

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING . CIVIL ACTION NO. 07-40098-FDS
V. .
GAILON ARTHUR JOY, et al . BOSTON, MASSACHUSETTS
Defendant . NOVEMBER 13, 2007
.

TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE TIMOTHY S. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording,
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P R O C E E D I N G S

CASE CALLED INTO SESSION

THE CLERK: The Honorable Timothy S. Hillman
presiding. Today's date is November 13, 2007 in the case of
Three Angels Broadcasting v. Gailon Joy and Robert Pickle,
Civil Action No. 07-40098-FDS. Counsel, please identify
yourself for the record.

MR. PUCCI: John Pucci for the plaintiffs.

THE COURT: Good afternoon, Mr. Pucci.

MR. DUFFY: Gerald Duffy for the plaintiffs.

THE COURT: And good afternoon to you, Mr. Duffy.

MR. HEAL: Your Honor, I'm Laird Heal. I believe at
this point I'm representing Mr. Joy in the bankruptcy
proceeding only.

THE COURT: All right, and Mr. Heal - and you are,
you had previously had an appearance on behalf of the defendant
Joy.

MR. HEAL: That's correct, Your Honor.

THE COURT: All right. And is this Mr. Joy here?

MR. JOY: Yes, Your Honor.

THE COURT: Okay. And, Mr. Joy, is it your
understanding that Mr. Heal is no longer representing you on
this matter?

MR. JOY: I entered pro se it must be four months ago
on the matter, we're talking about 3ABN--

1 THE COURT: Yep.

2 MR. JOY: --versus Joy?

3 THE COURT: I am.

4 MR. JOY: Yes, sir.

5 THE COURT: Okay, so Mr. Heal is no longer affiliated
6 with this case as far as your legal representative; is that
7 correct?

8 MR. JOY: That's correct, Your Honor.

9 THE COURT: All right, thank you.

10 Mr. Pickle?

11 MR. PICKLE: Yes.

12 THE COURT: Can you hear me all right, sir?

13 MR. PICKLE: Yes, I can, Your Honor.

14 THE COURT: All right. And, Mr. Pickle, you are not
15 represented by counsel in this matter is that also correct?

16 MR. PICKLE: I guess I'm not familiar with the legal
17 technicalities and all of that. I mean, the way I understood
18 was he'd be representing me until he withdraws his appearance
19 even if I am pro se, but if that's not technically correct I
20 guess it's not correct.

21 THE COURT: Well, I have a notice filed by you in
22 which you are filing your appearance pro se.

23 MR. PICKLE: That's correct.

24 THE COURT: Mr. Heal, did you ever have an appearance
25 on behalf of Mr. Pickle?

1 MR. HEAL: Yes, Your Honor. I appeared with him. I
2 filed the answer.

3 THE COURT: Okay. And is it your understanding that
4 you are withdrawing as his counsel on this matter as well?

5 MR. HEAL: As I mentioned definitely I was up till
6 the wee hours of the morning discussing this case with him.
7 But as far as a matter of appearance, you know, Mr. Pickle had
8 chosen to enter his appearance pro se.

9 THE COURT: All right. So you are, just so that
10 we're real clear about this, you are not representing either
11 party in this matter?

12 MR. HEAL: That's what the parties say, Your Honor.

13 THE COURT: Is that what you say? Don't fence with
14 me. I just need to know, are you in or are you out?

15 MR. HEAL: For purposes of this, this discussion I'm
16 out. I've continued to give them the notices out of
17 convenience for electronic filing.

18 THE COURT: Well, you're either in for all purposes
19 or out for all purposes. You just can't file a special
20 appearance for a status conference.

21 MR. HEAL: Well, Your Honor for the matter, as to the
22 matter of bankruptcy, I'm representing Mr. Joy and we're
23 objecting on the basis that it violates - (inaudible -
24 #2:24:15).

25 THE COURT: Well, that's a different issue and we can

1 talk about that. But as far as representation of either
2 Mr. Joy or Mr. Pickle on this matter you are not their lawyer?

3 MR. HEAL: That is correct, Your Honor.

4 THE COURT: All right, thank you. All right,
5 Mr. Pickle is that your understanding as well?

6 MR. PICKLE: I guess it is now after I've heard this
7 discussion.

8 THE COURT: All right, good.

9 Now, Mr. Joy, with respect to my order of November 2,
10 2007, have you done what I asked you to do?

11 MR. JOY: We made contact with, let me think,
12 Mrs. Hayes and, or Ms. Hayes and confirmed - I got a letter
13 from her I believe on the 7th, the 6th, I'm sorry, and I didn't
14 pick up--

15 THE COURT: Who is Ms. Hayes?

16 MR. JOY: Ms. Hayes is counsel for 3ABN, Your Honor.

17 THE COURT: Uh-huh.

18 MR. PUCCI: Your Honor, she's a lawyer in my office.

19 THE COURT: Okay.

20 MR. JOY: Yeah. She had asked to, on the 6th she had
21 asked if it was possible for them to come and copy the, copy
22 the discs on the 9th. I didn't pick that up until late on the
23 7th and I responded first thing on the 8th to let her know that I
24 could be available, letting her also know that I had been ill,
25 was still ill, but I would still be happy to, you know, host

1 them for that purpose. She got back to me I believe late on
2 the 8th and said that she wanted to reschedule it for another
3 day but she also requested that we make them available, let me
4 see, she asked if they, I have the copies here, she asked to
5 make the, she asked if we would make them available by just
6 simply shipping them to Minnesota. To that I have not
7 responded. I thought we were too close to the status
8 conference to really get into the debate of the scope of
9 discovery. So I decided that I would defer the answer to that
10 until we got here, Your Honor.

11 THE COURT: How about the first paragraph of the
12 order where I ask you to supply a listing of your equipment,
13 have you done that one for me?

14 MR. JOY: Oh, that was done, Your Honor.

15 THE COURT: Okay, great.

16 MR. JOY: Yeah.

17 THE COURT: Did you file that with the court as I
18 requested cause I didn't see it if you did.

19 MR. JOY: Oh. I may not have filed it with the
20 court.

21 THE COURT: You did serve it on your opponents
22 though?

23 MR. JOY: I gave them, yeah.

24 THE COURT: Okay.

25 MR. PUCCI: He gave to us, he did file a list of

1 equipment by email on November 8th.

2 THE COURT: Okay, thank you. All right, Mr. Pucci or
3 Mr. Duffy, what, if anything, do you want to say about this
4 specific issue and then we can go into anything else that you
5 want to talk about.

6 MR. PUCCI: Well, Your Honor, I want to pick up
7 compliance with the Court's status conference order.

8 THE COURT: Uh-huh.

9 MR. PUCCI: And I want to leave this courtroom today
10 with something that can work in terms of trying to preserve a
11 status of what's been purged from electronic data--

12 THE COURT: Uh-huh.

13 MR. PUCCI: So what I would like to do is have a
14 dialogue and get some guidance from the Court as to trying to
15 find a reasonable time, place and manner where we can comply,
16 they can comply with the Court's order of November 2nd. We have
17 our expert Mark Landergin (ph) on standby. Our preference is
18 that the second paragraph of having them making equipment
19 available that it does get FedEx'd out to him in Minnesota
20 which is a frequently used means of transmitting the holding
21 devices for the electronic data.

22 THE COURT: How many devices are we talking about?

23 MR. PUCCI: There are five different lists. If it
24 would it would help the Court I can give you a copy of the list
25 that was emailed. It's my only copy but--

1 PAUSE

2 THE COURT: All right, and of the list what is it
3 that you are interested in getting the copies of the drive, the
4 storage device rather?

5 MR. PUCCI: Well, unfortunately you have my only copy
6 of the list so--

7 THE CLERK: I can make a copy.

8 THE COURT: Would you, please.

9 THE CLERK: (Inaudible - #2:29:10).

10 THE COURT: Yeah would you. That'd be great.

11 MR. PUCCI: Thank you. I think it's the five--

12 THE COURT: Mr. Joy where are those, the stuff that's
13 in that list where is that located physically?

14 MR. JOY: Your Honor, when the - what we did is we
15 vacated the premises of our office and the actual machines
16 including the three that are inoperable I had they brought to,
17 I have an office in my basement. I had them brought there and
18 stored there for purposes of obviously holding them pending the
19 decision of this Court relating to the manner of discovery and
20 so all five of the machines are there in the basement.

21 THE COURT: And where is that?

22 MR. JOY: At my home.

23 THE COURT: And where is that?

24 MR. JOY: West Boylston, Massachusetts--

25 THE COURT: All right.

1 MR. JOY: --Your Honor.

2 THE COURT: Okay.

3 MR. JOY: And so they're there. They've always been
4 there. And frankly I guess that brings up another issue here
5 and that is the Court's never really made a decision on the
6 first issue relating to the form of discovery and now we're
7 into issues relating to scope of discovery.

8 THE COURT: Actually, all I'm talking about at this
9 time is preservation.

10 MR. JOY: But those, but we have made it clear in
11 several memoranda, Your Honor, as well as in direct
12 representation to this Court that those things are in our care,
13 custody and control and are in no danger of disappearing.

14 THE COURT: Well--

15 MR. JOY: Preservation has been made.

16 THE COURT: Well, I'm not sure I agree with you but
17 we'll come back to that. I'm just trying to find out where
18 everything is and then we can go from there. So the devices
19 that you have referenced are in West Boylston, Massachusetts in
20 your basement?

21 MR. JOY: Absolutely, Your Honor.

22 THE COURT: Okay. And, Mr. Pucci or Mr. Duffy, can
23 you get your person to, whoever it is you want to West Boylston
24 to
25 Mr. Joy's basement?

1 MR. PUCCI: We can. Frankly, Judge, I hoped when
2 the machines got transferred from a business setting to a
3 personal residence so that we might avoid entering his personal
4 residence.

5 THE COURT: Uh-huh.

6 MR. PUCCI: Avoid, you know, further complications
7 and invasions, issues of privacy that--

8 THE COURT: Uh-huh.

9 MR. PUCCI: --we're frankly not interested in
10 invading. So my preference would be to find a neutral site.
11 If they're not going to be FedEx'd to find a neutral site that
12 would be convenient to all parties and where my experts have
13 the ability to set up their equipment and lay it out. I think
14 two obvious choices, one is the federal courthouse in Worcester
15 would be a place that they could get to. We normally work with
16 the clerk's office to find a room and be able to set up and
17 have access to data there. An alternative is my office in
18 North Hampton and - so those are really the three options. I
19 would suggest the Court order them FedEx'd, that the Court
20 would order them produced in my office or the Court would order
21 them produced in the courthouse.

22 THE COURT: Do you, I'm looking at the list. Are you
23 - thank you, Lisa, for doing that. Are you interested in the
24 fax machines?

25 MR. PUCCI: Yes.

1 THE COURT: Are you interested in the AT&T phones?

2 MR. PUCCI: No on the phones, no on the TV, yes on
3 the scanner, yes on the printer, no on the lamps, no on the
4 shredder, and I guess they could inspect the HP jet printer
5 that's dysfunctional.

6 THE COURT: So we're talking about the five things
7 unbranded with the operating system of Microsoft Windows for
8 XP, three of which are inoperable, two fax machines, one color
9 scanner, one color printer, one HP all in one office jet
10 printer, and do you want the tel - you don't want the telephone
11 with the voicemail?

12 MR. PUCCI: In an abundance of caution, I would say
13 yes, we would include that rather than have to come back here
14 if it turned out to be something.

15 THE COURT: All right, Mr. Joy, what's your pleasure?
16 Do you want to have them come to your place or do you want to
17 bring them to Worcester to the federal courthouse? What's--

18 MR. JOY: I have no objection whatsoever, Your Honor,
19 to them coming to the home and finishing it there. Obviously
20 there would be a third alternative. We could obviously use
21 Mr. Laird's office, Mr. Heal's office which is right up the
22 street five miles away, much more convenient.

23 THE COURT: What do you say to that?

24 MR. JOY: I have plenty of extra room, Your Honor.

25 THE COURT: What do you say to that?

1 MR. DUFFY: Your Honor, as long as the computer
2 forensic equipment could be placed where they can set up their
3 electronic equipment, where they could operate it with some
4 ease, we would have no objection.

5 THE COURT: How long do you expect the processing
6 will take?

7 MR. DUFFY: What I'm advised is with operable
8 computers it's a fairly simply process. With the inoperable
9 computers it is a difficult process because they first have to
10 figure out why they're not operating.

11 THE COURT: Uh-huh.

12 MR. DUFFY: If it's a matter of plugging them in
13 that's one thing, but if it has something to do with having
14 them crash, they have to do some deep forensic work that's
15 another matter.

16 THE COURT: Well, how long?

17 MR. DUFFY: We were told it could take two days.

18 THE COURT: And that's like two days from nine to
19 five, 10 to six, I mean so two eight hour days?

20 MR. PUCCI: Yeah.

21 MR. DUFFY: When they last did it with my involvement
22 it was two 12 hour days. (inaudible - #2:35:09).

23 THE COURT: Mr. Heal, are you still willing to have
24 your office used considering that?

25 MR. HEAL: It would be fine. I have a separate room.

1 It's empty right now. They could put everything in it.

2 THE COURT: Great. And it's got electrical service
3 enough so that they can plug everything in?

4 MR. HEAL: Everything's set.

5 THE COURT: Mr. Joy?

6 MR. JOY: Just as a facility, Your Honor, none of the
7 three machines that are inoperable have ever been used for
8 anything relating to - (inaudible - #2:35:44) - report, 3ABN,
9 et cetera. I'm certainly happy to, as a matter of fact I'd be
10 happy to just simply dismantle the hard drives and they can
11 take them with them back to Minnesota. They're virtually
12 useless at this point anyway. They were business machines used
13 basically by loan officers who were going through various steps
14 of the origination process and not related to my application.
15 If they want them they can certainly enjoy themselves.

16 THE COURT: Well, I'm just concerned that there may
17 be some privacy issues that--

18 MR. JOY: Well, there are privacy issues, Your Honor.

19 THE COURT: That's why--

20 MR. JOY: With respect to representation.

21 THE COURT: That's why they are, we're doing this
22 under seal.

23 MR. JOY: Yeah.

24 THE COURT: Okay. What day do you want - Mr. Pucci?

25 MR. PUCCI: In that regard I thank Mr. Joy for his

1 offer. I would ask that our experts be the ones that break
2 down the computer equipment if that's his choice rather than
3 arrive, have them broken down and have some issue arise. So
4 with that understanding we would be pleased to take over this.

5 THE COURT: Well, whatever you do we're going to
6 follow this order cause I want it done under seal and then we
7 will talk about what we're going to do, if anything, with it at
8 a later point in time.

9 MR. PUCCI: Yes, Your Honor.

10 THE COURT: What is, what date - Mr. Heal, let me
11 start with you. What day would be good for you?

12 MR. HEAL: The last week of this month would be bad.

13 THE COURT: Okay. Mr. Duffy or Mr. Pucci, what would
14 be good for your expert?

15 MR. DUFFY: Your Honor, I think if I could give them
16 a week's notice that would be I'm sure enough.

17 THE COURT: So how about, and I know it's a bad week,
18 how about like the 19th and 20th which is Monday, Tuesday next
19 week understanding that's Thanksgiving week?

20 MR. DUFFY: I will make a call immediately after the
21 conclusion of this hearing. If there's a problem I'll notify
22 the clerk and all the parties but I don't think there'll be.

23 THE COURT: All right, what I'm going to - and then,
24 Mr. Heal, how's those dates for you?

25 MR. HEAL: They'll be somebody in the office and it

1 will be fine.

2 THE COURT: Mr. Joy?

3 MR. JOY: That's fine, Your Honor. I'm just - I did
4 notice in the response from Ms. Hayes that she was now talking
5 about three different copies.

6 THE COURT: As far as the order goes, as far as
7 making your peace with me, I need to have one copy made under
8 seal--

9 MR. JOY: Okay.

10 THE COURT: --that you all are square on and you can
11 at your own expense have a copy made, and then if Mr. Pickle
12 wanted one subject to your approval only--

13 MR. JOY: Yeah.

14 THE COURT: --they could make a third for him, but
15 that would not happen without your approval cause it's your
16 information.

17 MR. JOY: Yeah, I understand that.

18 THE COURT: And they would all remain under seal.

19 MR. JOY: Okay.

20 THE COURT: You could go into yours obviously.

21 MR. JOY: Can you define for me what under seal means
22 specifically.

23 THE COURT: It means that it's going to be put in an
24 envelope and it's going to be sealed, and they're going to sign
25 over it. I don't want anybody accessing it.

1 MR. JOY: And where will it be retained?

2 THE COURT: I don't know. I haven't thought that out
3 yet. Someplace where - probably you can give it to the clerk
4 and we can hold onto it.

5 MR. JOY: I was going to say the court clerk, is that
6 appropriate?

7 THE COURT: Yeah, we can do that. That makes sense.

8 MR. JOY: I don't have any objection to that, Your
9 Honor. I guess the only question I would have is why the other
10 two copies?

11 THE COURT: It's up, well it would be for your
12 purposes. If you didn't want it, you don't have to. And the
13 other copy would be for Mr. Pickle, and if he didn't want it -
14 actually, you know wha, I think let's just make one copy for
15 now and then I'll have it and we can deal with it as needed.

16 MR. JOY: Okay. Thank you, Your Honor.

17 MR. DUFFY: Your Honor, if I might.

18 THE COURT: Uh-huh.

19 MR. DUFFY: We would normally do a back-up. So if we
20 have two and you'll get both of them.

21 THE COURT: Whatever you copy I want it.

22 MR. DUFFY: They take, they typically do a backup
23 against the possibility that something would happen to the
24 one--

25 THE COURT: As long as I get them both.

1 MR. DUFFY: We'll seal everything.

2 THE COURT: Yeah.

3 MR. DUFFY: If we need to do that.

4 THE COURT: Good. Okay. All right, so it's going to
5 be the 19th and 20th. Now, if for some reason those dates don't
6 work you need to communicate with each other so that I don't, I
7 don't want to get involved unless I absolutely have to. So I'm
8 going to ask Mr. Duffy and Mr. Pucci to communicate with Mr.
9 Joy because - and Mr. Heal cause he's kindly consented to let
10 his office be used.

11 Okay, now that's that. What other issues do we have
12 to talk about? Let me start with the plaintiffs first,
13 anything?

14 MR. PUCCI: We're satisfied at this point. Thank
15 you, Your Honor.

16 THE COURT: All right. Mr. Joy, how about you?

17 MR. JOY: I think I'm, this status conference was
18 called by them. I'm fine. I think we need to get on with
19 discovery but that's a matter of time and money.

20 THE COURT: Where are you all on discovery?

21 MR. JOY: Not very far, Your Honor.

22 MR. DUFFY: Your Honor, we noticed the depositions of
23 Mr. Joy, Mr. Pickle, Mr. Joy's bankruptcy state, any activity
24 with respect to him. This morning the bankruptcy counsel has
25 filed a motion to relieve him, this automatic stay. They're

1 willing to waive the automatic stay. We could, you know, start
2 - (inaudible - #2:41:13) - and then we just go through the
3 process - (inaudible - #2:41:17). We put off Mr. Pickle's
4 deposition because we think it makes more sense to wait till we
5 find out the nature of the e-discovery, what we would be
6 allowed to do and actually have access to that before we
7 actually depose him cause there may be things disclosed by the
8 e-discovery that would be fruitful inquiry during the
9 deposition.

10 THE COURT: All right. Mr. Pickle, do you want to
11 add anything?

12 MR. PICKLE: Well, I do have a concern, Your Honor,
13 about I just want to make sure this is clarified. The,
14 regarding the copies that they want to do of Mr. Joy's hard
15 drive, Jerrie Hayes, Attorney Hayes said that they would make a
16 copy on a device that they use for all such copy and then it
17 would be transferred to the plaintiffs' experts server and on
18 those servers they would make a backup. And that's why Mr. Joy
19 was referring to three copies. One copy on the device and they
20 two copies on their servers. I just want to make sure that
21 it's clarified sufficiently that all copies made would be given
22 to the Court and there'd be no transfer to a server.

23 THE COURT: Is that everybody's understanding as
24 well--

25 MR. DUFFY: Yes.

1 THE COURT: --cause it's mine.

2 MR. JOY: Yes, Your Honor.

3 THE COURT: That's my understanding as well,
4 Mr. Pickle, but thank you for clarifying that.

5 Okay, do you need anything else from me or do you
6 guys, are you guys--

7 MR. DUFFY: Your Honor, I need to, excuse me, I need
8 to clarify that. It's my understanding that it has to go into
9 the computer forensics high speed server.

10 THE COURT: Yep.

11 MR. DUFFY: It has to. But what comes out of it
12 would be sealed including whatever goes into its server.

13 THE COURT: Right. Yeah.

14 MR. DUFFY: He has to be able to run it through that
15 server in order to get there.

16 THE COURT: Yep. In order to process the information
17 or copy the information. Okay.

18 MR. PICKLE: Your Honor, what will be done to ensure
19 that whatever was on the server, transferred to the server has
20 been destroyed so that there will only be, this is really to
21 the point that even a computer forensics expert would not be
22 able to recover anything. And so then any copy, all copies
23 would indeed be under seal, in the possession of the Court and
24 no one else.

25 MR. DUFFY: Your Honor, the computer forensics

1 experts do this in federal court all the time. They'll make
2 the appropriate certification that this Court has all copies of
3 the data and that there are no other copies other than what's
4 going to be given back to Mr. Joy cause they're his.

5 THE COURT: That'll work for me. Okay, thank you
6 everybody.

7 We're in recess.

8 MR. PUCCI: Thank you, Your Honor.

9 MR. DUFFY: Thank you, Your Honor.

10 MR. PICKLE: Thank you.

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CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

March 12, 2010

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