

No. 09-2615

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

AFFIDAVIT OF ROBERT PICKLE

GAILON ARTHUR JOY, *PRO SE*
P.O. Box 37
Sterling, MA 01564
(508) 499-6292

ROBERT PICKLE, *PRO SE*
1354 County Highway 21
Halstad, MN 56548
(218) 456-2568

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury, based on his own personal knowledge and information:

1. Attached hereto as **Exhibit A** is Plaintiffs' counsel's communications stating that I must file purchase orders for printing under seal if I file them.

2. Attached hereto as **Exhibit B** is Plaintiffs' designation of appendix threatening sanctions if we seek to file these documents with this Court, even though these documents were offered to the district court.

3. From all the documents we are seeking to file under seal, including the CD/DVD, I have done my best to redact all financial account numbers, social security numbers, and birthdates in compliance with Fed.R.App.P. 25(a)(5) and Fed.R.Civ.P. 5.2(a), including the taxpayer-identification number of Three Angels Broadcasting Network, Inc., which is a matter of public record. I am unaware of any names of minor children in any of those documents.

4. We are refileing in the instant case, provisionally under seal, the Affidavit of Robert Pickle filed in 1st Cir. Case No. 08-2457 on November 19, 2009, in order to have this affidavit a part of the record in this case. The clerk has informed us, based on this Court's order of December 4, 2009, that the documents referenced in that affidavit are already a part of the record in the instant appeal.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 3rd day of December, 2010.

s/ Bob Pickle
Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 3rd day of December, 2010.

s/ Danielle Rhea Brommenschenkel
Notary Public—Minnesota

My Commission Expires Jan. 31, 2015

Ex. A

Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion
From: Bob
Date: Wed, 17 Nov 2010 17:45:45 -0600
To: Greg Simpson
CC: "G. Arthur Joy", John Pucci, Lizette Richards

Counselor Simpson:

I am not using you as a source of legal advice. You are either misinformed, or are once again attempting to commit extrinsic fraud.

Consult *Moore's Federal Practice* § 310 if you are in doubt. The case law is clear.

Bob Pickle

----- Original Message -----

Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion
Date: Wed, 17 Nov 2010 17:25:49 -0600
From: Gregory Simpson <gsimpson@>
To: Bob <bob@>
CC: G. Arthur Joy <g.arthur.joy@>, John Pucci <Pucci@>, Lizette Richards <Richards@>

I think you are using me as a source of legal advice because you suspect I may be right. I will play along because it may save my client the fees that would be necessary to respond if you filed these documents.

You say that the Court of Appeals needs to see the documents in order to review Judge Saylor's decision to exclude them. On the contrary, the admissibility of the excluded documents can ONLY be reviewed by the First Circuit without viewing the documents themselves. The Court of Appeals is a reviewing court. It reviews the district court's decisions using the information that was before the district court, and nothing more. Hence, FRAP 10.

Judge Saylor concluded that these documents were irrelevant based on your description of them in the motion to file them under seal, (and the fact that you had been ordered to return them to me but ignored the order). The Court of Appeals will review that ruling under an abuse of discretion standard. The Court of Appeals will make this decision without looking at the documents themselves, just as Judge Saylor did.

I am not just posturing. This is a clear cut issue, and these documents may not be filed.

M. Gregory Simpson
Meagher & Geer, P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Direct: (612) 337-9672
Fax: (612) 877-3138
gsimpson@

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From: Bob [<mailto:bob@>]
Sent: Wednesday, November 17, 2010 4:55 PM
To: Gregory Simpson
Cc: G. Arthur Joy; John Pucci; Lizette Richards
Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion

Thank you for your clear answer as to requiring us to file under seal mere purchase orders for printing, purchase orders which contain nothing qualifying for confidentiality protection.

As to FRAP 10, the admissibility of excluded evidence cannot be reviewed if that evidence is not included in the record on appeal.

Bob Pickle

----- Original Message -----

Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion
Date: Wed, 17 Nov 2010 16:37:33 -0600
From: Gregory Simpson <gsimpson@>
To: Bob <bob@>
CC: G. Arthur Joy <g.arthur.joy@>, John Pucci <Pucci@>, Lizette Richards <Richards@>

You may not file these documents at all because of FRAP 10. If you file them in violation of FRAP 10, you must do so under seal because of the protective order.

M. Gregory Simpson
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reply to the sender that you have received this message in error, then delete it. Thank you.

From: Bob [<mailto:bob@>]
Sent: Wednesday, November 17, 2010 4:25 PM
To: Gregory Simpson
Cc: G. Arthur Joy; John Pucci; Lizette Richards
Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion

Counselor Simpson:

I do not believe that you disagree with each assertion in my email.

Once again, let me remind you of the provisions of the confidentiality order:

If any non-designating party or their counsel intends to use at trial, or for the purpose of any motion filed with the Court, any documents, interrogatory answers, deposition testimony, or other discovery responses which have been designated as Confidential Information, he/she shall so advise designating party's counsel seven (7) days prior to such use, and counsel for all parties shall confer in an effort to agree upon a procedure to maintain the confidentiality of such Confidential Information.

Therefore, I must confer with you as to whether you will require us to file mere purchase orders for printing under seal. Shall I assume from your response that you do not care whether they are filed under seal or not, but that you only care whether they are filed at all? If this be the case, I shall file them not under seal.

However, if my assumption is incorrect, and you require us to file them under seal, then please plainly state so.

Bob Pickle

----- Original Message -----

Subject: RE: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion
Date: Wed, 17 Nov 2010 15:52:08 -0600
From: Gregory Simpson <gsimpson@>
To: Bob <bob@>
CC: G. Arthur Joy <g.arthur.joy@>, John Pucci <Pucci@>, Lizette Richards <Richards@>

Bob-

I disagree with each assertion in your email below, but am not interested in debating you.

I will not agree to the filing of these documents, under seal or otherwise. Do what you have to do, and I will respond as I indicated.

M. Gregory Simpson
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From: Bob [<mailto:bob@>]
Sent: Wednesday, November 17, 2010 2:53 PM
To: Gregory Simpson
Cc: G. Arthur Joy; John Pucci; Lizette Richards; Gerald Duffy; Kristin L. Kingsbury; Jerrie Hayes; William Christopher Penwell
Subject: Re: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion

Counselor Simpson,

As far as the confidentiality order is concerned, upon which Judge Saylor's order of October 30, 2008, was based, we do not have to return these documents, as you very well know.

More importantly, the First Circuit ruled a year ago that the Remnant documents, by virtue of being offered to the lower court, were part of the record on appeal. Therefore, the two documents in question are also part of the record on appeal since we offered them to the lower court.

You have failed to answer my question: Will you require us to file a motion to file under seal these two documents? I think if you so require, it will not impress the appellate court. Will you so require?

Bob Pickle

----- Original Message -----

Subject: 3ABN v. Pickle & Joy - Response to Pickle's Question regarding motion

Date: Wed, 17 Nov 2010 14:06:04 -0600

From: Gregory Simpson <gsimpson@>

To: Bob <bob@>

CC: G. Arthur Joy <g.arthur.joy@>, John Pucci <Pucci@>, Lizette Richards <Richards@>

Bob-

You may not file these documents at all, whether under seal or not.

An elementary rule of appellate procedure is that the appellate record can only include materials that were filed with the district court. See FRAP 10. You filed a motion in the district court for leave to file these two documents under seal, then identified as Exhibits Q and R to Doc. 171. Your motion is Doc. 173. We opposed your motion in Doc. No. 174. Judge Saylor denied your motion in Doc. 193 on the basis that the documents were not relevant. He pointed out that you have already been ordered to return these documents to me. You continue to flout the district court's order to return these documents.

I will ask that you be sanctioned if you file these documents, or make a motion to file them. They were never filed with the district court. You are not even supposed to have them.

M. Gregory Simpson
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Direct: (612) 337-9672
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From: Bob [<mailto:bob@>]
Sent: Tuesday, November 16, 2010 8:30 PM
To: Gregory Simpson
Cc: G. Arthur Joy
Subject: Question regarding motion

Counselor Simpson:

Regarding TABN000677 and TABN000680, I was wondering if you are going to require us to file a motion seeking leave to file under seal these two documents. These two purchase orders do not contain any confidential information as far as I can tell. They merely identify the number of *3ABN World's* that Smith & Butterfield printed, how much was charged, and when the finished magazines arrived back at 3ABN.

It seems to me that it will not impress the appellate court if you require us to file these two documents under seal.

Bob Pickle

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Ex. B

In The
United States Court of Appeals
For The First Circuit

No. 08-2457 & 09-2615

Three Angels Broadcasting Network, Inc.,
an Illinois Non-Profit Corporation;
Danny Lee Shelton,

Appellees,

v.

Gailon Arthur Joy and Robert Pickle,

Appellants.

**APPELLEES' DESIGNATION OF ADDITIONAL PARTS
TO BE INCLUDED IN THE APPENDIX**

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

John P. Pucci
J. Lizette Richards
Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060
Attorneys for Appellees

Pursuant to Federal Rule of Appellate Procedure 30(b)(1), Appellees Three Angels Broadcasting Network, Inc. and Danny Lee Shelton hereby designate additional parts of the record to which it wishes to direct the Court's attention. Pursuant to the cited Rule, "the Appellant must include the designated parts in the appendix."

This designation expressly *excludes* any materials filed in the District Court under seal or that should have been filed under seal because they were produced under the Protective Order issued by the District Court in this case.

APPELLEES HEREBY GIVE NOTICE TO APPELLANTS of the requirement that the inclusion of any material that was filed under seal in the District Court or that has been designated as subject to the Protective Order issued by the District Court in this case must be filed under seal with the First Circuit Court of Appeals, and that as to such material there must be a "specific and timely motion" in compliance with the court's rules regarding the filing of sealed materials. *See* First Circuit Court of Appeals Local Rule 30.0(g). Failure to adhere to this Rule will result in a motion for sanctions against the Appellants.

APPELLEES GIVE FURTHER NOTICE TO APPELLANTS that their inclusion in the Appendix of filings and materials outside the record that are irrelevant to the orders from which the Appellants appeal is unreasonable and vexatious and may subject them to an award of costs and other sanctions authorized by First Circuit Court of Appeals Local Rule 30.0(f).


**DESIGNATION OF ADDITIONAL PARTS TO
BE INCLUDED IN THE APPENDIX**

FILING DATE	Docket #	DESCRIPTION
10/23/2008	120	Plaintiffs MOTION to Dismiss <i>voluntary</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Simpson, M.) (Entered: 10/23/2008)
10/23/2008	121	Plaintiffs MEMORANDUM in Support re <u>120</u> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 10/23/2008)
10/23/2008	122	AFFIDAVIT of Greg Simpson in Support re <u>120</u> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton with exhibits 1 & 2
10/23/2008	123	AFFIDAVIT of Walt Thompson in Support re <u>120</u> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 10/23/2008)
11/03/2008	129	Judge F. Dennis Saylor, IV: ORDER entered. ORDER DISMISSING CASE.(Castles, Martin) (Entered: 11/03/2008)
11/26/2008	140	MEMORANDUM in Opposition re <u>130</u> MOTION for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 11/26/2008)
12/22/2008	158	Plaintiffs MEMORANDUM in Opposition re <u>153</u> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 12/22/2008)
12/22/2008	159	AFFIDAVIT of M. Gregory Simpson in Opposition re <u>153</u> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. with exhibit 1. (Entered: 12/22/2008)
04/13/2009	166	Judge F. Dennis Saylor, IV: ORDER entered denying <u>130</u> Motion for Costs. (Castles, Martin) (Entered: 04/13/2009)

05/11/2009	174	Plaintiffs Opposition re <u>173</u> MOTION for Leave to File <i>Under Seal</i> documents pertaining to Defendants' motions for reconsideration and motion to amend findings filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 05/11/2009)
05/11/2009	175	Plaintiffs MEMORANDUM in Opposition re <u>169</u> MOTION to Alter Judgment MOTION for Reconsideration re <u>130</u> MOTION for Costs, <u>153</u> MOTION for Leave to File <i>under Seal Exhibit A</i> for Doc. # 152 MOTION to Amend Order on Motion for Leave to File, <u>166</u> Order on Motion for Costs MOTION for Reconsideration re <u>130</u> MOTION for Costs, <u>153</u> MOTION for Leave to File <i>under Seal Exhibit A</i> for Doc. # 152 MOTION to Amend Order on Motion for Leave to File, <u>166</u> Order on Motion for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 05/11/2009)
07/08/2009	188	Plaintiffs MEMORANDUM in Opposition re <u>183</u> MOTION for Sanctions filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 07/08/2009)

Respectfully submitted,

Dated: November 23, 2010

By 
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