
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.

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR PROTECTIVE ORDER LIMITING SCOPE
AND METHODS OF DISCOVERY**

INTRODUCTION

Plaintiffs are willing to produce to Defendants relevant, non-privileged documents but this is impeded by (a) Defendants' purposeful seeking of information that is irrelevant to this lawsuit; and (b) Defendants' overbroad requests, which have the effect of seeking both irrelevant information as well as potentially relevant information. Defendants have served similarly flawed discovery requests on third parties (hereinafter "Requests") and have overzealously requested information from Plaintiffs and third parties that are cumulative, overly burdensome, expensive, and/or intended to harass or annoy, any of which outweigh Defendants' need for this information.

Defendants' memorandum fails to demonstrate that their Requests are permissible under the Federal Rules of Civil Procedure and offers no challenge to Plaintiffs' requests that the Court provide ongoing oversight of Defendants subpoena practice. For these reasons, Plaintiffs respectfully request that the Court grant its Motion for Protective Order Limiting the Scope and Methods of Discovery ("Motion") and that Defendants' Discovery Requests be denied.

ADDITIONAL FACTS

Plaintiffs wish to apprise the Court of the events that occurred since the filing of Plaintiffs' opening brief on June 25, 2008 ("June 25 Brief").

A. Status of Discovery Produced by Plaintiffs.

On July 10, 2008, Plaintiffs completed their document production and privilege log, pursuant to the production schedule communicated to Defendant by letter dated May 27, 2008. [Exhibit 22 to Second Affidavit of Kristin Kingsbury at ¶¶ 2 (hereinafter "Kingsbury Aff. Ex. ____")]. Over the course of that production, Defendant Pickle sent several letters to Plaintiffs' counsel complaining about the production, among other things, including four letters dated June 25, 2008, one letter dated July 1, 2008, and one letter dated July 7, 2008. [Kingsbury Aff. Ex. 23-28]. By letter dated July 9, 2008, Plaintiffs responded to Mr. Pickle's concerns and referred him to Plaintiffs' objections raised in this Motion. [Kingsbury Aff. Ex. 29].

Plaintiffs also compiled a summary of the Requests to which Plaintiff responded, including Bate number, which is submitted with this brief. [Kingsbury

Aff. Ex. 30]. This exercise revealed that Plaintiffs' production responded to **18** of the 44 requests, rather than the 14 requests Plaintiffs acknowledged through enclosure letters to Mr. Pickle. [*See id.*]. The volume of documents submitted to Defendants is substantial. [*See id.*].

B. Status of Third Party Subpoenas.

On July 1, 2008, Magistrate Judge Boylan denied Defendant Pickle's Request for Reconsideration of his order that MidCountry Bank's documents be produced under seal to Magistrate Judge Hillman. [Kingsbury Aff. Ex. 31].

On June 27, 2008, counsel for Remnant Publications filed a Motion to Amend the Court's Order (W.D. Mich.) that Remnant's documents be produced directly to Defendants. [Kingsbury Aff. Ex. 32]. The merits of this motion has not yet been considered. [*Id.* ¶ 12].

On June 26, 2008, third party Gray Hunter Stenn ("GHS") joined in Plaintiff's Motion to Quash. [Kingsbury Aff. Ex. 33]. On July 15, 2008, the Honorable Judge Gilbert granted a Motion to Continue scheduled hearings pending Magistrate Judge Hillman's adjudication on the Defendants' Motion to Compel and Plaintiff's Motion for a Protective Order. [Kingsbury Aff. Ex. 34].

C. Clarification of the Record.

Defendants spend a significant portion of their opposition brief ("Def. Brief") attacking the integrity of Plaintiffs' counsel – which is their usual strategy. Regardless, Plaintiffs will not waste the Court's time disputing Defendants' mischaracterizations and hyperbole, unless the Court requests such information of

Plaintiffs. Suffice it to say that the inadvertent and inconsequential typos and errors that Defendants label “false statements under oath” were unintended.¹ All that is before the Court, therefore are four issues, outlined below.

ARGUMENT

Plaintiffs are entitled to an order granting the relief sought in the pending Motion for Protective Order Limiting the Scope and Methods of Discovery (“Motion”) for the following reasons: (1) This Motion is timely; (2) This not a motion to reconsider treatment of donor identities within the Confidentiality Order; (3) Defendants have failed to demonstrate their Requests are permissible under the Federal Rules of Civil Procedure; and (4) Defendants do not challenge Plaintiffs’ request that the Court intervene with Defendants’ third party practice.

I. THIS MOTION IS TIMELY.

In determining timeliness, a court should consider all of the circumstances facing the parties. *See* MOORE’S FED. PRAC. 3d § 26.102[2]. At the May 7, 2008 Status Conference, Plaintiffs put the Court and Defendants on notice that this Motion was forthcoming – Defendants made no objections. Plaintiffs’ June 25 Brief also sets forth several factors that have contributed to the timing of this Motion in its June 25 Brief (Doc. No. 75 pp. 6-7), including a transition of counsel, ongoing good faith conferences with Defendants in an attempt to limit the

¹ Defendants correctly note that Attorney Kingsbury erroneously affied that GHS filed a June 16 motion opposing Defendants’ subpoena, when in fact this motion was filed by Plaintiffs. Ms. Kingsbury made this error, in part because she had not contributed to the June 16 motion and in part because Ms. Kingsbury did not recognize the E-filer’s signature when she reviewed the motion (Ms. Jennifer White, Plaintiff’s local counsel in Illinois). As a result, Ms. Kingsbury assumed this individual represented GHS. However, Defendants’ argument is moot because GHS joined in Plaintiff’s Motion to Quash on June 26, 2008, which Defendants likely knew when they filed their July 9, 2008 brief. Kingsbury Aff. ¶ 15.

scope of discovery by stipulation, Defendants' filing a motion to compel in May 2008 prior to Plaintiffs' ability to file the present Motion, and the need to respond to Defendants' intensive third party discovery practice.

Even if this Motion were not timely, ongoing negotiations of protective orders and a lack of opportunity to move for a protective order will excuse the timing of a Motion for Protective Order. MOORE'S § 26.102[2]. In addition, the First Circuit has observed that "the district court has 'broad discretion' to decide 'when a protective order is appropriate and what degree of protection is required' and great deference is shown to the district judge in framing and administering such orders." *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532 (1st Cir. 1993) (citations omitted)). To be clear, Plaintiffs do not intend to "hamstring" the Defendants' ability to obtain relevant documents nor do Plaintiffs seek to withhold documents because Plaintiffs "know that the Defendants' statements were true" [Def. Brief p. 1]. Instead, Plaintiffs believe the Court's intervention on the issue of scope will facilitate more efficient discovery which will help streamline its completion.

II. THIS IS NOT A MOTION TO RECONSIDER.

Plaintiffs do not seek reconsideration of this Court's analysis on the first Motion for Protective Order. While Plaintiffs' Motion to Protect sought a Protective Order governing issues of confidentiality in December 2007, including donor information, it did not ask the Court's consideration of the relevance of this information, or Defendants' needs for this information to establish its claims and

defenses. In addition, the Court's order is silent on the issues relevance and donor information, and only governs preservation of confidentiality in this matter.

The Federal Rules provide that “[p]arties may obtain discovery regarding any nonprivileged matter that is *relevant* to any party’s claim or defense. . . .” Fed. R. Civ. P. 26(b)(1) (emphasis added). The threshold question of relevance is crucial, then, because unlike confidentiality, if identifying donor information is not considered relevant this information will lie completely outside the bounds of discovery. Thus, it is important that the issue of relevance and the Defendants’ need for this information be addressed.

III. DEFENDANTS’ DISCOVERY REQUESTS SHOULD BE DENIED BECAUSE THEY SEEK INFORMATION PROHIBITED BY THE RULES OF CIVIL PROCEDURE.

Plaintiffs’ Motion to Limit the Scope of Discovery to relevant matters should be granted for three reasons: (1) Defendants failed to respond to the majority of Plaintiffs’ objections; (2) where Defendants did respond, they have failed to demonstrate a legitimate basis for this Court to allow Defendants’ Requests for irrelevant information where it lies well beyond the 24 subject matters; and (3) Defendants fail to address the overbreadth of their Requests.

A. Defendants Fail to Address Several of Plaintiffs’ Objections.

Defendants failed to address the Plaintiffs’ objections to the relevance overbreadth, burden, expense, and intent to harass / embarrass to the following Requests:

Requests	Description	Plaintiffs' Objection
8, 22	3ABN publications (Def. Brief p. 17)	Not Relevant Overbroad, burdensome and expensive.
1-12, 17, 19, 22- 25, (27), 28-29, 33-34, 37-38, 42- 44, And subpoenas	Over-use of the term "all" to qualify documents with broad and general classes of documents, resulting in over- reaching.	Characteristically overbroad requests Irrelevant Overly burdensome and expensive.
13	Communications with attorneys	Privileged
32	Amazing Facts merger, etc.	Irrelevant

Because Defendants failed to address the above objections set forth by Plaintiffs, Plaintiffs' Motion should be granted as to these Requests.

B. Defendants' Requests Seek Irrelevant Information.

Because Defendants disclose irrelevant factual bases to support their Requests, Defendants have failed to establish entitlement to the following:

- **Request 24 - Health Conditions of Tommy and Danny Shelton.** To support this Request, Defendants disclose their desire to determine whether the Sheltons' alleged health statuses are "mere sympathy getting devices" and "mere diversion tactics" to evade responsibility. This is irrelevant, harassing and embarrassing.
- **Request 5 – Documents relating to 3ABN's Foreign Affiliates.** To support this Request, Defendants argue that this information would "speak to . . . whether the Plaintiffs have complied with domestic and foreign laws in the setting up and operation of their foreign facilities." [Def. Brief p. 16]. This is irrelevant and a fishing expedition.
- **Request 27 – Danny Shelton's phone records.** Defendants argue that if "phone records can prove Linda Shelton is an adulteress, then they can *potentially* prove that Shelton is an adulterer." [Def. Brief p. 11]. Defendants may hope this evidence exists, but this is a fishing expedition, expensive and harassing, and ultimately irrelevant.

- **Request 41 and Plaintiff-Related Issue ¶ 16(k)-(m) - Child Molestation Allegations Against Tommy Shelton.** [Def. Brief p. 12]. Defendants argue that because Plaintiffs claim that Defendants' statement that "Danny Shelton and ASI conspired to prevent various allegations and issues from being included to a fact-finding tribunal" was false, Defendants are entitled to discovery information about accusations against Tommy Shelton of alleged sexual misconduct. This overstates the proper scope of discovery – Defendants are entitled to discovery facts surrounding the alleged conspiracy – not irrelevant subject matters pertaining to Tommy Shelton. Further, Tommy Shelton is not even a party to this case.
- **Plaintiff-Related Issue ¶ 16(p)-(r) - Internal Damage Control and Plaintiff-Related Issue ¶ 16 (bb)-(ff) – Administration and Theological Issues.** [Def. Brief. 14-15]. Defendants argue that Plaintiffs claims that 3ABN "failed to oversee" means that Defendants to take inventory of Plaintiffs' current oversight. The internal workings of 3ABN – today – is not relevant to establish claims made in this action of statements that were made in the past. Plaintiffs have not made claims to ongoing defamation. These Requests seek irrelevant information, are made solely to harass, embarrass and annoy and to engage in fishing expedition.
- **Requests 15 and 16 – Identifying Information about Church Leaders and Donors.** Defendants make no argument in support of how these identities are relevant to the claims in this case. Defendants can obtain the information they need without the identities of these individuals, and Plaintiffs have requested direction on devising a system that would allow this. Defendants made no response.

The above Requests should be denied for Defendants' failure to identify a legitimate basis to assert their relevance.

Defendants have further taken the position that where documents are made part of the record in this case, or are produced through discovery, and contain reference to information that interest Defendants (but are outside the scope of the

24 subject matters), then these documents have the ability to “open the door” to discovery of that subject matter. Utilizing this theory, Defendants argue that:

- Paragraphs in Plaintiff’s Complaint averring that 3ABN was founded and organized in the 1980s, entitle Defendants to discovery from this point onward; and
- Identities of church leaders have been made relevant by statements made by 3ABN representatives that certain church leaders’ opinions of 3ABN have been affected by Defendants’ conduct.

No authority was located to support this theory. The scope of discovery cannot be augmented by mere mentions of certain keywords. Thus, the above requests should be denied for their failure to conform to the scope of this case.

C. Defendants Fail to Establish Their Requests Are Not Overbroad or that a Narrower Tailoring is Not Warranted.

From what Plaintiffs can tell, Defendants do not address Plaintiffs’ objection that Requests seeking “all” documents of any given general class of documents, and other forms of overreaching, are too broad. Defendants seem to say that Plaintiffs are claiming that no category of information within Defendants’ overbroad requests would be relevant. This is not Plaintiffs’ position.

The problem created by overbroad requests is that compliance requires a party to expend substantial resources collecting, reviewing, and preparing for production reams and reams of paper, of which up to 99% could be irrelevant. Overbreadth also indirectly allows parties to engage in prohibited discovery behavior – e.g., fishing expeditions and harassment. For some time now, Plaintiffs have attempted to produce what appears to them to be responsive to Defendants’

Requests, only to learn that Defendants do not agree. This is direct evidence that the Requests are too broad. Examples include the following:

- **Defendants argue in favor of Request 27** by pointing to certain evidence indicating that certain specific phone records *may* be relevant. But Request 27 does not seek certain, specific records at all. It requests “all types of phone records or other documents enumerating phone calls made by 3ABN officers from January 1, 2003, onward . . .”
- **Plaintiff-Related Issues ¶ 16(aa)** seeks discovery of Governmental Investigations and documents relating to investigations conducted by every governmental agency Defendants list.

Because it is not Plaintiffs’ job to guess which of the thousands of phone records and agency documents in Plaintiffs’ possession are relevant to Defendants’ case, Defendants must narrow their Requests. For these all Requests identified by Plaintiffs as “overbroad” should be denied or narrowed.

Defendants mischaracterize Plaintiff’s request for the imposition of a discovery time period of 2001 to 2007 in certain circumstances and therefore incorrectly argue that Plaintiffs’ proposal excludes relevant subject matters from discovery (*e.g.*, the alleged van transaction claimed in ¶ 46(b) of the Complaint, which allegedly occurred prior to 2001). Plaintiffs have proposed that Defendants narrow the breadth of their Requests by (a) describing with greater specificity the information they seek (for instance setting forth the specific transaction, conversation, event, etc. for which Defendants request documents) and (b) and imposing a reasonable time period (January 1, 2001 through January 2007) only where specificity is not possible (where Defendants seek and are entitled to more

general and broad classes of documents, for instance, meeting minutes). Thus, as stated in the June 25 Brief, Plaintiffs will agree to produce documents relating to relevant transactions prior to 2001 where Defendants provide sufficient detail for Plaintiffs to locate such documents, if they exist. Plaintiffs *cannot* agree to open discovery to whether the 3ABN Board's exercise of proper oversight "spans the entire length of 3ABN's history." [Def. Brief p. 10).

Plaintiffs must insist, however, upon the January 2007 bookend for discovery. Defendants argue that Plaintiffs' claims that Defendants falsely stated that the 3ABN Board "failed in its responsibilit[ies] to oversee and manage" entitle Defendants to discovery all 3ABN internal governance, oversight and management *even after* the commencement of this litigation, in perpetuity. Ongoing internal matters have no relevance to the false statements at issue in this case because Plaintiffs have not claimed ongoing defamation in this litigation. For this reason, any discovery post-January 1, 2007 must be prohibited, which includes Mr. Shelton's resignation in September 2007, payments of legal expenses, facts relating to a potential merger with Amazing Facts; and placement of James Gilley as President (unless responsive to the 24 subject matters).

IV. PLAINTIFFS ARE ENTITLED TO AN ORDER REQUIRING DEFENDANTS TO SEEK LEAVE OF COURT PRIOR TO ALL FUTURE SUBPOENA SERVICES AND IN CAMERA REVIEW OF THIRD PARTY DOCUMENT PRODUCTIONS BY AN APPOINTED THIRD PARTY.

Defendants offered no response or argument to Plaintiffs' request for the Court's intervention in Defendants' subpoena practice to date and on an ongoing

basis. Because Plaintiffs' requests for guidance in third party practice are warranted under the Rules of Civil Procedure, Plaintiffs respectfully request that the Court issue an order governing Defendants' third party subpoena practice by (a) requiring Defendants to seek leave of court prior to all further subpoena services; and (b) appointing a third party, special master, or Magistrate Judge Hillman to review *in camera* all documents produced by third parties from here to the conclusion of this litigation.

Respectfully Submitted:

Attorneys for Plaintiffs

Dated: July 18, 2008

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Certificate of Service

I, Kristin L. Kingsbury, 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 July 18, 2008.

Dated: July 18, 2008

/s/ Kristin L. Kingsbury
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