UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-RWZ

DEFENDANTS' MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE TWO SUPPLEMENTAL EXHIBITS: (A) WARRANTS FOR THE ARREST OF TOMMY SHELTON, AND (B) PRESS RELEASE ISSUED BY FAIRFAX COUNTY POLICE DEPARTMENT

Defendants seek leave of the Court to supplement Defendants' reply (Doc. 233) filed on February 26, 2010. Defendants seek leave to supplement that reply with two exhibits: (a) Five warrants for the arrest of Tommy Shelton, obtained by the Fairfax County Police Department ("FCPD") on February 25, 2010, labeled as **Exhibit H.** (b) The FCPD's March 18, 2010, press release concerning the March 16, 2010, arrest of Tommy Shelton on sexual assault charges arising from crimes that allegedly occurred in Virginia in the 1990's, labeled as **Exhibit I.**

FACTS

Prior to Plaintiffs filing suit, Defendants repeatedly reported on the child molestation allegations against Tommy Shelton, including incidents allegedly occurring in Virginia in the 1990's. (Doc. 8-2 pp. 58, 62; Doc. 63-15 p. 3; Doc. 81-2 pp. 3, 5, 7–8, 52, 54, 68, 83; Doc. 81-11 pp. 10, 14; Doc. 81-10 p. 24).

On February 18, 2010, Plaintiffs filed a response to Defendants' objections to the magistrate judge's orders which stated:

> Pickle and Joy have long made uncorroborated, unfounded allegations against Danny Shelton and 3ABN, *including claims that they covered up allegations of child molestation against a 3ABN employee,* financial mismanagement, and other misconduct *that framed the original basis for Plaintiffs' lawsuit against them.*

(Doc. 231 p. 5, italics added). On February 26, 2010, Defendants replied to Plaintiffs' outrageously fallacious and sanctionable assertion[1] that Defendants' allegations were unfounded and uncorroborated, citing extensive documentation that demonstrates that Plaintiff Danny Lee Shelton ("Shelton") did indeed cover up the child molestation allegations against Shelton's brother, Tommy Shelton. (Doc. 233 p. 7).

However, on February 26, Defendants were not yet aware that the FCPD in Fairfax County, Virginia, had obtained five felony arrest warrants for Tommy Shelton on February 25. (Affidavit of Robert Pickle ("Pickle Aff.") ¶ 3, Ex. H). These five warrants led to Tommy

[1]Plaintiffs' assertion is sanctionable under Fed.R.Civ.P. 11(b) because it is devoid of any evidentiary or legal basis, and is contradicted by the record. (Doc. 233 p. 7). That outrageous assertion appears in a response which Plaintiffs' own logic declares to be unauthorized. (Doc. 242 pp. 5–6). Therefore, Plaintiffs must have filed that response to mislead the new judge as to the contents of the record, which constitutes an improper purpose.

Prior to dismissal of the case, Defendants stated multiple times that they intended to prove beyond a reasonable doubt, a higher standard than necessary, the utter frivolousness of Plaintiffs' claims. (Doc. 126 p. 14; Doc. 152-6 p. 17; Doc. 171-20 p. 93). Defendants obtained documents from Remnant Publications, Inc. (Doc. 155-2). Bank statements from MidCountry Bank were filed with the Court. (Doc. 206-2; Doc. 231 p. 7). The October 22, 2008, comments of the court in Illinois indicated that Defendants would ultimately prevail in obtaining the auditor's work papers. (Doc. 152-6 pp. 9–10, 22–24). The evidentiary noose was tightening, and it was evident that Defendants would meet the higher standard of "beyond a reasonable doubt." Plaintiffs therefore filed for dismissal on October 23, 2008. (Doc. 120).

Plaintiffs' counsel made the outrageously fallacious assertion at issue here nearly two years after becoming lead counsel. (Doc. 65). The counselor was enough acquainted with the case to be able to admit that Defendants' reporting about Shelton's cover up of the pedophilia allegations against Tommy Shelton "framed the original basis of Plaintiffs' lawsuit." (Doc. 231 p. 5). Therefore, the counselor's misrepresentation as to whether Defendants' allegations were "uncorroborated, unfounded" cannot be due to incompetence or ill preparedness, and must be due to bad faith. Thus, the counselor's outrageously fallacious assertion is also sanctionable under the court's inherent powers. *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 767 (1980).

Shelton's arrest on March 16, 2010. (Pickle Aff. Ex. H).

The FCPD issued a press release on March 18, which led to Defendants discovering that Tommy Shelton had been arrested. (Pickle Aff. ¶ 3, Ex. I).

ARGUMENT

Having obtained copies of the five warrants on March 29 (Pickle Aff. ¶ 3), Defendants now seek to supplement their earlier reply with the arrest warrants and press release, since these additional, brief documents conclusively demonstrate that Defendants' allegations were not "uncorroborated, unfounded."

I. THE EXHIBITS ARE RELEVANT TO PENDING ISSUES

Plaintiffs' counsel has represented that he opposes the present motion on the basis that the arrest warrants and press release are "not relevant to any issue presently pending before the Court." (Pickle Aff. Ex. J).

But Plaintiffs' counsel's assertion is patently false: (a) Defendants' objections to the magistrate judge's orders are indeed pending before this Court. (Doc. 229). (b) Plaintiffs based their opposition to those objections partly on Plaintiffs' outrageously fallacious and sanctionable assertion[1] that Defendants' reporting about Shelton's cover up of the child molestation allegations against Tommy Shelton was "uncorroborated, unfounded." (Doc. 231 p. 5).

Defendants' objections pertain to the bank statements produced by MidCountry Bank ("MidCountry records"). (Doc. 229). Plaintiffs injected the issue of the child molestation allegations into their opposition to Defendants' objections as part of their legal argument. (Doc. 231 p. 5). Plaintiffs sought thereby to convince this Court that Defendants have engaged in a "campaign of harassment." (*Id.*). Plaintiffs also sought thereby to convince this Court that Defendants seek return to the Court of the unlawfully obtained[2] MidCountry records, and the

[2]Plaintiffs unlawfully obtained the MidCountry records on December 16, 2008, in violation of the Court's order that those records "be returned to the party that produced" them,

forwarding of those records to the First Circuit, "for reasons unrelated to this litigation." (Doc. 231 p. 6).

Clearly, by Plaintiffs' own choice of argument, the five felony arrest warrants for the arrest of Tommy Shelton, and the press release issued by the FCPD, are relevant to the issues pending before this Court. These two exhibits are indisputably relevant to the outrageously fallacious and sanctionable assertion[1] Plaintiffs utilized in their argument, that Defendants' reporting concerning the pedophilia allegations against Tommy Shelton was "uncorroborated, unfounded." (Doc. 231 p. 5).

II. MOTIONS SEEKING LEAVE TO SUPPLEMENT ARE PERMISSIBLE

Plaintiffs' counsel has also represented that he opposes the present motion on the basis that "the rules of civil procedure do not authorize [the instant] motion anyway." (Pickle Aff. Ex. J). It is difficult to understand this reasoning.

Regarding motions, Local Rule 7.1(b)(3) states:

> *Additional Papers.* All other papers not filed as indicated in subsections (b)(1) and (2), whether in the form of a reply brief or otherwise, may be submitted only with leave of court.

Plaintiffs previously acknowledged the existence of this rule. (Doc. 53 p. 2). Therefore, Plaintiffs know that Local Rule 7.1(b)(3) authorizes motions seeking leave to file supplemental responses or replies pertaining to motions. (*Id.*).

Defendants are not seeking to supplement their reply to a response to a motion. Instead, Defendants seek to supplement their reply to Plaintiffs' response to Defendants' objections, a response that by Plaintiffs' own logic was not authorized under the rules. (Doc. 242 pp. 5–6).

If the instant situation is analogous to that covered by Local Rule 7.1(b)(3), if Defendants wish to supplement their reply to Plaintiffs' response, Defendants must first obtain leave of court,

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which party was MidCountry Bank. (Doc. 160; Doc. 212-3; Doc. 141 p. 13; Doc. 121 p. 9).

and thus must file the instant motion. Thus, the instant motion would be authorized under the rules.

Inasmuch as this Court has not yet decided whether to strike Plaintiffs' response, and Plaintiffs have not yet withdrawn their response,[3] Defendants should be allowed to request the Court for leave to supplement their reply.

Yet it should be noted that Defendants are not seeking to file a supplemental brief. All Defendants are seeking to do is to file two supplemental exhibits: the five felony arrest warrants as Exhibit H, and the press release as Exhibit I. Defendants thereby seek to have the Court consider this previously unavailable, new evidence when evaluating the accuracy of Plaintiffs' outrageous and sanctionable assertion[1] that Defendants' reporting was "uncorroborated, unfounded."

III. DEFENDANTS COULD NOT FILE THESE EXHIBITS ON FEBRUARY 26

In seeking leave of the Court to supplement Defendants' reply with two exhibits, good cause should probably be shown why these exhibits could not have been filed on February 26.

Defendants had no knowledge of the February 25 arrest warrants on February 26 when they filed their reply. Even if Defendants had had such knowledge, they could not have obtained copies of the arrest warrants by February 26, since the court in question does not fax or email such copies, and may take a week to fulfill a request for copies. (Pickle Aff. ¶ 4).

Furthermore, the March 18 press release (which led to Defendants' discovery of the arrest warrants (Pickle Aff. ¶ 3)) had not been issued prior to Defendants' filing their reply on February 26. It was therefore impossible for Defendants to file the FCPD press release on February 26.

IV. THE EXHIBITS CONCLUSIVELY DETERMINE THE ISSUE AT BAR

These exhibits conclusively decide a matter that Plaintiffs themselves put at issue in their

[3]Plaintiffs' response made three extremely damaging admissions in Defendants' favor, and it is therefore in Defendants' favor for that response to remain in the record. (Doc. 242 p. 6).

February 18 response, namely, whether Defendants' reporting was "uncorroborated, unfounded" concerning the child molestation allegations against Tommy Shelton, allegations that included alleged incidents in Virginia in the 1990's. (*supra* 1).

On February 25, 2010, the Honorable Magistrate Claude J. Beheler of the Fairfax County Juvenile and Domestic Relations District Court stated:

> I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of Pirnat, T.M #3201 Fairfax County PD, Complainant.

(Pickle Aff. Ex. H).[4] Subsequently, Tommy Shelton voluntarily turned himself in, traveling from Kentucky to Fairfax County, and can neither leave Virginia nor have contact with children under 15 until trial. (Pickle Aff. Ex. I, Ex. H at p. 1). Since Magistrate Behler found probable cause, there is no legal basis for Plaintiffs' outrageous and sanctionable assertion[1] that Defendants' reporting was unfounded and uncorroborated.

CONCLUSION

For the above reasons, Defendants now seek leave of the Court to supplement Defendants' February 26th reply (Doc. 233) with the five arrest warrants as Exhibit H, and the press release as Exhibit I.

Respectfully submitted,

Dated: April 1, 2010

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[4]The sworn statements themselves are unavailable to the public. (Pickle Aff. ¶ 4).