"), and on Remnant Publications ("Remnant"). Remnant is the publisher from which 3ABN bought between $2 and $3 million dollars of Plaintiff Shelton's books in 2006. A subpoena *duces tecum* was also issued and served upon Gray Hunter Stenn LLP, 3ABN's auditor ("GHS"). See Pickle Aff. at ¶ 2.

The Plaintiffs have gone beyond refusing to produce documents and have actively interfered with the production of documents by third parties. In follow-up communications with counsel for GHS and Remnant, these counsel told the Defendants that the Plaintiffs were preparing to file a motion for a protective order. See Pickle Aff. at ¶ 3. This proves that there was communication between the Plaintiffs and these third parties that was intended to hinder the production of documents. Plaintiff Shelton also filed a Motion to Quash the subpoena to MidCountry in the District of Minnesota on February 6 or 7, 2008. See Pickle Aff., Ex. D–G.

Counsel for both GHS and Remnant stated that they would require motions to compel before producing anything, and counsel for Remnant stated that royalty information was irrelevant to the instant case. See Pickle Aff. at ¶¶ 4–5.

In the status conference of December 14, 2007, Attorney Hayes referred to at least four

subpoenas that had already been served, and mentioned that two of them had been issued from the wrong court, thus acknowledging that she already knew about the first subpoena served on MidCountry. See Pickle Aff. at ¶ 6.

In that same status conference of December 14, 2007, Attorney Hayes requested that there be a stay on discovery until they could file a motion for a protective order, and until that motion could be heard. The Honorable Judge Saylor made it clear that there would be no stay, that any proposed protective order must be narrowly tailored, and that more is felt by parties to be confidential than usually is. See Pickle Aff. at ¶¶ 6–7.

The proposed protective order that the Plaintiffs filed on December 18, 2007, is not narrowly tailored, and allows the Plaintiffs to declare virtually anything they wish to be privileged or confidential, requiring a court order to reverse that designation. It is therefore in contempt of Judge Saylor's order of December 14, 2007.

The Plaintiffs served responses on Defendant Pickle to his Requests to Produce Documents and Things on January 9, 2008. In these responses the Plaintiffs took the extreme position that even 3ABN's widely distributed monthly magazine, *3ABN World*, was confidential. See Pickle Aff., Ex. A–B at Response to Request No. 8. This demonstrates just how far the Plaintiffs are trying to take their claims of confidentiality, and how they would use the proposed Protective Order at issue in the instant motion.

In follow-up discovery conferences with Attorney Hayes in order to narrow the issues before bringing a motion to compel before this Court, the parties were unable to arrive at agreement even upon the handling of the identities of 3ABN's former donors. Attorney Hayes would not consider the possibility of the Defendants keeping confidential the identities of donors unless the donors themselves allowed the release of that information. See Pickle Aff., ¶ 12, Ex. C.

In these discovery conferences, Attorney Hayes stated that discovery of donor information would have to be sought from third parties, which, given the Plaintiffs' interference with the Defendants' obtaining of information from third parties, makes the prospect of the Defendants being able to adequately prepare their defense pretty abysmal. See Pickle Aff. at ¶ 11.

Plaintiff Shelton's Motion to Quash in the District of Minnesota sought a stay of the enforcement of the subpoena, in contempt of Judge Saylor's order of December 14, 2007. See Pickle Aff., Ex. D–G.

Plaintiff Shelton's Memorandum in Support of His Motion to Quash goes so far as to accuse Defendant Pickle of attempting an end-run with his subpoena of MidCountry, an end-run around having to file motions to compel Plaintiff Shelton to produce his bank statements, and around having to wait for a hearing on the instant motion for a Protective Order, even though the same Memorandum acknowledges that the subpoenas are dated before the instant motion was filed, and before Plaintiff Shelton served his responses to Defendant Pickle's Requests to Produce. See Pickle Aff., Ex. I at p. 11.

Based on this bogus end-run allegation, Plaintiff Shelton and his counsel went so far as to accuse Defendant Pickle of, "at worst, a deceitful abuse of subpoena power." Id. This memorandum was posted on an internet forum by Gregory Thompson, the son of 3ABN's board chairman, and Defendant Pickle was defamed by Gregory Thompson's subsequent comments based on that allegation. Id., p. 8.

In his memorandum filed in the District of Minnesota, Plaintiff Shelton and his counsel also claimed that there was no basis for asking for bank statements back to 1998, even though they well know about the scandalous real estate deal whereby Plaintiff Shelton made almost $129,000 in one week at 3ABN's expense. Id., pp. 11, 12.

Plaintiff Shelton has taken the position in his Motion to Quash that MidCountry's production of his bank statements would infringe on his privacy, even though he has put his personal finances at issue in this controversy, and even though the subpoena in question did not call for copies of checks or copies of deposit slips. He also claimed that his publishing ventures are irrelevant, even though he has placed them at issue in this controversy as well. Id., pp. 11–13.

Attorney Hayes ended her response to Defendant Pickle's Motion to Dismiss Plaintiff Shelton's Motion to Quash with a request that Defendant Pickle pay the costs of opposing his motion to dismiss, "pursuant to Rule 37(a)(4)(B) (*sic.*)." See Pickle Aff., Ex. H at p. 8. Rule 37(a)(5)(B) concerns the payment by the losing party of costs concerning motions to compel disclosure and discovery, not motions to dismiss.

ARGUMENT

I. THE PLAINTIFFS ARE ON A MISSION TO VIOLATE FEDERAL RULE 1

The Federal Rules of Civil Procedure "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding" (Fed. R. Civ. P. 1).

The Plaintiffs, as well as GHS and 3ABN's allied ministry Remnant, have made it clear that they will force the Defendants to file as many motions to compel as possible, which will make the litigating of this frivolous and unconstitutional suit as tedious, lengthy, and expensive as possible.

Plaintiffs' counsel, by invoking Federal Rule 37(a)(5)(B) in the District of Minnesota, has indicated a willingness to make the Defendants pay for each such motion to compel that fails. The prospect, given 3ABN's immense resources, is that the Defendants will become bankrupt or intimidated before they can prepare an adequate defense. And that prospect is anything but just.

The filing of motions for protective orders is but one of the tactics of the Plaintiffs to

delay and stall and make more expensive this case, as is evident by their use of the instant motion as a basis in Minnesota for requesting a stay of enforcement of a subpoena in contempt of the order by Judge Saylor that there would be no stay. The filing of this overbroad, proposed Protective Order two and a half months ago was itself an act in contempt of Judge Saylor's order, and has impeded the just, speedy, and inexpensive progress of discovery.

II. THE PLAINTIFFS ARE IN VIOLATION OF 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.

Despite this very clear local rule, the Plaintiff Shelton's motion to quash in Minnesota attempts to impose the instant proposed, overbroad Protective Order upon any documents produced in response to the subpoena to MidCountry.

III. PLAINTIFFS REJECT REASONABLE PROPOSALS BY THE DEFENDANTS

The issue at stake in the instant motion is clearly not one of confidentiality, since Attorney Hayes spurned Defendant Pickle's offer to keep donor identities confidential unless the donor himself wished his identity to be made public. Rather, the goal is to impede discovery and to keep the public from knowing what is really going on in the affairs of a 501(c)(3) organization that is itself supported by donations that it solicits from the public.

IV. TRADE SECRETS QUESTION IS MOOT

The Defendants have no interest in disclosing 3ABN's trade secrets to its competitors, and the Defendants are not 3ABN's competitors. Yet it should be noted that Derrell Mundall, Plaintiff Shelton's ex-son-in-law and former marketing director of 3ABN, has worked and does work for 3ABN's main competitors. Having been allegedly wrongfully terminated from 3ABN,

and slandered and defamed by Plaintiff Shelton, he has been as motivated as any could be to share 3ABN's "trade secrets" with his subsequent employers, The question of the confidentiality of 3ABN's alleged trade secrets is largely moot.

V. DEFENDANTS ARE JOURNALISTS AND HAVE USED JUDICIOUS RESTRAINT

The Defendants are ecclesiastical, investigative journalists, and have a vested interest in reporting their findings to the public from which 3ABN solicits its public financial support. To impede that right is a violation of the First Amendment of the Constitution of the United States.

The Defendants have used restraint in what they published. Though in the possession of tax returns, bank statements, and sensitive correspondence, they have not published such.

VI. DEFENDANTS' INTEREST IN DEFENDING THEIR REPUTATIONS

The Plaintiffs have claimed that the Defendants would put false, defamatory material into court filings, which could then be disseminated on the internet. In reality, the Plaintiffs and their allies have done this very thing, as is evident by the posting of Gregory Thompson, son of 3ABN Board's chairman.

Rather than seek impoundment of documents through a protective order such as the one proposed in the instant motion, the Defendants prefer that the Plaintiffs be free to insert whatever they wish into their court filings so that the public can get a clear picture of what the Plaintiffs are really like. The Defendants continue to call for openness, transparency, and full disclosure on the part of the Plaintiffs, and wish to be afforded the same privilege as they make their defense against the Plaintiffs' frivolous and unconstitutional claims.

CONCLUSION

The Plaintiffs realize that the prospects of their winning this frivolous lawsuit are nil, and they have therefore adopted the strategy of impeding discovery and making it as expensive and intimidating as possible.

The Plaintiffs, not the Defendants, chose the forum of a lawsuit in U.S. District Court to settle their differences. They must play by the rules they have chosen, and cease to impede the most just, speedy, and inexpensive way of applying those rules.

For these reasons and those already given, the continued impeding of the progress of this case must cease, and the instant motion, which was filed in contempt of Judge Saylor's order, must be denied. Additionally, the Defendants request payment of reasonable expenses pursuant to Federal Rule 37(a)(5)(B) and 37(b)(2)(C).

Respectfully submitted,

Dated: March 3, 2008

s/ Robert Pickle, pro se

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AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavit and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and by email to Gailon Arthur Joy on March 3, 2008.

Dated: March 3, 2008

s/ Bob Pickle