

“1. Limiting the scope of discovery to relevant subject matters according to the claims and defenses of the parties.”

The court denied this request to limit the scope of discovery. Further, the court stated:

At the same time, it is apparent from the hearing that plaintiffs are taking much too narrow a view as to whether documents or other things in their possession may be relevant to their claims and/or defendants’ defenses. ... Plaintiffs should not have to be reminded that it is they who have initiated this action and as part of their claims, they are seeking significant monetary damages from the defendants. Documents which they may deem irrelevant to the specific statements they allege were defamatory may well be relevant to put the statements in context, or relevant on the issue of whether the plaintiffs have actually been damaged by the alleged statements.

“2. Denying all discovery requests that are overbroad, or that seek discovery that is irrelevant, privileged, unreasonably cumulative or duplicative, that can be obtained from other sources that is more convenient, less burdensome or less expensive, or where the burden or expense of the proposed discovery outweigh its likely benefit.”

The court denied this request.

“3. Directing that all future discovery requests identify with particularity the transactions and events of which Defendants seek discovery, including the approximate date, the individuals involved in that transaction, and the assets / items / persons affected by that transaction or event, and that when such specificity is not possible, that Defendants’ requests be narrowed to a relevant and reasonable time-frame of January 2001 through January 2007.”

The court denied this request. Thus the Plaintiffs’ contention in this Court that discovery requests cannot be made back to 1998 has been disposed of, as well as their insistence that requests be limited to specific transactions.

“4. Denying Defendants’ requests for identifying information of donors and church leaders.”

The court denied this request.

“5. Directing both parties to submit proposals to Magistrate Hillman for review to facilitate a discovery plan that will allow discovery to proceed while removing irrelevant donor and church leader identifying information.”

prejudice and ordering that revised requests to produce by served upon the plaintiffs on or before September 26, 2008.

The court denied this request.

“6. Ordering that Defendants seek leave of this Court prior to issuing any further subpoenas for discovery conducted in this case.”

The court granted this request by ordering that both the Plaintiffs and the Defendants seek leave of the court before issuing any further subpoenas.

“7. Appointing Magistrate Judge Hillman or a special master or a neutral third party to conduct *in camera* review of all non-party documents produced in this case prior to disclosure to Defendants for relevance, confidentiality, and privilege, and to ensure all documents produced by third parties comply with all discovery orders in this matter.”

The court denied this request.

THE MICHIGAN DECISION

In another relevant ruling this week, on September 8, 2008, Senior Judge Richard Alan Enslen of the Western District of Michigan denied the appeal of Remnant Publications, Inc. (hereafter “Remnant”). (Pickle Aff. Ex. C). Remnant had appealed from Magistrate Judge Carmody’s order that Remnant produce documents directly to the Defendants (subject to Magistrate Judge Hillman’s confidentiality order of April 17, 2008) rather than under seal to Magistrate Judge Hillman for *in camera* review.

ISSUES THAT REMAIN

The Defendants contend that the documents subpoenaed from Alan Lovejoy (hereafter “Lovejoy”) and Gray Hunter Stenn LLP (hereafter “GHS”) are relevant and discoverable, are necessary to verify and challenge the financial statements and testimony expected to be entered into evidence by the Plaintiffs, and are already subject by stipulation to the confidentiality order of Magistrate Judge Timothy S. Hillman. (Pickle Aff. ¶ 4). Additionally, the Defendants contend that the requested documents are not subject to accountant-client privilege since federal privilege law does not recognize such a privilege and the case is venued in Massachusetts.

The Defendants also contend that the production of these documents is by no means unduly burdensome. GHS and the Defendants previously stipulated that the Defendants will provide their own equipment, with paper and toner, for documents to be copied on, with a “Confidential” watermark being placed on all copies pursuant to Magistrate Judge Hillman’s confidentiality order of April 17, 2008. (*Id.*). (The few documents required by statute to be open to public inspection would not be so marked confidential).

The Defendants have retained three CPA’s (two auditors and a Certified Fraud Examiner) as experts to examine on site the ten boxes of requested documents for relevance and to thus determine which documents should be copied, as stipulated by GHS and the Defendants. (*Id.*). These experts will assist the Defendants in putting together their defense against claims of defamation *per se*, as well as challenging the financial data the Plaintiffs have produced and will produce.

CONCLUSION

The Defendants respectfully request that the Honorable Court enforce the subpoena in a manner pursuant to Local Rule 7.1(h).

Respectfully submitted,

Dated: September 12, 2008

/s/ Robert Pickle, *pro se*
Robert Pickle, *pro se*
Halstad, MN 56548
Tel: (218) 456-2568
Fax: (206) 203-3751

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 12, 2008, he served this **STATUS REPORT** with accompanying **AFFIDAVIT** and **EXHIBITS**, upon the following counsel of record, via U.S. Mail, postage pre-paid, and addressed as follows:

Jennifer E. White
131 S. Dearborn
30th Floor
Chicago, IL 60603
Attorney for the Plaintiffs

M. Gregory Simpson
Siegel, Brill, et al
100 Washington Avenue South, Suite 1300
Minneapolis, MN 55410
Attorney for the Plaintiffs

Deanna L. Litzenburg
Mathis, Marifian, et. al.
P.O. Box 307
Belleville, IL 62220
Attorney for Gray, Hunter, Stenn, LLP

and upon Gailon Arthur Joy via email.

Dated: September 12, 2008

/s/ Bob Pickle

Bob Pickle

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.: 4:08-mc-16-JPG
)	
) Plaintiffs,)	
v.)	
)	
Gailon Arthur Joy and Robert Pickle,)	
)	
) Defendants,)	
v.)	
)	
Gray Hunter Stenn LLP,)	
)	
) Interested Party.)	
_____)	

AFFIDAVIT OF ROBERT PICKLE

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. Attached hereto as **Exhibit A** is the motion to limit the scope of discovery filed by the Plaintiffs in the underlying case in the District of Massachusetts on June 25, 2008. The Plaintiffs used this motion they were preparing as a basis for asking this Court to quash or stay the Defendants’ subpoena *duces tecum* of Alan Lovejoy and Gray Hunter Stenn LLP (hereafter “GHS”).
2. Attached hereto as **Exhibit B** is Magistrate Judge Timothy S. Hillman’s decision on this motion filed on September 11, 2008.
3. Attached hereto as **Exhibit C** is the September 8, 2008, decision of Senior Judge Richard Alan Enslin of the Western District of Michigan, denying the appeal of Remnant

Publications, Inc. (hereafter “Remnant”) from Magistrate Judge Carmody’s order to Remnant to produce documents directly to the Defendants rather than under seal to Magistrate Judge Hillman.

4. Prior to the Plaintiffs filing their motion to quash, GHS and the Defendants had stipulated that (a) the Defendants would provide their own equipment, with paper and toner, for copying to be done upon, (b) copies of documents would be watermarked “Confidential” pursuant to the April 17, 2008, confidentiality order of Magistrate Judge Hillman, and (c) three experts the Defendants retained would assist the Defendants in examining the ten boxes of documents for relevancy and determining which documents should be copied. The names of the three experts were disclosed to GHS when their signed confidentiality agreements were served upon GHS, and these experts consisted of two auditors and a Certified Fraud Examiner. A letter outlining the understanding of the stipulation as of June 10, 2008, is attached hereto as **Exhibit D**. Documents required by federal or state statute to be open to public inspection would not be marked “Confidential.”

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 12th day of September, 2008.

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

Subscribed and sworn to me
this 12th day of September, 2008.

/s/ Melanie Dee Nelson
Notary Public—Minnesota

My Commission Expires January 31, 2011

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER
LIMITING SCOPE AND METHODS OF DISCOVERY
AND REQUEST FOR ORAL ARGUMENT**

**TO: DEFENDANT GAILON ARTHUR JOY, P.O. BOX 1425
STERLING, MA 01564**

**DEFENDANT ROBERT PICKLE, 1354 COUNTY HIGHWAY 21,
HALSTAD, MN 56548**

NOTICE

PLEASE TAKE NOTICE that on a day and time to be determined by the Court, the undersigned counsel for Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton will bring a Motion for Protective Order Limiting Scope and Methods of Discovery against Defendants Gailon Arthur Joy and Robert Pickle pursuant to Fed. R. Civ. P. 26(c) and Local Rules 7.1 and 37.1 of the District of Massachusetts, at the United States Court House (Donohue Federal Building), 595 Main Street, Worcester, Massachusetts, 01608.

MOTION

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton hereby move the Court for an Order as follows:

1. Limiting the scope of discovery to relevant subject matters according to the claims and defenses of the parties;

2. Denying all discovery requests that are overbroad, or that seek discovery that is irrelevant, privileged, unreasonably cumulative or duplicative, that can be obtained from other sources that is more convenient, less burdensome or less expensive, or where the burden or expense of the proposed discovery outweigh its likely benefit;

3. Directing that all future discovery requests identify with particularity the transactions and events of which Defendants seek discovery, including the approximate date, the individuals involved in that transaction, and the assets / items / persons affected by that transaction or event, and that when such specificity is not possible, that Defendants' requests be narrowed to a relevant and reasonable time-frame of January 2001 through January 2007;

4. Denying Defendants' requests for identifying information of donors and church leaders;

5. Directing both parties to submit proposals to Magistrate Hillman for review to facilitate a discovery plan that will allow discovery to proceed while removing irrelevant donor and church leader identifying information;

6. Ordering that Defendants seek leave of this Court prior to issuing any further subpoenas for discovery conducted in this case;

7. Appointing Magistrate Judge Hillman or a special master or a neutral third party to conduct in camera review of all non-party documents produced in this case prior to disclosure to Defendants for relevance, confidentiality, and privilege, and to ensure all documents produced by third parties comply with all discovery orders in this matter; and

8. For such other relief as the Court would deem just and equitable.

This Motion is based upon Plaintiffs' Notice of Motion and Motion for Protective Order Limiting the Scope and Methods of Discovery, Plaintiffs' Memorandum in Support of the same, any Affidavits filed herewith, the Arguments of Counsel and all other files, record and proceedings herein.

REQUEST FOR ORAL ARGUMENT

Plaintiffs respectfully request that this Honorable Court set a day and time for oral argument to be heard on this Motion.

Respectfully Submitted:

**Attorneys for Plaintiffs Three Angels
Broadcasting Network, Inc. and
Danny Shelton**

Dated: June 25, 2008

FIERST, PUCCI & KANE, LLP
John P. Pucci, Esq., BBO #407560
J. Lizette Richards, BBO #649413
64 Gothic Street
Northampton, MA 01060
Telephone: 413-584-8067

and

SIEGEL, BRILL, GREUPNER,
DUFFY & FOSTER, P.A.

s/ M. Gregory Simpson

Gerald S. Duffy (MNReg. #24703)
M. Gregory Simpson (MN Reg. #204560)
Kristin L. Kingsbury (MNReg. #346664)
100 Washington Avenue South
Suite 1300
Minneapolis, MN 55401
Tel: 612-337-6100 / Fax: 612-339-6591

Local Rule 7.1 Certificate

Undersigned counsel hereby attests that Plaintiffs have complied with the requirements of Local Rule 7.1 by having, in good faith, through counsel and without success, conferred with Defendants in an attempt to resolve or narrow the discovery dispute at issue.

Dated: June 25, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson

Local Rule 37.1 Certificate

Undersigned counsel hereby attests that Plaintiffs have complied with the requirements of Local Rule 37.1 by having, in good faith, through counsel and without success, conferred with Defendants to narrow the areas of disagreement to the greatest possible extent.

Dated: June 25, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson

Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 25, 2008.

Dated: June 25, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
THREE ANGELS BROADCASTING)	
NETWORK, INC,)	
DANNY LEE SHELTON,)	
Plaintiffs,)	
vs.)	CIVIL ACTION
)	NO. 07-40098-FDS
GAILON ARTHUR JOY,)	
ROBERT PICKLE,)	
Defendants.)	
_____)	

Amended Order
September 11, 2008

HILLMAN, M.J.

Nature of the Case

On April 6, 2007, Three Angels Broadcasting Network, Inc. (hereinafter “3ABN”) and Danny Lee Shelton (hereinafter “Shelton”) filed a complaint against Gailon Arthur Joy (hereinafter “Joy”) and Robert Pickle (hereinafter “Pickle”) for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage.

Nature of the Proceeding

By Order of Reference dated July 10, 2008, Defendant Robert Pickle’s Motion to Compel Three Angels Broadcasting Network, Inc. To Produce Documents and Things, and His Motion to Compel Danny Lee Shelton To Produce Documents and Things (Docket No. 61), and Plaintiff’s Motion for Protective Order (Docket No. 74) have been referred to me for disposition.

Background

On November 29, 2007, Pickle served a request to produce under Federal Rule of Civil Procedure 34(a) on plaintiff 3ABN, which contained 36 requests for production of documents. On December 7, 2007, Pickle served a second request to produce documents on Shelton, which contains 44 requests for production of documents. Pickle contends that plaintiffs have failed to produce any documents responsive to his requests. Instead, plaintiffs have asserted that all of the documents requested by Pickle are irrelevant, confidential or privileged. The plaintiffs have filed an opposition to the motion to compel. In their opposition, plaintiffs contend that they have produced over twelve thousand non-confidential documents responsive to Pickle's requests, and at the time they filed their opposition, were working to produce confidential documents, subject to the Confidentiality and Protective Order, issued by this Court on April 17, 2008. A hearing was held on the motion on July 24, 2008.

Plaintiff has moved this court for a protective order and for judicial intervention into the discovery process. They assign as reasons for the protective order a series of subpoenas ostensibly issued under Fed.R.Civ.P. 45 on six non-parties to this litigation. Several of those subpoena's have resulted in judicial action or motions to quash in the districts in which they were served.

Discussion

Pickle's production requests and Rule 45 subpoenas appears to be overbroad and far-reaching. Many of the requests are prefaced with the word "all" and thus, fail to describe with particularity each document or thing requested. For example, defendant Pickle seeks "all types of phone records or other documents enumerating phone calls made by 3ABN officers from January 1, 2003, onward . . ." He also seeks "all" minutes and other documents

of the 3ABN Board for the entire length of time of 3ABN's existence, and on an ongoing basis." Furthermore, since the parties have not complied with L.R. 37.1 there is no listing of the specific discovery request at issue and their position with respect to it. This failure to comply with L.R. 37.1 results in the referenced regularity of Defendant's complaints and not a request by request breakdown of why information is sought and the argument for its production. Given the broad definitions utilized by Pickle¹, it is apparent that a substantial number of documents which would fall within the subject matter of the requests would be irrelevant to any claims or defenses, and otherwise outside of the scope of discoverable information under Federal Rule of Civil Procedure 26(b)(1). At the same time, it is apparent from the hearing that plaintiffs are taking much too narrow a view as to whether documents or other things in their possession may be relevant to their claims and/or defendants' defenses. The plaintiffs also assert that they are about to serve additional responsive documents on the defendants subject to the Confidentiality Agreement. Plaintiffs should not have to be reminded that it is they who have initiated this action and as part of their claims, they are seeking significant monetary damages from the defendants. Documents which they may deem irrelevant to the specific statements they allege were defamatory may well be relevant to put the statements in context, or relevant on the issue of whether the plaintiffs have actually been damaged by the alleged statements. If the plaintiffs fail to produce documents which are relevant to their claims or potential defenses, then they may be subject to sanctions, including limiting evidence which they may introduce at trial, or limiting the scope of any damages to

¹At the hearing, defendants indicated that they adopted the definitions utilized by the plaintiffs in their discovery requests. However, defendants did not file a motion for protective order for purposes of narrowing the plaintiffs' requests and therefore, this Court did not have the opportunity to address whether those requests were overly broad.

which they could be entitled should they prevail.

The defendants also contend that the plaintiffs' responses are inadequate because they have simply produced volumes of documents without specifying the requests as to which the documents are responsive. The plaintiffs have an obligation to produce the documents as kept in the usual course of business or organize and label them to correspond to the categories of the request. *See* Fed. R. Civ. P. 34(b)(2)(E)(i). From the parties' submissions and the issues raised during the hearing, the Court has doubts as to whether the plaintiffs have fulfilled their obligation under Rule 34(b)(2)(E)(i).

In light of both parties' noncompliance with the applicable discovery rules, I am denying Pickle's motion to compel, without prejudice, and ordering that defendants re-serve their Rule 34 requests for production of documents and things. The defendants shall be limited to 25 requests for each defendant (including subparts) which shall be tailored to comply with this Court's rules governing discoverable information. The defendants shall serve their revised requests on or before September 26, 2008. Any additional Rule 34 requests may be made only with leave of the Court. The plaintiffs shall respond to such requests within thirty (30) days and such responses shall be indexed and indicate which documents respond to which requests.

With respect to Plaintiff's motion for a protective order, I am allowing that motion with respect to the further filing of any subpoenas under Fed.R.Civ.P. 45. Any further subpoenas, by any party to this action must only be issued upon leave of the court. I will note that as recently as this week the defendant's have moved for leave of court to issue subpoenas citing the pending motion for protective order. They are to be commended for exercising an abundance of caution.

All further motions to compel filed with this Court shall comply with both the Federal Rules of Civil Procedure and this Court's Local Rules and, in particular, LR, D.Mass. 37.1.

Conclusion

It is ordered that:

Defendant Robert Pickle's Motion to Compel Three Angels Broadcasting Network, Inc. to Produce Documents and Things and His Motion to Compel Danny Lee Shelton to Produce Documents and Things (Docket No. 61) is denied without prejudice. On or before September 26, 2008 defendants shall serve on the plaintiffs a revised request for production of documents pursuant to Fed. R. Civ. P. 34, in accordance with this Order.

Plaintiff's Motion for Protective Order (Docket No. 74), allowed. No party is to issue subpoenas to any non-party under Fed.R.Civ.P. 45 without leave of the court. In all other respects, the Plaintiff's motion is denied.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
MAGISTRATE JUDGE

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: OUT OF DISTRICT SUBPOENA,

Case No. 1:08-MC-00003

Honorable Richard Alan Enslin

/

ORDER

Petitioners Gailon Arthur Joy and Robert Pickle filed a motion to compel pursuant to a third-party subpoena issued from this District. The third-party subpoena arises from a case pending in the District of Massachusetts brought by Three Angels Broadcasting Network, Inc. and Danny Lee Shelton against Gailon Arthur Joy and Robert Pickle for alleged defamation. Petitioners seek documents from Respondent Remnant Publications, Inc., relating, *inter alia*, to Three Angels Broadcasting Network, Inc. and Danny Lee Shelton. The motion to compel was referred to United States Magistrate Judge Ellen S. Carmody, who, after hearing, issued an order granting in part and denying in part the motion to compel. The Magistrate Judge ordered produced those documents described in the subpoena involving Three Angels Broadcasting Network and Danny Lee Shelton. Respondent Remnant Publications filed a motion to amend the order to require prior *in camera* review by the Court for the District of Massachusetts. The motion to amend was denied by the Magistrate Judge on July 28, 2008. The matter is before the Court on Respondent's appeal from the Magistrate Judge's Order denying the motion to amend.

A district court considering objections to an order issued on a non-dispositive matter that was referred to a magistrate judge may "modify or set aside any part of the order that is clearly erroneous or contrary to law." FED. R. CIV. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A); W.D. MICH. LCIVR

72.3(a). A decision is clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). If there are two plausible views of a matter, then a decision cannot be “clearly erroneous.” *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

Respondent argues that the documents sought by Petitioners are not relevant to the underlying lawsuit and that the scope of the discovery sought is overbroad. Respondent also argues that no order to produce documents should have been granted unless and until the District of Massachusetts had the opportunity to review those documents *in camera*. After careful consideration of Respondent’s arguments, the record evidence and the Order on review, this Court concludes that the Magistrate Judge’s Order is neither clearly erroneous nor contrary to law. Accordingly,

IT IS HEREBY ORDERED that Respondent Remnant Publications, Inc.’s Claim of Appeal Pursuant to Local Civil Rule 72.3 (Dkt. No. 33) is **DENIED**, and the Magistrate Judge’s Order (Dkt. No. 32) is **AFFIRMED**.

DATED in Kalamazoo, MI:
September 8, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

1354 County Highway 21
Halstad, MN 56548
(218) 456-2568
June 10, 2008

Deanna Litzenburg
P.O. Box 307
Belleville, Illinois 62220

Dear Ms. Litzenburg:

My apologies for not getting back to you quite as quickly as I had hoped.

Confidentiality

Magistrate Judge Hillman's confidentiality order of April 17, 2008, which covers all discovery materials produced in our case, states in part:

Whenever the designating party determines that a disclosure of the Subject Discovery Materials will reveal matters that such party believes in good faith are not generally known or readily available to the public, and that such party deems to constitute proprietary information, confidential business or commercial information, and/or trade secrets relating to its business, such party has the right to designate such information as confidential.

Our understanding is that Gray Hunter Stenn LLP has deemed the documents we have subpoenaed as being confidential. That being so, as parties to this case, Mr. Joy and myself are bound by the terms of Magistrate Judge Hillman's confidentiality order, and must and will use those documents and the information they contain only as allowed by that order.

I would point out a notable exception to a blanket designation of confidentiality. Some of the subpoenaed documents are required by federal and state statutes to be open to public inspection. For example, the tax return filed by a non-profit organization known as a Form 990 is required by federal law to be open to public inspection. That being so, it would not fit the description of Magistrate Judge Hillman's order.

Another example is 3ABN's audited financial statements which, because of 3ABN's non-profit status, are required by 225 ILCS 460 § 2(f), § 4(a) to be open to public inspection.

I know of and anticipate finding no other examples of this kind of thing.

Dates for Inspection and Copying

We are planning to arrive with our experts at Gray Hunter Stenn LLP to begin inspection and copying on June 24, 2008. We still anticipate that the reasonable amount of time necessary to properly inspect the documents to decide what needs to be copied will be three days.

June 10, 2008
Page 2

Copying Protocol

We will bring our own copier, along with toner and paper.

We understand that you will provide someone to make the copies on our equipment. We are also open to any other proposals that avoid expense or trouble as long as they meet the requirements of the confidentiality order.

Signed Stipulations

Please find attached the signed stipulations of our three forensic accounting/auditing experts.

Sincerely,



Bob Pickle, *pro se*



Gailon Arthur Joy, *pro se*