

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

vs.

Case No.: 1:08-mc-03

Gailon Arthur Joy and Robert Pickle,

Defendants.

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**MEMORANDUM IN SUPPORT OF RESPONSE TO
DEFENDANTS' MOTION TO COMPEL
REMNANT PUBLICATIONS**

PROCEDURAL HISTORY AND FACTS

The Plaintiffs in this case, Three Angels Broadcasting Network (hereinafter “3ABN”), and Danny Lee Shelton (hereinafter “Shelton”), filed suit against the defendants, Gailon Arthur Joy and Robert Pickle, in the United States District Court for the District of Massachusetts, for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage. (C.A. No. 07-40098-FDS (D. Mass.)). Defendants first sought documents from Daniel Hall of Remnant Publications, Inc. (hereinafter, “Remnant”) via subpoena issued from the United States District Court for the District of Massachusetts and served on November 30, 2007. Remnant objected to the subpoena in a written letter to defendants dated December 10, 2007, on the basis that the subpoena was irrelevant, overbroad, burdensome, and sought confidential documents.

Defendants then sought documents from Remnant in a second subpoena issued from this Court and served on March 31, 2008. Remnant objected in a written letter to the defendants dated April 1, 2008 on the same basis. Defendants served this Motion to Compel on Remnant on May 5, 2008.

ARGUMENT

I. THE DOCUMENTS SOUGHT BY DEFENDANTS IN THIS MOTION ARE NOT RELEVANT TO THE UNDERLYING LAWSUIT.

Remnant is not involved in the current lawsuit between plaintiffs 3ABN and Shelton and defendants. As a non-party, Remnant is not implicated, discussed, or even mentioned in plaintiffs’ complaint. Therefore, any documents that are in Remnant’s possession are not relevant to the underlying lawsuit.

Under Fed. R. Civ. P. 26(b)(1), parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. In paragraph 46 of plaintiff's complaint, it states as follows:

“Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds. Among those untrue statements made by Joy and Pickle are, *inter alia*, that:

h. Danny Shelton wrongfully withheld book royalties from 3ABN and refused to disclose those royalties in proceedings before a court of law related to the distribution of marital assets.” (Complaint, p 12-13).

This provision is the main impetus behind defendants desire to obtain documents from Remnant. In citing defendants' own statements against them, as is necessary in a defamation case, the plaintiffs did not address an allegation made by defendants that implicated Remnant. Rather, defendants' Motion to Compel is riddled with assumptions and inferences which led them to make various allegations against the plaintiffs. The allegation made by the defendants concerning book royalties only involves the relationship between 3ABN and Shelton. Therefore, any relationship between the plaintiffs and Remnant is irrelevant.

II. THE SUBPOENA INITIATED BY DEFENDANTS IS OVERBROAD, BURDENSOME, AND CALLS FOR THE DISCLOSURE OF CONFIDENTIAL BUSINESS RECORDS.

Under Fed. R. Civ. P. 26(b)(2)(C)(i) and (iii), the court must limit the frequency or extent of discovery otherwise allowed by the rules if it determines that:

“the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive ... [or] the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.”

Defendants' subpoena demands the production of "all contracts," "all ledgers," "all records of money," "all bank statements," "all manuscripts," and "all documents containing detail for royalty expenses" for relationships between Remnant Publications, Inc., approximately a dozen corporations, and more than a dozen individuals, including "all officers, directors, employees, or volunteers of Three Angels Broadcasting Network, Inc." The subpoena seeks these records from January 1, 2000, or the first date Remnant performed publishing or printing services for Danny Shelton or the named entities, whichever is later, to the present date.

This request is overly broad when considered in light of the fact that defendants' motion centers around plaintiff Shelton's book, *Ten Commandments Twice Removed*. Instead of seeking information surrounding this topic, defendants have asked for all documents for the past eight years. This would require Remnant and its staff to go back through eight years of records that are irrelevant to the lawsuit, which is a rather extensive and time-consuming task. As the court in *Surles ex re. Johnson v. Greyhound Lines, Inc.*, 474 F.3d 288, 305 (6th Cir. 2007) held, "[a]lthough a plaintiff should not be denied access to information necessary to establish [his] claim, neither may a plaintiff be permitted to 'go fishing' and a trial court retains discretion to determine that a discovery request is too broad and oppressive" (citing *Marshall v. Westinghouse Elec. Corp.*, 576 F.2d 588, 592 (5th Cir. 1978)). Therefore, defendants should not be permitted to search through documents having no bearing on their allegations simply to determine whether anything of interest may be found.

In addition, defendants have demanded confidential business documents. These documents are of a proprietary nature to Remnant, and they include bank and financial statements of numerous entities. Therefore, even if this Court determines that they are discoverable, they should be kept confidential by a protective order pursuant to Fed. R. Civ. P. 26(c).

III. DEFENDANTS ARE SEEKING INFORMATION AND DOCUMENTS WHICH CAN BE OBTAINED FROM MORE CONVENIENT SOURCES.

Under Fed. R. Civ. P. 26(b)(2)(C)(i) cited above, the court must limit the frequency or extent of discovery otherwise allowed by the rules if it determines that the discovery sought can be obtained from some other source that is more convenient, less burdensome, or less expensive. Defendants have had ample opportunity to obtain these documents from the plaintiffs in this case. As indicated in the complaint, defendants have made allegations that plaintiff Shelton withheld royalties from plaintiff 3ABN. Therefore, defendants have had the opportunity to obtain documentation of Shelton's earnings and 3ABN's business records and board meeting minutes from the plaintiffs. Defendants do not need to resort to subpoenaing records from Remnant in order to obtain the documentation they need. Rather, defendants are attempting to make an end-run around plaintiffs by serving subpoenas on Remnant. Under Fed. R. Civ. P. 26(b)(1)(C)(i), defendants should be required to first seek these documents from the plaintiffs.

IV. DEFENDANTS HAVE MADE ALLEGATIONS AGAINST THE PLAINTIFFS WHICH THEY DID NOT KNOW TO BE TRUE, AND NOW THEY ARE SEEKING A FACTUAL BASIS TO SUPPORT THEIR ALLEGATIONS.

Under the law of Massachusetts, where this case was filed, truth of the allegedly defamatory statements is an affirmative defense to either libel or slander. *Perry v. Hearst Corp.*, 334 F.2d 800 (1st Cir. 1964). Throughout defendants' motion, they acknowledge the fact that they are trying to ascertain whether the allegations they made were, in fact, true. (Motion, p 9-10). Defendants cite various "credible sources" which they relied upon to make the numerous allegations against the plaintiffs. Yet, defendants have produced no documents that support the allegations made by these "sources." In a similar case, *Garland v. Torre*, 259 F.2d 545 (2d Cir. 1958) *cert. denied*, 358 U.S. 910, 79 S. Ct. 237 (1958), the court addressed the issue of whether a journalist accused of defamation was required to disclose her sources. In considering the constitutional issues, the court held that "the question asked of the [journalist] went to the heart of the plaintiff's claim." *Id.* at 550. As such, "the Constitution conferred no right to refuse an answer." *Id.* Like the journalist in *Garland*, defendants in this case do not have a right to refuse to reveal their sources and instead demand documentation from non-parties such as Remnant. Even more so, if defendants' "credible sources" do not have a factual basis for allegations they have made, defendants are not going to find any records from Remnant which prove or disprove opinions.

CONCLUSION

Based on the case law and facts above, it is clear that the documents sought by defendants in their Motion to Compel are not relevant to the underlying lawsuit. Defendants' subpoena to Remnant is overbroad, burdensome, and seeks confidential business and financial documents. Furthermore, defendants have other, more convenient, sources which could provide the information they seek – namely, the plaintiffs and defendants' own "sources." Defendants have made strong allegations against the plaintiffs without knowing if those allegations were in fact true, and defendants are now attempting to find documentation to prove the truth of those allegations. As a non-party to this case, Remnant's documentation is not relevant, and defendants Motion to Compel should be denied.

Respectfully submitted,

Dated: May 19, 2008

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