
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' OPPOSITION TO DEFENDANTS'
MOTION TO FILE UNDER SEAL

This constitutes the Plaintiffs' Opposition to Defendants' Motion to File Under Seal (Doc. 153). Over the relevancy objections of Remnant Publications, Inc. and the Plaintiffs, Defendants convinced the District Court for the Western District of Michigan to allow them access to records regarding dealings between Remnant and the Plaintiffs. However, the Michigan court expressly ordered that the Remnant documents were being produced "subject to the Protective Order already entered in the underlying case." (Simpson Aff. Ex. 1).

On October 30, 2008, as part of its order dismissing the case, this Court ordered Defendants to return all confidential documents. (Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV – Affidavit of M. Gregory Simpson Ex. 2). Defendants refused to comply with this Court's order, both with respect to the

Remnant documents at issue in this motion and with respect to all other documents designated as confidential under Judge Hillman's Protective Order entered on April 17, 2008 (Doc. 60). (*See* Simpson Aff. Exs. 3 & 4). Judge Hillman's order had permitted the designation of documents as "confidential" whether they were produced by a party or a third party. (Doc. 60 at pp. 1-2). The Remnant documents were designated as confidential by both Remnant and Plaintiffs. They were ordered produced with that express understanding.

Instead of complying with this Court's order to return the Remnant documents, Defendants began talking freely about them on the internet, stating falsely that they prove wrongdoing by the Plaintiffs. (*See* Simpson Aff. Exs. 5 and 6). At the same time, Defendant Joy began making veiled death threats against the Plaintiffs, suggesting that Plaintiff Shelton was like a conquered king and "you know what they do with conquered kings? Ask the czar and his entire family!!!" (Simpson Aff. Ex. 6), and referring to his actions against Shelton and supporters of the Plaintiffs as "ethnic cleansing." (Simpson Aff. Ex. 7).

Now, in a rather transparent effort to publicize documents that had no relevance to the underlying lawsuit and even less relevance to the motion at hand, Defendants move to file Exhibit A to the Affidavit of Robert Pickle (Doc. 152), under seal. The benefit of filing the document under seal is somewhat diminished, however, by Defendants' description of Exhibit A as "a selection of the documents from Remnant [Publications, Inc.] pertaining to kickbacks and/or royalties from Remnant to DLS Publishing, Inc...." The point of filing these documents under seal is obviously undermined by Defendants'

characterization of what they represent. (In point of fact, the Remnant documents reflect perfectly legal transactions that have been fully vetted by certified public accountants and evidence no wrongdoing by anybody).

Quite frankly, Defendants have been talking about these documents on the internet for some time now. The only apparent purpose of this motion is to provide Defendants a forum to publicly characterize confidential documents that they have been ordered to return to Defendants. By calling these documents evidence of “kickbacks and/or royalties” in a public filing, the Defendants can now quote themselves endlessly on the internet, as they tend to do, with citation to a public filing for support. They have abused the judicial process hopefully for the last time.

The motion should be denied because Exhibit A does not contain admissible evidence. Evidence is admissible if and only if it is relevant. Fed. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401.

This case is over. It has been dismissed. The only remaining issue is the pending motion by Defendants for reimbursement of “costs,” which to them means every expense they incurred that is metaphysically related to this case, including Mr. Pickle’s cost of showering at a camp site while supposedly traveling to investigate allegations related to the lawsuit. The Court is well-advised of the parties’ positions with respect to that motion, and has no need of Mr. Pickle’s laughably twisted take on the royalty payments reflected in the Remnant documents.

Pickle's affidavit indicates that the Remnant documents somehow show that the lawsuit itself was frivolous. This contention is itself frivolous. The lawsuit mentions royalties in just two allegations: Complaint ¶¶ 46(h) and 46(i) – alleging that Defendants defamed Plaintiffs by stating that Shelton refused to disclose royalties in divorce proceedings. There was never any dispute that Remnant paid royalties. The issue was whether these were properly disclosed. Defendants have never produced even an iota of evidence that the Remnant royalty payments were improperly characterized in any court proceeding or in IRS reporting. All the evidence has been to the contrary.

Defendants' motion for costs should not become a backdoor means of arguing the merits of the case. The point of dismissing the lawsuit was to stop the lawsuit prior to reaching a determination on the merits, to spare the resources of the Court and the parties. Defendants did not see fit to offer Exhibit A in connection with that motion, and should not be allowed to add new arguments and evidence in support of their position now. If the merits of a dismissed lawsuit are to be addressed in the context of a motion for costs, there is no opportunity for Plaintiffs to respond adequately. Further, the benefit of dismissing the case would be lost if Plaintiffs were now forced to produce all the evidence that supported the case in what would be an endless procession of affidavits from the many witnesses who would have proven Plaintiffs claims had the case proceeded to a resolution on the merits.

If the Court is inclined to consider Exhibit A, then Plaintiffs agree that it should be filed under seal. The best course of action would be to deny Defendants permission to file it at all.

Respectfully Submitted:

Dated: December 22, 2008

SIEGEL, BRILL, GREUPNER,
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Certificate of Service

I, M. Gregory Simpson, 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 December 22, 2008.

Dated: December 22, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson