
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.)
_____)

**DEFENDANT ROBERT PICKLE’S MEMORANDUM IN SUPPORT OF HIS MOTION
TO COMPEL THREE ANGELS BROADCASTING NETWORK, INC. TO PRODUCE
DOCUMENTS AND THINGS, AND HIS MOTION TO COMPEL DANNY LEE
SHELTON TO PRODUCE DOCUMENTS AND THINGS**

INTRODUCTION

Defendant Robert Pickle served Requests to Produce Documents and Things upon Plaintiff Three Angels Broadcasting Network, Inc. (hereafter “3ABN”) on November 29, 2007, and upon Plaintiff Danny Shelton on December 7, 2007.

Plaintiffs’ untimely responses claimed that all documents sought were irrelevant, confidential, or privileged. The Defendants entered into lengthy and time consuming negotiations in January with Plaintiffs’ counsel over the Requests to Produce and their relevancy, and were unable to come to an agreement as to access to the requested documents.

No documents have yet been produced in response to Pickle’s Requests to Produce, and Plaintiffs’ counsel indicated in the status conference of May 7, 2008. Obtaining the requested documents is crucial in order to properly and adequately frame a second set of requests prior to

the scheduled end of discovery for serving requests to produce, and Defendant Pickle seeks the granting of his Motions to Compel by this Court.

STATEMENT OF RELEVANT FACTS

Brief Background of the Plaintiffs

3ABN is a non-profit, 501(c)3 corporation which routinely solicits donations from the public and is required to file Form 990's with the Internal Revenue Service on an annual basis. 3ABN is a supporting ministry of the Seventh-day Adventist Church.

From 1985 until September 2007, Plaintiff Shelton was the president, CEO, and managing director of 3ABN, and he remains an influential director of and the only founder still employed by 3ABN.

Acknowledgment by the Plaintiffs of the Multiplicity of Allegations Against Them

Plaintiff Shelton has been the subject of numerous and varied allegations of malfeasance and misconduct, as well as negative internet commentary, long before either Defendant became involved in mid-August 2006. These allegations include wrongful termination, sexual assault, the ignoring or cover up of child molestation allegations, unbiblical divorce, deceit, private inurement, and conflict of interest.

The Plaintiffs through the affidavits of Mollie Steenson and Larry Ewing in the instant case, both dated May 9, 2007, and filed on May 24, 2007, as part of Document #10 of the instant case, assert that negative internet commentary about the Plaintiffs erupted in June or July 2006. See Affidavit of Mollie Steenson at ¶ 4, Affidavit of Larry Ewing at ¶ 3. From April 16 to about July 2, 2006, an individual using the alias of "Sister" published a series of posts in threads entitled "An Unauthorized History of 3ABN." See Affidavit of Robert Pickle (hereafter "Pickle Aff."), Exhibits A-J. This same individual began publishing in these threads Jorgen VanBraun's 2005 essay, "The Televangelist," along with her own commentary in May 2006. See Pickle Aff.,

Ex. E at posts #96, #130, Ex. F at posts #1, #18, #25, #132, Ex. G at post #35, Ex. H at post #1, Ex. K. Some of the more pointed allegations were made by Sister and other individuals in a thread entitled “Who Is It?” in August 2006. See Pickle Aff., Ex. L. These posts and publications put the spotlight on a wide range of allegations against the Plaintiffs. The Plaintiffs by their affidavits therefore assert that it was the allegations of these and other posts that damaged their reputations and caused a decline in donations.

In July 2006 Alyssa Moore issued a signed statement alleging that Plaintiff Shelton had sexually assaulted her. See Pickle Aff., Ex. M. This statement became the topic of public conversation on the internet in part due to Plaintiff Shelton using a globally televised broadcast to insinuate that Ms. Moore was a liar and was akin to the daughter of the evil Herodias. See Pickle Aff. at ¶ 5.

In mid-August 2006 the Defendants, both members of the Seventh-day Adventist Church, launched ecclesiastical investigations into the conduct of Plaintiff Shelton, and began publishing investigative reports in harmony with their First Amendment rights of Freedom of the Press, Freedom of Speech, and Freedom of Religion. The Plaintiffs repeatedly claimed to have evidence to prove various allegations false while also refusing to provide that evidence to inquirers.

Based on information given to Defendant Pickle by 3ABN Board chairman Walt Thompson in late November 2006, the Defendants published reports that Plaintiff Shelton had covered up child molestation allegations leveled against Plaintiff Shelton’s brother Tommy Shelton, a Church of God pastor. See Pickle Aff., Ex. N. The Defendants also published reports of new allegations of sexual misconduct that had surfaced by early December 2006 in Virginia against Tommy Shelton. See Pickle Aff., Ex. O.

By the end of December 2006, Plaintiff Shelton was threatening a defamation suit over these allegations regarding child molestation. See Pickle Aff. at ¶ 8. On January 5, 2007,

Attorney Michael Riva sent a cease and desist letter on behalf of 3ABN and Tommy Shelton threatening a suit over these allegations. See Pickle Aff., Ex. P. On January 30, 2007, Attorney Gerald Duffy sent his one and only cease and desist letter to Defendant Joy alleging defamation *per se* on the grounds that Defendant Joy had made the following “false allegations of criminal conduct”:

- 3ABN, through its board chairman has “admitted in writing that Danny [Shelton] had been involved in a cover up” of criminal conduct
- Danny Shelton knowingly lied regarding a feud between Tommy Shelton and Glenn Dryden
- 3ABN directed an attorney to use “intimidation tactics to cover up allegations of child molestation”
- Danny Shelton attempted to cover up and silence child molestation allegations
- Danny Shelton “abuses his power” and “steam roll[s] over alleged victims of his brother Tommy’s sexual misconduct.”

See Pickle Aff., Ex. Q. This letter is referred to in ¶ 37 of the Plaintiffs’ complaint, and a transcription was included in part as Attachment 1 to Plaintiffs’ memorandum in support of their *ex parte* motion for preliminary impoundment, and in whole as Exhibit 1 to the Defendants’ response to Plaintiffs’ motion for permanent impoundment. See the respective attachments to Documents #3 and #8 of the instant case.

Around early February 2007 Tommy Shelton sent an open letter to the membership of his former church in Virginia, indicating that Defendant Joy would be sued over Defendant Joy’s statements about the child molestation allegations against Tommy Shelton. See Pickle Aff., Ex. R at top of p. 2.

Broad and Varied Allegations in the Plaintiffs’ Complaint

The Plaintiffs filed suit on April 6, 2007. Their complaint contains “factual allegations” extending back “over two decades” to 3ABN’s “inception.” See Complaint at ¶¶ 9, 12, 31, 34. The Plaintiffs by their complaint have put at issue in this controversy the following:

- 3ABN’s “reputation, goodwill and character.” See Complaint at ¶¶ 14, 31, 34, 52, 60, 63, 66–68, 76–78.
- Whether 3ABN is “a dedicated, principled, Christ-centered ministry.” See Complaint at ¶ 66.
- Whether 3ABN is affiliated with or funded by the Seventh-day Church or Adventist-laymen’s Services and Industries (hereafter “ASI”). See Complaint at ¶ 10.
- Whether 3ABN is “theologically faithful, operationally sound, and financially conscientious.” See Complaint at ¶¶ 14, 66.
- The donations received by 3ABN, whether those donations have declined, and for what reasons. See Complaint at ¶¶ 14, 78, 81, 83.
- The purported sale of “3ABN-produced inspirational books and music recordings” generated by “the 3ABN website” even though no sales of such materials have been reported on 3ABN’s financial statements since 2003. See Complaint at ¶ 23, Ex. CC at p. 4 of Ex. L–P where “Other sales” is missing from 2004 through 2006.
- The purpose, function, actions, votes, authority, and activities of the 3ABN Board, and whether the directors or officers engaged in private inurement. See Complaint at ¶¶ 46a, 46e–46g, 46k, 48, 48c, 50, 50d, 50f, 50h.
- “Allegations of criminal conduct” made against “both Plaintiffs.” See Complaint at ¶¶ 27, 75.
- The grounds for Linda Shelton’s divorce and dismissal, and whether she should be “reinstated as an employee and director at 3ABN.” See Complaint at ¶¶ 40, 50.
- Allegations contained in postings “on websites frequented by members of the Seventh-Day Adventist Church, such as ‘www.blacksda.com,’ ‘www.maritime-sda-online.org,’ ‘www.christianforum.com,’ and the Yahoo Prophecy Board forum. See Complaint at ¶ 43.

- Whether or not the Plaintiffs have “committed financial improprieties” or “administrative and operational improprieties.” See Complaint at ¶¶ 46, 48.
- The “growing number of moral, ethical, and financial allegations” that have beset the Plaintiffs “for the last several years.” See Complaint at ¶ 46a.
- Whether the officers and directors have adequately and appropriately responded to “repeated calls for investigation, reform, and accountability.” See Complaint at ¶ 46a.
- Whether Plaintiff Shelton or his relatives have personally benefited from items purchased with 3ABN funds. See Complaint at ¶¶ 46b–46d.
- Whether Plaintiff Shelton funneled money or assets to inappropriate beneficiaries through third parties. See Complaint at ¶ 46f.
- Plaintiff Shelton’s book deals and royalties. See Complaint at ¶¶ 46h–46i.
- Plaintiff Shelton’s divorce, the various proceedings concerning that divorce, and Plaintiff Shelton’s personal finances as compared to his financial affidavit(s) filed in connection with those proceedings. See Complaint at ¶¶ 46i, 48d, 50, 50a, 50e, 50i.
- The evidence for Linda Shelton’s adultery or fornication, and the handling, disseminating, sharing, or hiding of that evidence by Plaintiff Shelton. See Complaint at ¶¶ 48d, 50.
- The usage of 3ABN’s corporate jets. See Complaint at ¶ 46j.
- The terms of purchase for stations 3ABN has bought, the actual process of deciding to purchase those stations, and the 3ABN Board’s involvement, consideration, and votes regarding those decisions. See Complaint at ¶ 46k.
- Whether preference has been given to Plaintiff Shelton’s relatives in the matter of hiring and firing. See Complaint at ¶ 48a.
- Ervin Thomsen and Kathi Bottomley’s complaint to 3ABN regarding the 3ABN Trust

Services Department and Leonard Westphal, and their subsequent firing and appeal to the 3ABN Board. See Complaint at ¶ 48b.

- Ervin Thomsen and Kathi Bottomley's subsequent complaint to the California Department of Fair Housing and Employment and the Equal Employment Opportunity Commission. See Complaint at ¶ 48b.
- The various allegations the ASI fact-finding tribunal was expected to consider, and the process and individuals by which the scope of the proposed ASI investigation was narrowed. See Complaint at ¶ 50a.
- Whether or not at any point in time and upon what grounds Plaintiff Shelton and/or Harold Lance wanted to exclude Defendant Joy from participation in the ASI tribunal process. See Complaint at ¶¶ 48d, 50b.
- Plaintiff Shelton's relationships with Linda Shelton, Brenda Walsh, Brandi Elswick Murray, and other women. See Complaint at ¶¶ 50c–50f.
- Plaintiff Shelton's vehicle titles and emailed statements regarding the same. See Complaint at ¶ 50g.

Since ¶¶ 46, 48, and 50 incorporate the phrase *inter alia*, the Complaint allows for the litigation in this case of anything ever alleged by the Defendants regarding administrative, operational, or financial improprieties by the Plaintiffs, or regarding Plaintiff Shelton or Linda Shelton's morality or divorce, or Plaintiff Shelton's remarriage.

Defendant Pickle's Requests to Produce

In light of the broad range of issues enumerated and alluded to in the Plaintiffs' complaint, and in light of the fact that only two sets of requests to produce are allowed without leave of the court, Defendant Pickle issued a fairly comprehensive first set of Requests to Produce Documents and Things. These were served on 3ABN on November 29, 2007, and on

Plaintiff Shelton on December 7, 2007. See Pickle Aff., Ex. S–T.

Not having been served a timely response, Defendant Pickle contacted Plaintiffs' counsel on January 4, 2008, to arrange a discovery conference if the Plaintiffs were going to take the position that not one requested document could be produced, in preparation for a motion to compel. See Pickle Aff., Ex. U. A discovery conference was then scheduled for January 10, 2008. See Pickle Aff., Ex. V.

3ABN and Plaintiff Shelton served their responses to the instant Requests to Produce upon Defendant Pickle on January 9, 2008, eleven (11) and three (3) days late respectively. See Pickle Aff., Ex. W–X. These untimely responses indicated that all documents sought were considered irrelevant, confidential, or privileged by the Plaintiffs. Since this Court has issued a Confidentiality Order on April 17, 2008, Plaintiffs' objections are effectively reduced to the questions of relevance.

Attorney Jerrie Hayes, and Defendants Joy and Pickle attended the discovery conference of January 10, 2008, which lasted four hours and twenty minutes. A good share of this time was spent discussing the relevancy of particular requests in Defendant Pickle's Requests to Produce. Attorney Hayes indicated that she did not know about D & L Publishing and DLS Publishing. See Pickle Aff. at ¶ 15.

A follow-up discovery conference was held on January 22. Id. In follow-up correspondence, Defendant Pickle found Plaintiffs' counsel unwilling to negotiate in good faith, in part because she refused to ask her clients if his new proposal for handling donor information might be acceptable. See Pickle Aff., Ex. Y.

On February 6 or 7, 2008, Plaintiff Shelton filed a motion to quash Defendant Pickle's third-party subpoena in U.S. District Court in the District of Minnesota, claiming that the records of the bank being subpoenaed were irrelevant. See Pickle Aff., Ex. Z. Defendant Pickle's

opposition to that motion demonstrated to great lengths that such a claim was a fraud upon the court. See Pickle Aff., Ex. AA–CC.

Plaintiff Shelton filed an affidavit with his motion to quash in which he admitted that D & L Publishing and DLS Publishing were his publishing companies, and claimed that D & L Publishing was a sole proprietorship. See Pickle Aff., Ex. DD. Yet he treated D & L Publishing on his 2001 tax return as if it were a partnership. See Pickle Aff., Ex. AA at p. 6, Ex. BB at ¶ 17.

Plaintiffs filed a Motion for a Protective Order on December 18, 2007, and requested oral arguments, but never scheduled a hearing, and then used that pending motion as a basis for stalling third-party subpoenas, such as in the above mentioned motion to quash. After Defendant Joy requested the scheduling of a hearing, a hearing was quickly scheduled and held on March 7, 2008, and a confidentiality order was issued by Magistrate Judge Hillman on April 17, 2008. See Pickle Aff. at ¶ 18.

On April 9, 2008, Defendant Pickle tried to arrange to inspect and copy all non-confidential documents responsive to his Requests to Produce. See Pickle Aff., Ex. EE. Not having received an answer, and with Magistrate Judge Hillman’s order having been issued, he attempted on April 18, 2008, to arrange to inspect and copy all responsive documents. Id. Attorney Hayes responded on April 21, 2008, stating that she would need to consult with her client before being able to arrange a time. Id. Now nearly four weeks later, not one single document has yet been produced in response to Defendant Pickle’s Requests to Produce, and Plaintiffs’ counsel has still not responded as to when that might occur. See Pickle Aff. at ¶ 19.

Obtaining these requested documents is crucial in order to properly and adequately frame a second set of requests prior to the scheduled cut off date of June 11, 2008.

ARGUMENT

Allowable discovery in a civil case 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.

See Fed. R. Civ. P. 26(b)(1).

The Plaintiffs by their complaint and related filings have placed at issue in this controversy a wide range of issues, including without limitation a) any allegations by the Defendants concerning administrative, operational, or financial improprieties by the Plaintiffs, b) any allegations by the Defendants regarding Plaintiff Shelton or Linda Shelton's morality or divorce, or Plaintiff Shelton's remarriage, and c) any allegations posted on the internet that led to a loss of reputation or a decline of donations from June through December 2006. Claims of irrelevancy by the Plaintiffs regarding Defendant Pickle's Requests to Produce are therefore disingenuous.

By serving their responses to Defendant Pickle's Requests to produce eleven and three days late, the Plaintiffs have waived their right to object to his requests.

Attorney Hayes informed Judge Saylor in the status conference of May 7, 2008, that she intended to file a motion for a protective order to limit discovery, claiming that the instant Requests to Produce were overbroad and sought irrelevant material. Yet Attorney Hayes' statements consistently show that she is at best uninformed as to the specifics of some of the aspects of this case, and at worse duplicitous:

- In the discovery conference of January 10, 2008, Attorney Hayes indicated to the Defendants that she did not know how D & L Publishing and DLS Publishing were related to Plaintiff Shelton, yet Plaintiff Shelton admitted that they were in an affidavit he filed in the District of Minnesota on February 7, 2008. See Pickle Aff. at ¶ 15, Ex. DD.
- In a court filing in the District of Minnesota on February 7, 2008, Attorney Hayes falsely

claimed that the third-party bank records sought by Defendant Pickle were irrelevant to the instant case, just one of several frauds upon the court perpetrated by Attorney Hayes and her client in that filing. See Pickle Aff., Ex. Z, Ex. AA at pp. 11–12. That court ordered the discovery of the subpoenaed documents. See Pickle Aff., Ex. FF.

- In a hearing on March 7, 2008, Attorney Hayes told Magistrate Judge Hillman that there was no IRS criminal investigation of the Plaintiffs going on, despite the fact that her own proposed protective order at issue in that hearing referred to “documents produced to the Department of Justice in connection with any investigative or compliance matter.” See Pickle Aff. at ¶ 18. Additionally, Gregory Scott Thompson, son of 3ABN Board chairman Walt Thompson, stated publicly that the IRS agent investigating 3ABN had recently had a baby. See Pickle Aff., Ex. GG.

Thus, Attorney Hayes’ professed knowledge of aspects of this case, as well as her written and spoken statements before the court, are unreliable, and as was conclusively demonstrated in the filings in the District of Minnesota, are at least part of the reason why a wide divergence in viewpoint as to what is relevant to this case continues to be expressed by the Defendants and the Plaintiffs.

At this point neither Defendant knows what specific documents or topics the Plaintiffs consider to be irrelevant to the case since the Plaintiffs’ objections in their untimely responses to Defendant Pickle’s Request to Produce were too general, particularly in regards to their objection to definition 16. See Ex. W–X at “General Objection No. 8” on p. 2. Defendant Pickle thus seeks leave of the Court for the Defendants to reply to objections raised by the Plaintiffs in any response they may make to these Motions to Compel.

Lastly,

A party may serve on any other party a request within the scope of Rule 26(b): ...

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

See Fed. R. Civ. P. 34(a).

Given the great difficulty the Defendants have had in obtaining any documents whatsoever from the Plaintiffs in this case, Defendant Pickle seeks an order of the Court a) ordering the Plaintiffs to allow the Defendants to enter upon property controlled by the Plaintiffs for the purpose of inspecting and copying all responsive documents, and b) altering his Requests to Produce to include a request for such an entry.

CONCLUSION

The Plaintiffs themselves have placed a multiplicity of allegations at issue in this controversy, allegations spanning decades. Their claim in their untimely responses that Defendant Pickle's Requests to Produce seek documents not relevant to the instant case has already been demonstrated to be a fraud upon the court in filings in the District of Minnesota. This Court should issue Orders to Compel each Plaintiff to produce all documents responsive to Defendant Pickle's Requests to Produce.

Due to the overly general nature of the Plaintiffs' untimely responses to Defendant Pickle's Requests to produce, the Defendants should be allowed to reply to whatever opposition the Plaintiffs file in response to these Motions to Compel. Due to the untimely nature of their responses, their objections should be considered waived.

The Plaintiffs' ongoing and repeated obstructionism in a case which they themselves filed is totally unwarranted, and Defendant Pickle is therefore justified in seeking his reasonable expenses and costs in bringing this motion before the Court, pursuant to Fed. R. Civ. P. 37(a)(5) (A).

Due to the flagrant nature of the Plaintiffs' obstructionism, Defendants should be permitted entry onto the property possessed or controlled by the Plaintiffs in order to inspect and copy all responsive documents, and his Requests to Produce should be altered by the Court to include a request for such entry, a request allowable under Fed. R. Civ. P. 34(a)(2).

Respectfully submitted,

Dated: May 15, 2008

/s/ Robert Pickle, *pro se*

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