

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. )	
_____ )	

**DEFENDANTS’ MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION FOR LEAVE TO CAUSE SUBPOENA TO BE SERVED UPON U.S. ATTORNEY COURTNEY COX, AND IN SUPPORT OF DEFENDANTS’ MOTION FOR LEAVE TO CAUSE SUBPOENA TO BE SERVED UPON THE FJARLI FOUNDATION**

**INTRODUCTION**

Though no leave is required for the Defendants to serve subpoenas, yet because a motion is pending relating to the issue of serving third-party subpoenas, Defendants Gailon Arthur Joy and Robert Pickle seek leave of the Court to serve subpoenas *duces tecum* upon U.S. Attorney Courtney Cox of the Southern District of Illinois, and upon Merlin Fjarli and the Fjarli Foundation.

**FACTS**

***U.S. Attorney Courtney Cox***

On July 25, 2008, Plaintiffs’ counsel Attorney Gerald Duffy issued a letter asserting that the joint investigation of the Plaintiffs (and their auditor) by the U.S. Attorney and the Internal Revenue Service had concluded, that that conclusion was favorable to the Plaintiffs, and that Plaintiff Three Angels Broadcasting Network, Inc. (hereafter “3ABN”) as well as other

unspecified entities *have ordered documents to be destroyed*. (Affidavit of Robert Pickle (hereafter “Pickle Aff.”) Ex. A). This letter was posted on 3ABN’s website, and the assertions it contains were also made in two emails circulated by Pastor Ronnie Shelton of Oklahoma. (Pickle Aff. Ex. B–D).

***The Fjarli Foundation***

Shelton reported a “Mortgage loan” with a balance of \$200,000 from “Merlin Fharli [sic.]” in his July 2006 financial affidavit. (Doc. 81-7 p. 12). In his interrogatories of August 2006 Shelton repeated the claim that he owed Merlin Fjarli \$200,000 for a mortgage loan on his property. (Pickle Aff. Ex. E). 3ABN has reported that Merlin Fjarli is a member of 3ABN’s Board of Directors. (Doc. 63-32 p. 25).

In its 2004 Form 990-PF, the Fjarli Foundation reported \$200,000 as other notes and loans receivable. (Doc. 81-7 at ln. 7 of p. 32). By the end of 2005, contrary to the claim of Shelton’s July 2006 financial affidavit, the balance was reduced to \$150,000. (Doc. 81-7 at ln. 7 of p. 34). By the end of 2006, the balance was reduced to \$0. (Doc. 81-8 at ln. 7 of p. 2).

On August 1, 2005, Shelton granted a mortgage on the property in question to the Fjarli Foundation, rather than to Merlin Fjarli. (Pickle Aff. Ex. F). The mortgage states that the principal amount secured was not to exceed \$200,000, but does not state what the actual indebtedness was at that point in time. No repayment schedule, no term for the mortgage loan, and no interest rate are given in the mortgage. (*Id.*). A release of mortgage signed on September 28, 2007, on behalf of the Fjarli Foundation was recorded on October 17, 2007. (Pickle Aff. Ex. G).

**ARGUMENT**

***U.S. Attorney Courtney Cox***

The Defendants wish to subpoena from the U.S. Attorney copies of interviews, notes,

signed statements, reports, correspondence, stipulations, agreements, findings of fact, information sheets, and lists of available evidence pertaining to Three Angels Broadcasting Network, Inc., Danny Lee Shelton (hereafter “Shelton”), and Shelton’s publishing companies, D & L Publishing and DLS Publishing.

Such documents are relevant to the questions of whether or not 3ABN directors or Danny Lee Shelton privately enriched themselves/himself at 3ABN’s expense and/or in violation of the Internal Revenue Code, questions put at issue in the Plaintiffs’ complaint and the Defendants’ answer, questions which in part form the basis for the Plaintiffs’ claim against the Defendants of defamation *per se*. (Doc. 1 ¶¶ 46g, 75; Doc. 9 at Answers to ¶¶ 9, 14).

On August 8, 2008, Remnant Publications, Inc. (hereafter “Remnant”) appealed Magistrate Judge Ellen Carmody’s decision in the Western District of Michigan regarding the Defendants’ third party subpoena *duces tecum* of Remnant. In their response, the Defendants further demonstrated that Shelton channeled 3ABN monies through his publishing companies, D&L Publishing and DLS Publishing, to himself in the form of royalties and profits from sales. (Pickle Aff. Ex. H–J). Therefore, non-privileged documents from the U.S. Attorney pertaining to D & L Publishing and DLS Publishing are also relevant.

### ***The Fjarli Foundation***

The Defendants seek copies of the mortgage note, deed, amortization schedule, payment schedule, and payment history (including source of payment); copies of the fronts and backs of all checks dispersed or received for account; copies of all wire transfers (including wire transfer instructions) dispersed or received for account; and all documents pertaining to the disposition of the debt.

The Plaintiffs in their complaint assert that the Defendants falsely claimed that Shelton refused to disclose “royalties in proceedings before a court of law related to the distribution of

marital assets,” and that “Danny Shelton perjured himself through the course of court proceedings relating to his divorce from Linda Shelton.” (Doc. 1 ¶¶ 46h, 50i). One item pertaining to this matter is Shelton’s reporting of the mortgage loan from “Merlin Fjarli [*sic.*]” on his financial affidavit filed in connection with those proceedings.

Shelton’s misstating the grantee of his mortgage as being Merlin Fjarli rather than the Fjarli Foundation, and his overstating by at least \$50,000 the balance due on that mortgage on his July 2006 financial affidavit raises a number of questions.

- Was the whole mortgage idea an attempt to artificially inflate his debts so as to have less property to divide with his ex-wife Linda Shelton in their still unsettled division of marital property case?
- Was Shelton unaware of what the balance of his mortgage really was because Remnant was paying off the mortgage using a) royalties Remnant owed Shelton, or b) a portion of the proceeds from Remnant’s sales of Shelton’s booklets drop shipped from Pacific Press Publishing Association to 3ABN? (Pickle Aff. Ex. H at p. 3).
- Was Shelton unaware of what the balance of his mortgage really was because Merlin Fjarli or the Fjarli Foundation was paying it off or amortizing it as a gift to Shelton, and thus it should not really have been reported in Shelton’s division of marital assets proceedings as a liability?

The possibility that the loan was actually a gift could explain why Merlin Fjarli ran the loan through the Fjarli Foundation rather than loaning the money to Shelton personally or from a real estate trust.

The documents the Defendants wish to subpoena from the Fjarli Foundation will establish the extent of the errors on Shelton’s July 2006 financial affidavit pertaining to Shelton’s mortgage, and could demonstrate the degree to which Shelton intentionally made those errors.

**CONCLUSION**

The Defendants believe that the documents they seek from U.S. Attorney Courtney Cox and the Fjarli Foundation are relevant to the claims and defenses of the parties of the instant case. Because the pending motions relate to the issuance of third-party subpoenas, the Defendants seek leave of the court to subpoena the documents detailed herein, even though no such leave is required.

Respectfully submitted,

Dated: August 22, 2008

/s/ Gailon Arthur Joy, pro se

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