UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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.: 0:08-mc-7

DEFENDANT ROBERT PICKLE'S MEMORANDUM IN SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF SHELTON'S MOTION TO QUASH SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, FOR PROTECTIVE ORDER, AND HIS MOTION TO STAY AND REMIT ENFORCEMENT OF SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, TO APPOINT A SPECIAL MASTER

INTRODUCTION

Defendant Robert Pickle caused a subpoena *duces tecum* dated December 12, 2007, to be issued and served upon MidCountry Bank, N.A. ("MidCountry"). This subpoena seeks the business records of a bank that are reasonably calculated to lead to the discovery of admissible evidence in ongoing litigation in the United States District Court for the District of Massachusetts captioned *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle* (No. 07-40098-FDS (D. Mass.)). The bank records in question are only for accounts upon which Plaintiff Danny Lee Shelton is a signatory.

Because Plaintiff Danny Lee Shelton has failed to make or demonstrate a claim of privilege, he lacks standing to bring the motions in question before this Court, and thus his

motions should be dismissed.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 26(b), the scope of discovery permitted in civil litigation is quite broad:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense .... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

In the absence of privileged information, Federal Rule of Civil Procedure 26(b) does not limit the discovery of otherwise confidential or private information.

Further, the U.S. Supreme Court has determined that bank records are "business records of the bank," not the private papers of a party, that the "issuance of a subpoena to a third party does not violate" a party's rights, and that a party possesses "no Fourth Amendment interest in the bank records that could be vindicated by a challenge to the subpoenas":

> There is no legitimate "expectation of privacy" in the contents of the original checks and deposit slips, since the checks are not confidential communications, but negotiable instruments to be used in commercial transactions, and all the documents obtained contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.

United States v. Miller, 425 U.S. 435, 445 (1976).

Various courts have repeatedly cited and applied the above case:

> Accordingly, the bank customer has no inherent right to assert ownership, possession, or inferentially, control over the release of a bank's records of his transactions. . . . Nothing in the Act [Financial Privacy Act], however, shields the records from discovery in a civil suit. . . .
>
> Absent a claim of privilege, a party has no standing to challenge a subpoena to a nonparty.

Clayton Brokerage Co. v. Clement, 87 F.R.D. 569, 571 (D. Md. 1980).

Since Plaintiff Shelton has not made or demonstrated a claim of privilege in the information contained in the business records of the bank, he lacks standing to challenge a subpoena to a non-party, and his motions should therefore be dismissed.

If it be argued by Plaintiff Shelton that his motions should not be dismissed because DLS Publishing, Inc. is not a party to the underlying suit, let it be pointed out that DLS Publishing, Inc. has not brought the motions in question, and that therefore Plaintiff Shelton still lacks standing to bring the motions in question before this court.

Moreover, Plaintiff Shelton in his memorandum acknowledges that MidCountry Bank intends to comply with the subpoena. Since MidCountry Bank is the owner of the business records in question, it is MidCountry Bank that should file a motions to quash or for a protective order or for a special master, not Plaintiff Shelton. Yet MidCountry Bank, after careful review by their attorney, has chosen to comply with the subpoena.

CONCLUSION

While Plaintiff Shelton's Memorandum spends more than a page arguing that Plaintiff Shelton has standing to bring the motions in question before this Court, it fails to make or demonstrate a claim of privilege. The motions should therefore be dismissed since, absent a claim of privilege, Plaintiff Shelton has no standing to bring the motions in question before this Court.

Respectfully submitted,

Dated: February 15, 2008

s/ Robert Pickle, pro se

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