

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THREE ANGELS BROADCASTING
NETWORK, INC., AN ILLINOIS NON-PROFIT
CORPORATION, AND DANNY LEE SHELTON,
INDIVIDUALLY,

CASE No. 08-MC-7 (RHK/AJB)

PLAINTIFFS,

ORDER

v.

GAILON ARTHUR JOY AND
ROBERT PICKLE,

DEFENDANTS.

This matter is before the Court, United States Magistrate Judge Arthur J. Boylan, on Plaintiff Danny Shelton's Motion to Quash Subpoena *Duces Tecum* [Docket No. 1] and Defendants' Motion to Dismiss Plaintiff Danny Shelton's Motion to Quash Subpoena *Duces Tecum* [Docket No. 12]. A hearing was held on March 4, 2008, in the United States District Courthouse, 180 East Fifth Street, St. Paul, MN, 55101. Jerrie M. Hayes, Esq., represented Plaintiffs. Gailon Arthur Joy and Robert Pickle appeared *pro se* by telephone.

Based upon the record, memoranda, and oral arguments of counsel, **IT IS HEREBY ORDERED** that Plaintiff Danny Shelton's Motion to Quash Subpoena [Docket No. 1] is **DENIED** and Defendants' Motion to Dismiss Plaintiff Danny Shelton's Motion to Quash Subpoena [Docket No. 12] is **DENIED AS MOOT**.



IT IS FURTHER ORDERED that:

1. Defendant Robert Pickle shall pay MidCountry Bank's reasonable costs in responding to the subpoena; and

2. Upon payment of its costs by Defendant Robert Pickle, MidCountry Bank shall send all documents falling within the scope of the subpoena, **under seal** directly to:

U.S. Magistrate Judge Timothy S. Hillman
United States District Court
District of Massachusetts
Donohue Federal Building & U.S. Courthouse
595 Main Street
Worcester, MA 01608

3. MidCountry Bank shall not provide copies of the documents to any party herein absent further order of the court.

Dated: March 28, 2008

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

MEMORANDUM

This Court has been advised by the parties that Plaintiffs' Motion for a Protective Order has been taken under advisement by Magistrate Judge Hillman in the District of Massachusetts. Once the Protective Order is entered by the court, the documents produced under seal by MidCountry Bank in response to Defendant Pickle's subpoena in this district may be reviewed by Magistrate Judge Hillman

for compliance with the approved Protective Order. This Order shall not preclude the parties from seeking relief from Magistrate Judge Hillman as to the disclosure of the documents produced pursuant to the MidCountry Bank subpoena.

AJB

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THREE ANGELS BROADCASTING
NETWORK, INC., AN ILLINOIS NON-PROFIT
CORPORATION, AND DANNY LEE SHELTON,
INDIVIDUALLY,

CASE No. 08-MC-7 (RHK/AJB)

PLAINTIFFS,

**ORDER ON DEFENDANT'S
REQUEST FOR RECONSIDERATION¹**

V.

GAILON ARTHUR JOY AND
ROBERT PICKLE,

DEFENDANTS.

This matter is before the Court, United States Magistrate Judge Arthur J. Boylan, on June 2, 2008, Defendant Robert Pickle filed a Request for Reconsideration of the Court's March 28, 2008, Order [Docket No. 29]. In that Order, the Court ordered the production of records subpoenaed by the Defendants from MidCountry Bank, N.A. ("MidCountry"). Said production was to be made under seal to Magistrate Judge Timothy S. Hillman in the District of Massachusetts to accommodate the pending protective order Magistrate Judge Hillman was to issue. The protective order was issued on April 17, 2008. Mr. Pickle claims that this confidentiality order "renders obsolete the provision of this Court's Order to produce the subpoenaed documents under seal to Magistrate Judge Hillman." See Mem. 1 [Docket No. 30]. Mr. Pickle also asked the Honorable F. Dennis Saylor of the District of Massachusetts in a status

¹ The Court holds that Mr. Pickle's request is best characterized as a "Request for Reconsideration" seeking modification of the undersigned's March 28, 2008, Order [Docket No. 28].



conference on May 7, 2008, to allow the subpoenaed documents to be produced directly to him, to which Judge Saylor referred Mr. Pickle back to this Court for such relief. For these reasons, Mr. Pickle requests that this Court amend its order to allow the subpoenaed records of MidCountry Bank to be produced directly to the office of Mr. Pickle, while in accordance with Magistrate Judge Hillman's confidentiality order.

Plaintiff Danny Lee Shelton responded in opposition to Defendants' request on June 18, 2008 [Docket No. 34]. Mr. Shelton argues that Mr. Pickle's motion should be denied as an improper motion for reconsideration pursuant to Local Rule 7.1(g). Id. at 3. In particular, Mr. Shelton asserts that Mr. Pickle's motion should be denied for failure to obtain "express permission of the Court" by means of a letter to the Court of no more than two pages as required by Rule 7.1(g). Id. at 4. Furthermore, upon reaching the merits of Mr. Pickle's motion, Mr. Shelton contends that Magistrate Judge Hillman's issuance of a protective order is not a "compelling circumstance" justifying reconsideration of this Court's previous Order. Id. at 5.

Based upon the record, memoranda, and pursuant to Local Rule 7.1(g), **IT IS HEREBY ORDERED** that Mr. Pickle's Request for Reconsideration is **DENIED**. Mr. Pickle has failed to show compelling circumstances to overturn the Court's previous Order. Moreover, this Court specifically stated that the March 28, 2008, Order did not preclude the parties from seeking relief from Magistrate Judge Hillman as to the disclosure of the documents produced pursuant to the MidCountry Bank subpoena. See Order 2-3 [Docket No. 28]. Therefore, the Court directs Mr. Pickle to seek relief from Magistrate Judge Hillman concerning the production of documents by MidCountry Bank subject to the subpoena served in this district.

Dated: July 1, 2008

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting)	
Network, Inc., and)	
Danny Lee Shelton,)	
Plaintiffs,)	
)	
)	
vs.)	Case No. 07cv40098-FDS
)	
)	
Gailon Arthur Joy,)	
and Robert Pickle,)	
Defendants.)	

BEFORE: The Honorable F. Dennis Saylor, IV

Status conference/Motion for Voluntary Dismissal

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
October 30, 2008

Marianne Kusa-Ryll, RDR, CRR
Official Court Reporter
United States District Court
595 Main Street, Room 514A
Worcester, MA 01608-2093
508-929-3399

Mechanical Steno - Transcript by Computer



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

(via telephone)
Siegel, Brill, Greupner, Duffy & Foster, P.A.
M. Gregory Simpson, Esquire
100 Washington Avenue South, Suite 1300
Minneapolis, Minnesota 55401
for the Plaintiffs, Three Angels Broadcasting Network, Inc.,
and Danny Lee Shelton

Fierst, Pucci & Kane, LLP
John P. Pucci, Esquire
64 Gothic Street, Suite 4
Northampton, Massachusetts 01060
for the Plaintiffs, Three Angels Broadcasting Network, Inc.,
and Danny Lee Shelton

(via telephone)
Gailon Arthur Joy
P.O. Box 1425
Sterling, Massachusetts 01564
Pro Se

(via telephone)
Robert Pickle
1354 County Highway 21
Halstad, Minnesota 56548
Pro Se

1 THE COURT: Let me -- let me just finish. And any
2 records that were delivered under seal and that are in the
3 custody of the magistrate judge shall be returned to the party
4 that produced those documents.

5 Yes, sir. Is this Mr. Pickle?

6 MR. PICKLE: Yes, it is.

7 THE COURT: Yes.

8 MR. PICKLE: Your Honor, one of the concerns that the
9 case law brings up is that -- see -- a voluntarily dismissal
10 without prejudice, one of the questions is well, will there be
11 plain legal prejudice to the defendants, and one of the things
12 that is, like, undue expense.

13 We've had -- and one of the factors they look at is
14 amount of time and effort and expense the defendants have
15 expended. We bring this out in our memorandum. Okay. What
16 the -- what the plaintiffs are doing -- see, our basis for
17 counterclaim --

18 THE COURT: Hold on. Hold on, Mr. Pickle. There's no
19 counterclaim filed, as I understand; is that right?

20 MR. PUCCI: Right.

21 THE COURT: In this case.

22 MR. PICKLE: That is correct, your Honor.

23 THE COURT: You know, and -- and, you know, whether
24 you have some future claim against the plaintiffs, I make no
25 comment on of any kind whatsoever.

1 MR. PICKLE: It is --

2 THE COURT: In terms of -- just let -- let me, if I
3 can. Just in terms of your costs and expense and attorney's
4 fees, my understanding is that but for a brief appearance by
5 Mr. Heal, I think, at the beginning of the litigation, you've
6 been proceeding pro se; and let me add as a further condition
7 that I will at least permit defendants to seek recovery of
8 reasonable costs, fees, expenses -- reasonable cost of
9 attorney's fees or expenses, if they file something within 21
10 days of the date of this order. I'm not promising that I will
11 allow those to be paid, and I'll permit plaintiffs to oppose
12 it, but I will give you the opportunity to make that argument
13 formally and with a specific itemized detailing of your costs
14 and expenses.

15 MR. PICKLE: Okay. Your Honor, if the discovery in
16 this case and work product is not transferable to -- to the
17 other -- the future actions, either by the plaintiff or
18 ourselves, that would prejudice the defendants.

19 THE COURT: Well, it's -- it is transferable, unless
20 it's subject to the confidentiality order. If it's subject to
21 the confidentiality order, you have to return it, or do
22 whatever the order says you're supposed to do with it; and, you
23 know, you have gained presumably a certain amount of
24 information. You're not required to erase it from your brain,
25 and you can use it consistent with the terms of the order

1 as -- as may be permitted by that order, but that's --

2 MR. PICKLE: That would mean, your Honor, that we
3 would have to spend months and months litigating again to get
4 the documents from Remnant, for example.

5 THE COURT: There is going to be no lawsuit pending.
6 You'll have -- we'll have to wait and see how that plays out
7 and in what court.

8 MR. PICKLE: And the one other thing, your Honor, is
9 that the MidCountry Bank records, as far as I know, they were
10 never designated confidential by MidCountry Bank, and it cost
11 us \$3,500 to get those.

12 THE COURT: Again, I'm giving you 21 days to file
13 something with me setting forth what you believe are your
14 reasonable costs, expenses, and attorney's fees incurred in
15 this litigation.

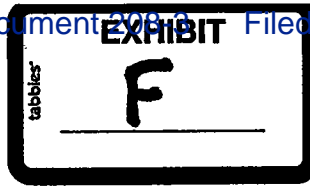
16 Again, I'm not promising I'm going to pay any of them,
17 or permit them to be paid, but I will entertain any filing you
18 wish to make.

19 MR. JOY: Your Honor, are you looking for -- this is
20 now Gailon Joy again.

21 Are you looking for our motion's total cost or --

22 THE COURT: Please characterize it as a motion, so
23 that it -- under the computer system, it -- it's flagged as
24 something requiring my action.

25 MR. JOY: Thank you.



Gregory Simpson

From: John Pucci [Pucci@fierstpucci.com]
Sent: Tuesday, December 15, 2009 3:57 PM
To: Bob
Cc: Gregory Simpson
Subject: RE: the return of MidCountry's records to the court

Dear Mr. Pickle:

In response to your letter of December 15, 2009, please recall that Judge Saylor ordered that the MidCountry Bank records be returned to us. See Electronic Clerk's Notes of hearing on 10/30/2008 ("Records in possession of Mag. Judge will be returned."). You did not obtain a stay of the October 30 order. Therefore, Judge Hillman obeyed it and delivered the records to counsel for 3ABN where they will remain unless and until we are ordered to do something else with them.

You have moved to have the records sent to the 1st Circuit Court of Appeals as part of the district court record. We will oppose your motion by filing an opposition memorandum. It is not appropriate to debate the legal issues raised by your motion informally because they will clearly need to be addressed in an orderly fashion by Judge Saylor and potentially reviewed by the First Circuit Court of Appeals.

In the meantime, you may be assured that the MidCountry records are in the custody of counsel for 3ABN, are in the same condition that they were in when Judge Hillman gave them to us, and will be maintained in that condition at least until the case is over and all rights of appeal are exhausted. Please consider this response as written assurance that the MidCountry Bank records will be preserved to that extent.

From: Bob [mailto:bob@pickle-publishing.com]
Sent: Tuesday, December 15, 2009 1:29 PM
To: John Pucci
Cc: G. Arthur Joy; Gerald Duffy; Jerrie Hayes; Kristin L. Kingsbury; William Christopher Penwell; Lizette Richards; Greg Simpson
Subject: re: the return of MidCountry's records to the court

Counselor Pucci:

I just spoke with a clerk of court at the federal courthouse in Worcester, Massachusetts. She informed me that the court does not have a copy of the bank statements that MidCountry Bank produced in response to our subpoena, and that the receipt docketed as Doc. 160 in our case shows who those bank statements were given to.

That receipt, dated December 16, 2008, is signed as follows:

Christine Parizo
Fierst, Pucci & Kane LLP
64 Gothic St. Northampton MA 01060
(413) 584-8067

Thus, you received the only copy of MidCountry's records that the court had. Would you stipulate to the return of MidCountry's records to the court, accompanied by your certification that the returned records do not differ in quantity or content from that which you received?

If you do not so stipulate, we shall prepare a motion seeking an order commanding you to return MidCountry's records to the court. (Such return would need to be accompanied by the same

certification.) This letter would then be, pursuant to L.R. 7.1(a)(2), Defendants' good faith attempt to narrow or resolve the issue before bringing such a motion. If you refuse to stipulate, would you oppose such a motion?

I would remind you that the district court is without authority to eliminate material from the record on appeal. 20 *Moore's Federal Practice* §310.40[2]; *Belt v. Holton*, 197 F.2d 579, 591 (D.C. Cir. 1952). Therefore, the bank statements must be returned.

Sincerely,

Bob Pickle, *pro se*