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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting)	
Network, Inc., et al.,)	
Plaintiffs,)	
)	
vs.)	Case No. 07cv40098-FDS
)	
Gailon Arthur Joy, et al.,)	
Defendants.)	

BEFORE: The Honorable F. Dennis Saylor, IV

Motion Hearing

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
June 21, 2007

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United States District Court
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12 for the Plaintiffs

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P R O C E E D I N G S

THE CLERK: All rise.

Court is now open. You may be seated.

Case No. 07-40098, Three Angels Broadcasting Network
versus Joy, et al.

Counsel, please note your appearance for the record.

MR. PUCCI: Your Honor, John Pucci for the plaintiffs.

THE COURT: Good afternoon.

MR. PUCCI: I have with me Christopher Penwell, who
was previously admitted pro hac vice, who makes his first
appearance before the Court today.

THE COURT: Good afternoon.

MR. PENWELL: Good morning, your Honor.

MR. PUCCI: Lizette Richards from my office who was
here with me previously.

THE COURT: Good afternoon.

MR. HEAL: Good afternoon, your Honor. I'm Laird Heal
for the defendant Bob Pickle.

THE COURT: Good afternoon.

MR. JOY: Your Honor, I'm Gailon Arthur Joy.

THE COURT: All right. And you're appearing pro se,
Mr. Joy?

MR. JOY: Yes, sir.

THE COURT: All right. Let me cut to the chase, so to

1 speak. I am -- on the motion for a permanent impoundment, I
2 have considered this at great length, and there are lots of
3 different strains of case law and rules and so forth that
4 affect this decision, but the bottom line is that I'm going to
5 lift the impoundment order and unseal the case and the
6 pleadings, and I will explain myself as best as I can on the
7 record.

8 I ordered a temporary impoundment to ascertain the
9 nature of the issues and to try to figure out what the
10 underlying law was. As I think everyone agrees, lawsuits are
11 presumptively public. Portions of lawsuits or occasionally
12 entire lawsuits can be made nonpublic for compelling reasons,
13 and if narrowly tailored.

14 Under our local rules, particularly local Rule 7.2,
15 blanket impoundments are not permitted and a separate motion
16 for impoundment is required each time a document or a group of
17 documents is to be filed.

18 And I note also that impoundment imposes a significant
19 burden on the Court and the clerk's office, even individual
20 docket -- documents, never mind the entire case.

21 Parties do not have license to file or to state in
22 pleadings or to attach anything that they please, among other
23 things, under Federal Rule of Civil Procedure 12 on motions may
24 be made to strike redundant, immaterial, impertinent, or
25 scandalous material. Certain types of information, such as

1 personal identifiers, Social Security numbers, and so forth are
2 normally and indeed are required to be redacted from pleadings
3 and exhibits.

4 And Rule 26(c) provides protections in the discovery
5 process for confidential information.

6 So I am going to lift the order. The -- the
7 smorgasbord of options remain that individual motions to
8 impound individual items under appropriate circumstances,
9 motions to strike, redactions, and protective orders in the
10 discovery process, and I will consider any of those under
11 appropriate circumstances and will consider the imposition of
12 sanctions in appropriate circumstances to achieve the goals.

13 I note and underscore that the fact the case involves
14 a claim of defamation creates a problem for the plaintiff,
15 because the plaintiffs are required to identify the defamatory
16 comments in the pleadings, and necessarily those statements
17 tend to be repeated and underscored. That is not what my
18 judgment would warrant or a blanket -- a blanket impoundment,
19 nor is the fact that pleadings have been or can be reported on
20 or circulated by the Internet.

21 There is a litigation privilege, and it goes perhaps
22 not as far as it has been suggested. If statements are
23 defamatory, particularly things that are published that are
24 made outside the litigation context or later used as exhibits
25 in litigation, they're subject to tort remedies for remedies

1 for defamation, by which I mean the mere fact that you've said
2 something and stapled it as an exhibit to a pleading does not
3 mean that it's not defamatory or that it's not privileged.

4 So the bottom line is I am not unsympathetic to
5 plaintiffs' concerns, but as I read the case law and the rules,
6 a blanket impoundment is not warranted under the circumstances,
7 and we will take each item as it comes.

8 I'm also willing to entertain, among other things, the
9 possibility of a reasonably expedited schedule and/or trial to
10 bring the matter to a head more quickly than it might otherwise
11 be done.

12 Quickly on defendant's motion to strike supplemental
13 pleadings for sanctions, there's -- there was an issue as to
14 whether service was improper. I'm going to deny the motion
15 without prejudice meaning that if there was a future service
16 problem that that can be part of the mix.

17 And the second piece of it was that the plaintiff
18 submitted redacted exhibits. There is nothing improper in my
19 judgment in submitting redacted exhibits under the
20 circumstances here. Plaintiff may need to produce unredacted
21 exhibits in discovery, and I'm not making any judgment one way
22 or the other, but it's possible that they may, and there may be
23 a need for a protective order in place. That's an issue for
24 another day, but under the circumstances, I saw no -- nothing
25 improper or inappropriate about the redacted exhibits, and so

1 that motion is denied.

2 So with that, what I propose to do, I think, is to
3 turn our attention to the schedule. What I think probably
4 ought to occur next is to have a scheduling conference and to
5 agree on a timetable for discovery motion practice and teeing
6 the case up as necessary for trial.

7 Mr. Pucci, let me hear from you, stating your view of
8 the statute.

9 MR. PUCCI: May I have just a moment, your Honor?

10 THE COURT: Yes.

11 (Counsel conferred.)

12 MR. PUCCI: Your Honor, we have initiated contact with
13 defense counsel to attempt to schedule a 26 -- Rule 26
14 conference between the parties. We've -- it's been complicated
15 by the fact that Mr. Joy is now pro se, and there has been some
16 hiccups in that process. I think we've ironed it out now.

17 THE COURT: Let -- let me stop before I forget the
18 thought. Mr. Joy, you have the right to represent yourself,
19 but the same rules apply to you. I can cut you a little bit of
20 slack, but not a whole lot; and if you have obligations to meet
21 with the other side and discuss things and so forth, you're
22 going to have to do that. Okay?

23 MR. PUCCI: And --

24 THE COURT: I'm sorry. Mr. Joy.

25 MR. JOY: Yes. And to that, your Honor, in my last

1 correspondence I noted that if this was no longer impounded,
2 then the issue would be moot because I have a problem with the
3 conference. The question was whether we should do the
4 conference as in here or should we do it on a much broader open
5 communications system, and that's now moot, your Honor.

6 THE COURT: Mr. Pucci.

7 MR. PUCCI: So we had hoped to have that conference
8 before we arrived here today, but we're unable to do it, in
9 part, because of the switch in representation, but more
10 significantly, in a remaining issue that precludes us from
11 having a Rule 26 conference is that Mr. Heal, apparently based
12 on insistence from his client, has required us to have that
13 conference in person, and the rule does not state that. The
14 rule permits the Court to order it to be in person, I think,
15 but we have -- we are seeking to have that Rule 26 conference
16 by phone.

17 THE COURT: And I'm going to so order. I mean, I
18 don't -- Mr. Heal, I'm not going to -- you don't -- you don't
19 have to respond. I'm simply going to state that the conference
20 may occur by telephone. The rules are intended to permit not
21 only the just adjudication of cases but the efficient
22 adjudication of cases. Mr. Pucci is, I think, from
23 Northhampton.

24 Are you from Illinois?

25 MR. PUCCI: Minnesota.

1 MR. PENWELL: Minnesota.

2 THE COURT: Minnesota. I grew up in Michigan so I
3 meant no Midwestern slant there, but the parties may confer by
4 telephone. It's absolutely permissible.

5 MR. PUCCI: And so in terms of scheduling, with that
6 having been clarified, what I'd like to do is try to firm a
7 date up today with counsel to set -- have a Rule 26 conference
8 and follow that process in the normal course; that is, we would
9 have a conference. We would discuss and dialogue about all the
10 issues, the e-discovery issues, the automatic disclosure, the
11 scheduling issues, and hopefully be able to present, in normal
12 fashion, a proposed order 14 days before a Rule 16 conference
13 with the Court, which would then lay out the -- the procedures
14 and issues for the Court to resolve.

15 THE COURT: What I was going to suggest is that we
16 hold a scheduling conference -- I'm out the next two weeks
17 anyway -- that we hold a scheduling conference in mid to late
18 July and that I don't need these things necessarily 14 days
19 before the conference. Two or three is probably enough
20 depending on my schedule. In other words, give me time to
21 digest how complicated they are, but I can live with that. So
22 why don't we set that.

23 Does that work, Mr. Pucci?

24 MR. PUCCI: You're talking about a rule -- actual Rule
25 16?

1 THE COURT: Scheduling conference, yes.

2 MR. PUCCI: I think we can do that, sure.

3 THE COURT: Mr. Heal, does that work for you?

4 MR. HEAL: We really have no problem.

5 THE COURT: Okay. Mr. Joy?

6 MR. JOY: That's fine, sir.

7 THE COURT: All right. Let's find a date then.

8 July the 23rd, Monday, at three o'clock, does that
9 work for everyone?

10 MR. JOY: Yes.

11 MR. PUCCI: It's fine with the plaintiffs, your Honor.

12 MR. HEAL: And, your Honor, if I may, to respond to
13 what seems to me to be some remarks intended to prejudice you
14 against me, they proposed that we have a telephone conference
15 on Tuesday; and my client simply said, again, if the case is
16 sealed, why are you having a telephone conference that everyone
17 can listen in on, but the whole issue of --

18 THE COURT: I don't want to get into that. If he
19 meant to prejudice me, he didn't succeed. I just want -- I
20 simply wanted to proceed and move to the next step, which is a
21 scheduling conference. I want you to do it efficiently, which
22 is by telephone call, if that's what makes sense, and I'm just
23 going to leave it there. Okay. I expect all counsel to act in
24 a professional manner, and I have no reason to think that
25 you're not at this point, okay.

1 All right. July 23rd then at three o'clock, we'll
2 have a scheduling conference.

3 I will issue my standard order, which indicates that
4 the parties suggest a timetable, I think, in which discovery
5 motion practice would be -- in a case of normal complexity
6 would be completed in about a year.

7 I will entertain a suggestion that a year is too short
8 because the case is too complex or that a year is too long
9 because the case can be resolved more quickly. I'll leave it
10 up to you.

11 My -- my experience, I'm sure you will not be shocked
12 to hear, is that if I order six months for discovery, all the
13 discovery occurs in the fifth and sixth month. If I order
14 eight months, it all occurs in the seventh and eighth months,
15 and so forth. So just try to make the best assessment you can
16 of what it is you need to do and what time it is you need to do
17 it in. And I'll look at either the joint proposed schedule or
18 the competing schedules and make the best decision I can, but
19 my default position will be discovery motion practice done one
20 year from now.

21 Okay?

22 MR. PUCCI: And do I understand we will get something
23 from the Court?

24 THE COURT: You'll get my standard order, yes.

25 MR. PUCCI: Soon? Or -- or after the Rule 16

1 conference? That's what I'm confused about.

2 THE CLERK: By the time you get back to your office.

3 THE COURT: By the time you get back to your office,
4 you'll have it.

5 MR. PUCCI: Soon enough.

6 THE COURT: Okay. Is there anything else that we have
7 to talk about at this stage? I think there was a motion for an
8 extension of time; is that now moot?

9 MR. HEAL: That is now moot, your Honor.

10 THE COURT: Okay.

11 MR. PUCCI: Excuse me one minute.

12 (Counsel conferred.)

13 MR. PUCCI: We have nothing else for the Court today,
14 your Honor.

15 THE COURT: All right. Yes, Mr. Joy.

16 MR. JOY: I have one question that's puzzled me. When
17 you have a corporation, Three Angels Broadcasting Network, in
18 one of my communications with the other side, I pointed out
19 that we would like to know which counsel is representing the
20 corporation and which counsel is representing Danny Shelton
21 individually.

22 That has not been clarified for me, and I'm wondering
23 if it's appropriate to ask that because --

24 THE COURT: Unless there's a conflict, counsel can
25 represent both.

1 Mr. Pucci?

2 MR. PUCCI: We represent both. I'm not aware of a
3 conflict. We thoroughly discussed the issues with our clients.
4 We're completely unaware of that. I'm not opposed to the Court
5 in providing Mr. Joy some guidance on it. I see this bubbling
6 up as a Rule 26 issue that's going to land on your deck anyway.

7 THE COURT: I'm not going to provide an advisory
8 opinion. If -- if there is no conflict of interest, you can
9 represent more than one client. If there is an actual or
10 potential conflict of interest, and the other side raises it, I
11 have to deal with the issue, but I have no way of making this
12 call now.

13 Mr. Joy.

14 MR. JOY: We haven't done our affirmative offenses
15 yet, nor have we done our counterclaim, and I would suggest to
16 the Court that it most likely would incur a conflict.

17 THE COURT: Well, we'll -- we'll take that as it
18 comes.

19 Have you been served with a complaint? Has Mr. Joy
20 been served?

21 MR. JOY: Yes, sir.

22 THE COURT: You ordinarily have 20 days after service
23 to file an answer in a counterclaim.

24 Is there any reason to extend that time? Do you need
25 more time?

1 MR. JOY: Well, yeah, we do. It's a rather complex
2 case; and, of course, we've been dealing with the issue of
3 the -- sequestering the file, et cetera, and so that has kind
4 of been to the present.

5 THE COURT: I want the issues to be teed up
6 sufficiently in advance of July 23rd. You can have an
7 intelligent conversation about it.

8 When were you served; do you remember?

9 MR. JOY: I think it was the 1st of May, your Honor,
10 the 1st or 2nd. I'm not sure.

11 THE COURT: Mr. Pucci?

12 MR. PUCCI: There was an answer filed by Mr. Heal for
13 both defendants.

14 THE COURT: Okay.

15 MR. PUCCI: Without counterclaims, just so that the
16 Court's aware, as we're discussing, you know, 20 days to file
17 an answer. An answer was filed already for both defendants.

18 THE COURT: All right. One problem with being sealed
19 is I cannot click on the computer and look at the docket. What
20 I'm going to do right now is leave matters exactly where they
21 are. If the party wants to move for some relief, I'll
22 entertain it at that point, but I do think the issues ought to
23 be reasonably well joined by July 23rd so we can have an
24 intelligent discussion about what we're going to do and in what
25 order; and if there is a conflict issue regarding counsel, that

1 we tee it up, so I can decide it.

2 MR. PUCCI: Yes, sir.

3 THE COURT: Anything else from the plaintiffs?

4 MR. PUCCI: No, sir.

5 THE COURT: Anything else from the defense?

6 MR. HEAL: Thank you very much, your Honor.

7 THE COURT: Okay. Thank you. And we'll stand in
8 recess.

9

10 (At 3:58 p.m., Court was adjourned.)

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C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby certify that the foregoing transcript, consisting of 15 pages inclusive, is a true and accurate transcription of my stenographic notes in Case No. 07cv40098, Three Angels Broadcasting Network, Inc., et al., versus Gailon Arthur Joy, et al., before F. Dennis Saylor, IV, on June 21, 2007, to the best of my skill, knowledge, and ability.

/s/ Marianne Kusa-Ryll

December 3, 2009

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter