

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

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

Case No. 08-MC-16

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**PLAINTIFFS' MOTION TO QUASH, MODIFY
OR STAY SUBPOENA *DUCES TECUM***

Plaintiffs Three Angels Broadcasting Network, Inc (“3ABN”) and Danny Lee Shelton bring this motion to quash, modify or stay the subpoena *duces tecum* issued by this Court on December 28, 2007 and served by *pro se* Defendants Robert Pickle and Gailon Joy upon “Alan Lovejoy or Keeper of the Records at Gray Hunter Stenn LLP” (“Gray Hunter”). In support of this motion, Plaintiffs state as the following:

1. This motion is brought in the Court from which the subpoena issued because Fed. R. Civ. P. 45 (c)(3) contemplates that motions to quash subpoenas be brought before the “issuing” court. *See also* Fed. R. Civ. P. 37(a)(2) (motion for an order to a nonparty is made in the court where discovery is or will be taken).

2. The issues raised herein will also be brought before the Court in which the case is pending, in Massachusetts, as part of a broader motion to control and curtail third party discovery activities and restrict the scope of permissible discovery to issues in the

case. Plaintiffs request that the Court quash the subpoena or, in the alternative, order that Gray Hunter's response to the subpoena be deferred until the Massachusetts court has an opportunity to consider the matter.

3. This motion seeks to preserve the status quo until that Court has a chance to rule on the scope of permissible discovery.

4. Further facts and details of the underlying case are set forth in the accompanying Memorandum of Law in Support of Plaintiffs' Motion to Quash Subpoena.

5. The subpoena was apparently served on March 17, 2008. Lovejoy is 3ABN's outside accountant, and Gray Hunter is his firm.

6. The subpoena seeks all of Gray Hunter's records regarding 3ABN and Danny Shelton from 1998 to present. It was issued in connection with litigation pending in the United States District Court for the District of Massachusetts captioned *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle* (No. 07-40098-FDS (D. Mass.)).

7. Gray Hunter, through counsel, had initially objected to the subpoena and refused to comply, but now advises that it intends to produce all responsive documents on June 24, 2008, because it does not wish to incur the expense of defending against a motion to enforce the subpoena. Plaintiffs, through counsel, have requested that Gray Hunter resist the subpoena on the basis of the issues raised in this motion and on the basis of the Illinois privilege against disclosure of records obtained by an accountant in that capacity. *See* 225 Ill. Comp. Stat. § 450/27. At this writing, Gray Hunter has not changed its decision.

8. Under the Federal Rules, a court *must* quash or modify a subpoena if it “subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A). A court *may* quash or modify a subpoena “to protect a person subject to or affected by the subpoena” if it requires disclosing a trade secret or other confidential commercial information. Fed. R. Civ. P. 45(c)(3)(B). A subpoena of third party accounting records must request records that exhibit a nexus to the issues in the complaint. *See Federal Deposit Ins. Corp. v. Mercantile Nat’l Bank of Chicago*, 84 F.R.D. 345, 350 (N. D. Ill. 1979) (ordering plaintiff to modify subpoena of accounting records and submit to court for approval).

9. Defendants’ cover letter explaining the purpose of the subpoena indicates that the requested information is necessary for two reasons: (1) to respond to discovery requests served by Plaintiffs on Defendants; and (2) to defend against three factual allegations contained in Paragraph 46 of the Complaint involving several specific financial transactions.

10. Manifestly, these reasons do not support the scope of the requests, which extend to every financial record of 3ABN and Danny Shelton since 1998. Plaintiffs submit that Defendants seek this information as part of a wide-ranging fishing expedition for unknown misdeeds by the Plaintiffs, which nobody has reason to believe occurred, and not for any purpose related to the litigation at hand.

11. For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order quashing Defendants’ December 28, 2007 subpoena *duces tecum* or, in the alternative, order the response to the subpoena be deferred until the Massachusetts court in which the underlying action is pending has an opportunity to rule upon the matter.

Dated: June 16, 2008.

Respectfully Submitted,

Three Angels Broadcasting Network, Inc.,
and Danny Lee Shelton

By: /s/ Jennifer E. White
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 16, 2008, she served this **PLAINTIFFS' MOTION TO QUASH, MODIFY OR STAY SUBPOENA DUCES TECUM** upon all counsel of record, via U.S. Mail, postage pre-paid, and addressed as follows:

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