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Halstad, MN 56548
(218) 456-2568
March 12, 2010

Sarah Alison Thornton, Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2300
Boston, MA 02210

Re: *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle, Case No. 07-40098-RWZ; Mishandling of Documents and Expropriation by Court Staff*

Ms. Thornton:

Thank you for your note of March 8 which accompanied your letter of January 25, 2010. Neither Mr. Joy nor I have record or knowledge of having received your January 25 letter earlier.

I note the following regarding your letter:

1. You quote where Judge Saylor ordered that the MidCountry records “be returned to the party that produced” them. You also admit that the producing party was MidCountry Bank of Minnesota, not the plaintiffs. Therefore, your assertion that the court’s surrender of those records to John Pucci instead of MidCountry Bank was “in accordance with court orders” is clearly erroneous.

2. Your letter apparently does not address large portions of our complaint. For example, Part II, the longest part, contained our allegations that court staff repeatedly told us in September and October 2008 that the MidCountry records could not be located, and that we were never notified when the MidCountry records were finally located. We believe this constituted withholding of evidence from us, and adversely affected our ability to litigate between September 12 and October 30, 2008. As yet another example, Part III of our complaint contained our allegations that the docket text and docketed receipt for the surrender of the MidCountry records were ambiguous. Part IV concerned the surrender of part of the court record during a pending appeal, and specifically referenced the suspicious timing of the surrender of the MidCountry records and the suspiciously delayed docketing of the receipt of that surrender. Did your investigation reach any conclusions as to any of these specific allegations?


3. You refer to the MidCountry records as being “records of plaintiffs held by MidCountry Bank.” I would direct you to *U.S. v. Miller* in which the United States Supreme Court ruled that regarding bank statements, the plaintiff “can assert neither ownership nor possession. Instead, these are the business records of the banks.” 425 U.S. 435, 440 (1975). The plaintiffs have cited no opposing legal authority to the contrary. Neither have the plaintiffs advanced legal arguments in favor of overturning this Supreme Court precedent. Nor have the judge and magistrate judge formerly assigned to this case attempted such an overturning *sua*

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sponte. Therefore, the assertion that MidCountry Bank's records are the plaintiff's records cannot be used to justify the surrender of those records to John Pucci when the court's order called for them instead to be returned to MidCountry Bank.

Please find attached a copy of the original complaint we mailed to you, which we respectfully request you to reconsider in light of the above points.

Sincerely,

A handwritten signature in black ink that reads "Bob Pickle". The signature is written in a cursive, somewhat stylized font.

Bob Pickle, *pro se*

Gailon Arthur Joy, *pro se*

cc: Judge Rya W. Zobel
Judge F. Dennis Saylor IV
Magistrate Judge Timothy S. Hillman

BRIEF STATEMENT OF FACTS
IN SUPPORT OF MISCONDUCT INQUIRY

I. INTRODUCTION

This complaint arises from conduct associated with the case *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle*, D. Mass. Case No. 07-cv-40098-FDS, and is prompted by the defendants' discovery that the court expropriated the defendants' property without due process, in violation of the court's own order. (*supra* 2).

II. WITHHOLDING EVIDENCE FROM THE DEFENDANTS

Gailon Arthur Joy ("Joy") and Robert Pickle ("Pickle") (collectively "the defendants") subpoenaed bank statements from MidCountry Bank ("MidCountry") ("MidCountry records") in the District of Minnesota, paying more than \$3,500 for these records. (Doc. 76-3 pp. 12-13; Doc. 149 p. 19).¹ Danny Lee Shelton ("Shelton") filed a motion to quash that was denied in that district on March 28, 2008, but that court, which had conferred with Magistrate Judge Hillman, ordered that the MidCountry records be produced under seal to Magistrate Judge Hillman so that he could review them to ensure compliance with Magistrate Judge Hillman's yet unissued confidentiality order. (Doc. 63-36; Doc. 206 pp. 1-2).

Because nothing in the April 17, 2008, confidentiality order prohibited discovery of mere bank statements (Doc. 60 pp 1-6), Shelton and Three Angels Broadcasting Network, Inc. (collectively "the plaintiffs") filed a motion to limit the scope of discovery, seeking an *in camera* review of the MidCountry records before these records were given to the defendants. (Doc. 74; Doc. 75 pp. 16-17). On September 11, 2008, Magistrate Judge Hillman denied those aspects of the plaintiffs' motion. (Doc. 107 p. 5). That left no legal impediment to the defendants acquiring these records which the defendants had already paid for.

The very next day, September 12, 2008, an 11 to 12 pound package containing the MidCountry records arrived via DHL at the federal courthouse in Worcester, Massachusetts. (Doc. 206-2). It was signed for by Sherry Jones ("Jones"), a docket clerk who is also in charge of multi district litigation. (*Id.*; Doc. 214-12; Doc. 214-13). Thus, Jones would be expected to handle these sealed, out-of-district documents professionally. Yet instead of these documents being promptly given to the defendants, they were "lost," and none of the court's clerks the defendants talked to seemed to know where they were, including Magistrate Judge Hillman's clerk, Lisa Roland. (Doc. 206 pp. 2-4).

The mysterious circumstances surrounding the courthouse's handling of the MidCountry records (which is further outlined below) leaves one to suspect that these records never were lost, and that they were intentionally withheld from the defendants without a legal basis for doing so. This constitutes the withholding of evidence from the defendants, and negatively impacted their ability to fairly litigate.

An official investigation is necessary to determine whether courthouse staff are

¹ "Doc." refers to the docket entry of the substantiating document in D. Mass. Case No. 07-40098.

implicated in whatever led to the misappropriation of evidence critical to a case at bar, resulting in a crescendo of statements that the documents were “lost” only to be conveniently found when plaintiffs’ counsel showed up to request the same in violation of the court’s standing orders.

III. EXPROPRIATION OF THE DEFENDANTS’ PROPERTY

The plaintiffs filed a motion to dismiss on October 23, 2008. In that motion the plaintiffs asked that the MidCountry records be given to the plaintiffs. (Doc. 120 p. 1). Instead, Judge F. Dennis Saylor IV on October 30, 2008, ordered that the MidCountry records be “returned to the party that produced those documents,” which would be MidCountry. (Doc. 141 p. 13). The Electronic Clerk’s Notes entered the next day also state that the MidCountry records were to be “returned.”

The defendants’ first indication that the courthouse had located the MidCountry records was docket text entered on December 23, 2008, for a receipt filed on December 16, 2008: “Receipt for Documents for In Camera Review.” (Docket text for Doc. 160). This ambiguous docket text suggests that the courthouse was finally acknowledging receipt of the MidCountry records. The receipt itself is also ambiguous in its wording, and the defendants did not notice until recently that the receipt was not signed by a court clerk, the address under the signature on the receipt being the only indication to that effect. (Doc. 160; Doc. 212 pp. 3–4). The receipt was instead signed by an employee of plaintiffs’ counsel John Pucci (“Pucci”). (Doc. 160; Doc. 212-3).

Pucci and plaintiffs’ counsel Gregory Simpson (“Simpson”) have admitted to taking 11 to 12 pounds of sealed records from the courthouse. (Doc. 212-6 p. 1; Doc. 208 p. 2). This was a violation of Judge Saylor’s order that they be returned to MidCountry (Doc. 141 p. 13) as well as a serious breach of courthouse security. Since Judge Saylor refused to impose the cost of the MidCountry records upon the plaintiffs (Doc. 166; Doc. 193 pp. 1–2), the surrender of the MidCountry records to the plaintiffs constitutes a profound expropriation by the court of the defendants’ property without due process. Even if Pucci now returns the MidCountry records, they will need to be properly certified pursuant to the Federal Rules of Evidence, a potentially expensive proposition.

Pucci and Simpson are quick to blame Magistrate Judge Hillman or his office for surrendering the MidCountry records to Pucci’s employee. (Doc. 212-6; Doc. 207 p. 5). But the defendants’ questioning of the various court staff does not support this allegation. An official investigation is therefore necessary to determine whether courthouse staff are implicated in this grossly negligent expropriation of the defendants’ property.

IV. SURRENDERING PART OF THE RECORD DURING A PENDING APPEAL

The defendants filed a timely appeal to the First Circuit Court of Appeals. (Doc. 133). On December 9, 2008, the clerk of the court of appeals declared that the record on appeal was complete. (Doc. 206-8 p. 1). On December 16, 2008, Pucci’s employee walked off from the courthouse with 11 to 12 pounds of sealed records in violation of the court’s own order. (Doc. 160; Doc. 212-3; Doc. 141 p. 13). The receipt of that date was not entered in the docket until December 23, 2008, the very day the defendants served their designation of appendix and issues for review. (Doc. 214-5). This sequence of events leads one to suspect that court staff knew that

the MidCountry records were part of the record on appeal, and that a concerted effort was made to keep the defendants from realizing this until their appendix and issues for review had already been designated.

A recent inquiry to the clerk's office indicated that the clerk's office had not retained a copy of the MidCountry records, and that the records were "returned" to the plaintiffs despite the pending appeal and in violation of the court's standing order on the issue. (Doc. 212 p. 4; Doc. 141 p. 13). The clerk's office also indicated that the MidCountry records were never forwarded to the court of appeals as part of the record on appeal because the reception by the courthouse of these records had never been docketed. (Doc. 212 p. 4). The fact that the surrender of the MidCountry records to plaintiffs' counsel was docketed (Doc. 160) while the reception of these records was not docketed also leads one to suspect that court staff purposefully withheld evidence from the defendants as well as part of the record from the court of appeals.

V. MOTIVATION FOR "LOSS" AND SURRENDER OF MIDCOUNTRY RECORDS

On September 22, 2008, the plaintiffs' co-conspirator, Remnant Publications, Inc., produced documents in response to the defendants' subpoena. (Doc. 155-2). The defendants believed these documents to be *prima facie* evidence of abuse of process and malicious prosecution on the part of plaintiffs' counsel, and made that known by September 26, 2008. (Doc. 127-7 pp. 1, 4; Doc. 126 pp. 4-5).

At the October 22, 2008, hearing in the Southern District of Illinois, Simpson led the magistrate judge to believe that dismissal was anything but imminent, and then moved to dismiss in the District of Massachusetts the very next day. (Doc. 152-6 p. 35; Doc. 120). During the October 30, 2008, status conference, Simpson informed the court that the defendants intended to pursue their claim of malicious prosecution against the plaintiffs and their counsel. (Doc. 141 pp. 6-10). Simpson identified this as his "only concern." (Doc. 141 p. 8). Simpson's assertion that the defendants could not obtain diversity jurisdiction would only apply if the defendants' suit included as parties plaintiffs' counsel in Minnesota and Massachusetts, since the defendants reside in those same states. (Doc. 141 pp. 10-11; Doc. 1 p. 2).

Of particular benefit would be the "loss" and surrender of the MidCountry records, since the defendants would be less able to prevail against an anti-SLAPP motion in a future suit involving claims of abuse of process and malicious prosecution.

These facts lead one to suspect that someone on the court's staff has ties to Pucci, and/or desires to protect Pucci, Pucci's co-counsel, and/or Pucci's clients from the claims of two unrepresented defendants who have largely proven their allegations beyond a reasonable doubt, a higher than normal standard for a civil case. Such ties to and desire to protect Pucci would explain (a) the failure to docket the reception of the MidCountry records on September 12, 2008, (b) the subsequent "loss" of the MidCountry records by court staff, (c) the failure to notify the defendants when the MidCountry records were finally "found," (d) the failure to forward the MidCountry records to the court of appeals as part of the record on appeal, (e) the surrender of the MidCountry records to plaintiffs' counsel in violation of the court's own order, (f) the surrender of the MidCountry records to plaintiffs' counsel after the record on appeal was declared complete, and (g) the failure to docket that surrender until the very day the defendants served their designation of appendix and issues for review.