

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: OUT OF DISTRICT SUBPOENA,

Hon. Richard Alan Enslin

ROBERT PICKLE, PETITIONER

Hon. Ellen S. Carmody

v

Case No. 1:08-mc-00003

REMNANT PUBLICATIONS, INC.,
RESPONDENT

_____ /

MEMORANDUM IN SUPPORT OF MOTION TO AMEND ORDER

ARGUMENT

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

The documents sought by defendants, Gailon Arthur Joy and Robert Pickle, from Remnant Publications, Inc. (hereinafter, "Remnant") are not relevant to the underlying lawsuit between plaintiffs, Three Angels Broadcasting Network, Inc. (hereinafter "3ABN") and Danny Lee Shelton (hereinafter "Shelton"), and the defendants. As stated in plaintiffs' Motion for Protective Order Limiting Scope and Methods of Discovery, plaintiffs' claims focus on the following three allegations made by the defendants:

- (A) that "3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds";
- (B) that "3ABN and its President Danny Shelton have committed administrative and operational improprieties at 3ABN and that the organization is not properly or competently managed by its managers, officers, and directors"; and

(C) that “3ABN and its President Danny Shelton acted without grounds in removing Linda Shelton from the 3ABN Board of Directors, that Danny Shelton had no grounds for divorcing Linda Shelton, that 3ABN and Danny Shelton conspired to hide evidence and information concerning the removal and divorce, and that 3ABN and Danny Shelton have lied and made otherwise purposeful misstatements concerning the Shelton’s divorce and Danny Shelton’s remarriage.” (*See* Plaintiffs’ Memo in Support of Motion, p 2-3).

Although the defendants are entitled to discovery in order to prove the purported truth of these allegations, none of the allegations have anything to do with Remnant. In fact, Remnant is not implicated, discussed, or even mentioned in plaintiffs’ complaint. Therefore, any documents sought by the defendants from Remnant are not relevant to the underlying lawsuit.

II. THE DEFENDANTS HAVE ABUSED THE DISCOVERY PROCESS BY USING DELAYING TACTICS AND ISSUING OVERBROAD SUBPOENA REQUESTS TO UNINVOLVED NON-PARTIES.

As noted in plaintiffs’ motion, defendants have issued subpoenas on six non-parties during this discovery process. (*See* Plaintiffs’ Memo in Support of Motion, p 3-4). In these subpoenas, the defendants have asked for every possible document that mentions the name of 3ABN or Shelton. (*See* Plaintiffs’ Exhibit 19). Obviously, all of these documents are not relevant to the underlying lawsuit, as they relate to dates, persons, and institutions that are not pertinent to the claims made by the plaintiffs. As a result, defendants’ requests are not only overbroad, but also duplicative many times over.

Furthermore, defendants themselves have stated that their goal is to “launch a full scale and public effort to ... indict Danny [Shelton] in the public eye and to put pressure on 3ABN.” (*See* Plaintiffs’ Exhibit 20). In order to reach this goal, defendants have tried

to “substantially expand the case to bring in the most damaging and certain to sway the jury details” and have “deliberately dragged [their] feet.” (*See* Plaintiffs’ Exhibit 21).

These statements demonstrate that the defendants have abused the discovery process by issuing overbroad, duplicative subpoenas to numerous non-parties in the hopes of delaying litigation and placing pressure on the plaintiffs. Defendants’ actions have resulted in expensive and unnecessary litigation for these non-parties.

III. FAILURE TO PROVIDE *IN CAMERA* REVIEW OF THE DOCUMENTS PROVIDED BY REMNANT WILL ALLOW DEFENDANTS ACCESS TO DOCUMENTS THAT MAY LATER BE PROHIBITED.

The Order entered June 20, 2008, by this Court provided for the submission of documents from Remnant to the defendants without the protection of *in camera* review by the District Court in Massachusetts. If this Order is not amended to consider the relevancy determination yet to be made by the District Court in Massachusetts, the defendants will gain access to documents that may later be prohibited. Therefore, the Order entered June 20, 2008, should be amended to provide for *in camera* review of the documents submitted by Remnant pending a relevancy determination by the United States District Court for the Central District of Massachusetts. As the matter is already before that court, no particular delay or denial of justice will fall upon defendants if the amendment sought herein is granted.

Dated: June 27, 2008

/s/ Charles R. Bappert
Charles R. Bappert (P41647)
Biringer, Hutchinson, Lillis,
Bappert, & Angell, P.C.
100 W. Chicago Street
Coldwater, MI 49036-1897
Tel: (517) 279-9745
Fax: (517) 278-7844 g\15003.20

