
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' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR LEAVE TO CAUSE ISSUANCE
OF SUBPOENAS ON
U.S. CUSTOMS DIRECTOR AND DELTA AIRLINES**

INTRODUCTION

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton object to Defendants' proposed subpoenas because (a) Defendants once again provided no proposed language setting forth the documents to be requested for this Court to review or for Plaintiffs to object; and (b) the pregnancy test "joke" and the Florida trip are not issues in this case and are therefore irrelevant.

Defendants have demonstrated a past practice for serving discovery that is "overbroad and far-reaching" and/or that seeks information "otherwise outside the scope

of discoverable information under Rule 26(b)(1).”¹ For that reason, Plaintiffs respectfully request that Defendants’ motion seeking leave to cause issuance of subpoenas on the U.S. Customs Director and Delta Airlines be denied, or in the alternative, that Defendants be ordered to submit their proposed subpoena document requests to the Court and Plaintiffs for a proper review.

ARGUMENT

I. **DEFENDANTS’ MOTION SHOULD BE DENIED AS TO BOTH THE U.S. PORT DIRECTOR AND DELTA AIRLINES BECAUSE THE INFORMATION DEFENDANTS SEEK IS IRRELEVANT TO THE ISSUES IN THIS LAWSUIT.**

Although unclear (because Defendants have *again* neglected to provide the Court with their proposed language describing the subpoenaed documents (“Exhibits A”)), Defendants appear to seek the following information:

- **From the Port Director of U.S. Customs and Border Protection or other applicable officer or agency of the United States government** (“Customs Director”),² the dates “when Abrahamsen entered and exited the United States between 2003 and at least the end of 2004.”³
- **From “the keeper of the records of Delta Airlines (hereinafter “Delta Airlines”)**, “any tickets Linda Shelton may have purchased, used, or been named on from February 6, 2004, through at least the end of 2004.”⁴

Defendants claim the above information is relevant to determine whether a certain Dr. Abrahamsen from Norway visited Linda Shelton. Defendants argue that this information sought from Delta will be relevant to determine whether Linda Shelton actually vacationed with a Dr. Arild Abrahamsen in Florida around April of 2004.

¹ Court’s Amended Order [ECF Doc No. 107] p. 2.

² Defendants’ Amended Memorandum in Support of Motion for Leave [ECF Doc. No. 105] p. 8.

³ Defendants’ Amended Memorandum in Support of Motion for Leave [ECF Doc. No. 105] p. 6.

⁴ *Id.* p. 7.

Defendants imply this information will substantiate that no adultery occurred between the two in Florida at that time and that the pregnancy test described by Defendants could not possibly have been intended to determine whether Linda was pregnant (as purported circumstantial evidence of adultery). Instead, Defendants attempt to illustrate that the pregnancy test (the subject of substantial discussion on Defendants' website) was actually planted by Linda Shelton as a joke, of which she intended for Danny Shelton to find.

None of this information is relevant to Plaintiffs' claims. It is therefore also irrelevant to Defendants' defenses. The alleged trip to Florida was never considered by Plaintiffs to constitute a factual basis supporting any claims set forth in Plaintiffs' complaint. In the end, Plaintiffs do not care whether Linda actually went to Florida or not. Defendants will prove nothing with the information they seek – whether Linda Shelton traveled to Dr. Abrahamsen's condo or not, and whether Dr. Abrahamsen was present at that time or not.

Worth noting, Defendants do not explain how a subpoena served on Delta Airlines will conclusively establish all of Linda Shelton's traveling. Without subpoenaing all airlines, there will be no way of knowing whether she used other means for traveling. Any conclusion that subpoenaed documents from Delta constitutes the universe of Linda Shelton's traveling is based on a faulty premise at best.

Because the information Defendants seek have no bearing on the claims and defenses in this litigation, Plaintiffs respectfully request that the Court deny Defendants' request for leave to cause to issue a Subpoena on the Customs Director and Delta Airlines, in its entirety.

II. DEFENDANTS' MOTION SHOULD BE DENIED BECAUSE THEY HAVE NEGLECTED TO SUBMIT THEIR PROPOSED LANGUAGE SETTING FORTH THE DOCUMENTS TO BE COMMANDED BY EACH PROPOSED SUPBOENA.

The Honorable Magistrate Judge Hillman has ordered all parties to seek leave of the Court prior to causing issuance of further third party subpoenas in this matter. [ECF No. 107]. As previously stated in Plaintiffs' first motion opposing leave [ECF Doc. No. 97], Defendants have demonstrated a pattern of practice for seeking irrelevant, overbroad, harassing, embarrassing, unduly burdensome and expensive, cumulative and duplicative information.

Defendants have argued in previous briefing that it is impossible for them to submit draft subpoenas for the Court's review because they are *pro se* clients. This is not the portion of a subpoena that Plaintiffs considers important for the Court to review. Instead, Plaintiffs request that Defendants submit the appended document (typically labeled "Exhibit A") which sets forth the a description of the subpoenaed documents.

Thus, Plaintiffs incorporate their previous arguments [ECF No. 97] requesting that the Court evaluate Defendants' actual proposed language listing the subpoenaed documents, so that it may grant or deny each line item commanded for production in accordance with the Federal Rules of Civil Procedure and the orders of this Court. To *not* undertake this step would facilitate overstepping and misinterpreting this Court's orders, as well as increased motion practice.

Thus, Plaintiffs request that the Court order Defendants to submit for review Defendants' proposed document requests (typically the Exhibit A) prior to granting leave.

Granting this request completely disposes of Defendants' present motion and allows the Court and the parties to undergo proper review of the proposed subpoenas.

In addition, because Defendants have demonstrated a propensity for continued and ongoing motions to the Court for leave to serve additional third party subpoenas, Plaintiffs respectfully request that the Court require both parties to submit a list of all third party subpoenas remaining to be issued in this case, so that the Court and the parties can commence and conclude all necessary motion practice at one time and stay on task with this Court's scheduling orders.

III. SUBPOENAED DOCUMENTS FROM DELTA AIRLINES WILL NOT PROVE WHETHER THE AIRLINE TICKETS WERE PAID FOR BY 3ABN FOR PERSONAL VACATION AIR TRAVEL.

Defendants argue that "information from Delta Airlines regarding the disposition of Linda Shelton and Walsh's tickets may also further confirm whether 3ABN paid for personal, vacation air travel."⁵ This argument fails to further Defendants' request for leave to seek information from Delta Airlines. Regardless of whether Defendants obtain information from Delta Airlines that will indicate that Linda Shelton flew all over the country, documents from Delta will *not* demonstrate whether 3ABN paid for personal trips that were not reimbursed. To determine this, Defendants will need to seek information from Linda Shelton herself and/or 3ABN.

It is not possible that the documents Defendants will receive from Delta Airlines will evidence unreimbursed travel expenses paid by 3ABN. Because this argument does

⁵ Defendants' Amended Memorandum in Support of Motion to Leave [ECF 105] p. 7.

not support Defendants' request for leave, Defendants' motion cannot be granted on this argument.

IV. DEFENDANTS' ARGUMENT THAT PLAINTIFFS' HAVE ACTED WITH UNCLEAN HANDS SHOULD BE DENIED.

Through filing the Affidavit of Robert Pickle in Support of Defendants' present Motion for Leave, Defendants seek to demonstrate dishonesty by Plaintiffs and, moreover, that Plaintiffs have engaged in unclean hands by making false statements about Linda Shelton and Dr. Abrahamsen. Defendants' argument fails for at least three reasons.

First, Plaintiffs reject all of Defendants' characterizations that Plaintiffs have made false statements of fact. In reality, Defendants use the Robert Pickle affidavit to provide his monologue interpretation that an attached series of email and an "investigative report" posted by Defendants on their Internet site. Defendants argue that the contents of these documents permits Defendants to infer Plaintiffs and their allies have made misrepresentations. But none of the information Defendants have presented provide direct evidence of misrepresentations, but instead, unsubstantiated wild goose chases. In other words, Defendants fail to provide factual support for their damaging theories – the very conduct which led to this lawsuit in the first place.

Second, Defendants lack standing to assert an unclean hands defense against Plaintiffs on behalf of Linda Shelton and Dr. Abrahamsen.

Third, Defendants cite to no authority for their application of the "unclean hands doctrine" in a discovery motion, and indeed, Plaintiffs are aware of none.

For the foregoing reasons, Plaintiffs respectfully request that Defendants' request for application of the unclean hands doctrine be denied.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request the Court to order that:

- (1) Defendants be denied leave to cause issuance of subpoena upon the Director of the U.S. Customs Director and Delta Airlines; and in the alternative, that
- (2) Defendants' motion be denied in its entirety, pending Defendants' submittal of the list of documents commanded for production that Defendants propose to append to the actual subpoenas Defendants propose to issue (the "Exhibit A") for review by the Court, both for the subject subpoenas now before the Court and for all future subpoenas proposed by Defendants; and
- (3) For all other relief deemed just and equitable by the Court.

Respectfully Submitted:

Attorneys for Plaintiffs

Dated: September 22, 2008

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Certificate of Service

I, Kristin L. Kingsbury, 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 September 22, 2008.

Dated: September 22, 2008

s/ Kristin L. Kingsbury
Kristin L. Kingsbury