UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-FDS

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO CAUSE SUBPOENA TO BE SERVED UPON A PORT DIRECTOR OF U.S. CUSTOMS AND BORDER PROTECTION OR OTHER APPLICABLE OFFICER OR AGENCY OF THE UNITED STATES GOVERNMENT, AND IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO CAUSE SUBPOENA TO BE SERVED UPON THE KEEPER OF THE RECORDS AT DELTA AIRLINES

INTRODUCTION

The Defendants thought that the Plaintiffs might not file a memorandum in opposition to the instant motions, for theoretically, the information sought might help the Plaintiffs' case.

3ABNtalk.com is an independent website dedicated to aggressively defending Danny Lee Shelton (hereafter "Shelton") and Three Angels Broadcasting Network, Inc. (hereafter "3ABN"). The owner of that site, Steffan Philip, had this to say about the instant motion:

> I have to rub my eyes in disbelief. Did the last (2) subpoenas (subpoenae) that were proposed by Joy and Pickle to be served on Delta Airlines and the USCIS ???? To verify whether trips were taken by Arild and Linda? I wonder what happens if the informtion [*sic.*] is not to their liking? I wait with bated breath for the judge's decision.

(Affidavit of Robert Pickle (hereafter "Pickle Aff.") Ex. A–B). Whether apologist or critic, the

many individuals who are acquainted with this over-four-year-old controversy know that the Plaintiffs have claimed that Linda Shelton and Dr. Arild Abrahamsen (hereafter "Abrahamsen") vacationed together and took a trip to Florida together. These many individuals know that the Plaintiffs have used these claims as a basis for justifying the Sheltons' divorce and Linda Shelton's termination. Thus it comes as a bit of a shock to now hear the Plaintiffs denying that any of this information is relevant to their claims.

Perhaps the reason for this sudden reversal can be seen in the fact that the Plaintiffs' witness list currently lists only two witnesses who can testify "to the falsity of various statements about" Shelton, namely Shelton himself and Linda Shelton. (Doc. 37-2 pp. 2–5). With Shelton's veracity in grave doubt and Linda Shelton unmotivated to vindicate and exonerate her ex-husband, the Plaintiffs need some other key witness who can shore up their weak case, and Brenda Walsh, the only ally of the Plaintiffs who was with Linda Shelton in Norway at Abrahamsen's clinic in February 2004, is the prime candidate. Indeed, Brenda Walsh was a principal witness against Linda Shelton in the days leading up to Linda Shelton's termination and divorce, and Plaintiffs' counsel has represented that Brenda Walsh needs to be added to the Plaintiffs' witness list. (Doc. 81-11 p. 24; Pickle Aff. ¶ 3).

The instant motions merely seek leave to issue subpoenas *duces tecum* to acquire documents that should support the Plaintiffs' claims, if those claims be true. In reality, the Defendants now believe that those claims will not only be proven to be bogus, but that the credibility of the Plaintiffs' stealth, star witness will be irreparably shattered, if the Court grants the instant motions.

PLAINTIFFS' OBJECTIONS REFUTED

A. "None of this information is relevant to Plaintiffs' claims. It is therefore also irrelevant to Defendants' defenses."

The Defendants have argued that the information sought is relevant not only to the claims

of the Plaintiffs, but also to the questions of the veracity of the Plaintiffs and Brenda Walsh, of whether 3ABN has used revenue from tax-deductible donations to privately benefit certain individuals, and of the extent to which the Defendants can plead the defense of unclean hands. (Doc. 99 pp. 6–8). It is impossible to conclude that the information sought is irrelevant to the claims and defenses of any party.

The Court will note that the Plaintiffs' opposition memorandum avoided the use of Brenda Walsh's name, while the Defendants' memorandum used Brenda Walsh's name a total of 30 times. (Doc. 110; Doc. 99). Also, the words "credibility" or "veracity" cannot be found in the Plaintiffs' opposition memorandum. Presumably, the Plaintiffs know that the Defendants have made a solid argument for obtaining the information in order to potentially impeach Brenda Walsh, as well as Shelton and Walter Thompson (hereafter "Thompson").

B. "The alleged trip to Florida was never considered by Plaintiffs to constitute a factual basis supporting any claims set forth in Plaintiffs' complaint."

The Plaintiffs have claimed that Shelton had grounds for divorce and 3ABN had grounds to terminate Linda Shelton. (Doc. 1 ¶ 50). What those grounds were is made clear by Thompson, chairman of the 3ABN Board, in July 2007:

> Nearly two years after the divorce, in March of 06, Danny decided to get married again. Before that occured [*sic.*], our board met together by phone conference and again reviewed the evidence regarding his legal and moral rights to do so. Our conclusion was that he met the requirements for remarriage, from a legal, biblical, and church manual viewpoint.

And:

> Danny's divorce was done legally and with appropriate moral grounds (contrary to rumor and denials). We have extensive evidence to defend this statement, both of trustworthy witnesses and hard evidence.

(Pickle Aff. Ex. C at p. 1, Ex. D at p. 1). Thompson's reference to *The Seventh-day Adventist Church Manual* leaves no question as to what he is referring to as grounds for Shelton's divorce

from Linda Shelton: Thompson is insinuating that Linda Shelton committed adultery, and he is claiming to have "hard evidence" to that effect, as well as trustworthy witnesses, one of which must certainly be named "Brenda Walsh."

Yet at another time, Thompson admitted on March 7, 2005, "... frankly, I have never had the kind of evidence needed whereby to make such an accusation [of adultery]." (Pickle Aff. Ex. E at p. 3).

Be that as it may, Cindy Tutsch, an employee of the General Conference of Seventh-day Adventists, wrote on May 28, 2006, of "3ABN's central pins establishing their contention that Danny has biblical ground for remarriage." She lists just four "central pins":

1. Linda Shelton and Abrahamsen vacationed in Florida and Norway before and after the divorce.
2. A recording of Linda Shelton's side of an incriminating phone conversation.
3. A message left by Linda Shelton's mother that was taken from Linda Shelton's answering machine, which sounded as if Linda Shelton was in Florida with Abrahamsen.
4. Shelton's discovery of the pregnancy test kit.

(Pickle Aff. Ex. F).

Regarding claims of Linda Shelton being with or vacationing with Abrahamsen both prior to and after her divorce, one of the earliest public announcements to that effect was that of Dr. Kay Kuzma (hereafter "Kuzma"). Kuzma, together with Thompson, Attorney Nicholas Miller, and Bill Hulsey, comprised a small committee that were ultimately responsible for recommending Linda Shelton's termination. (Pickle Aff. ¶ 8). On August 16, 2004, Kuzma's response to a piece written by Thorvaldsson was published on BlackSDA.com by owner Calvin

Eakins at Kuzma's request. (Pickle Aff. Ex. G). In that response Kuzma claimed that Abrahamsen was with Linda Shelton both before and after "she left Danny." (*Id.* p. 2) Both the resulting BlackSDA.com thread and the Maritime-SDA-Online.org posting of the same communication are found in the Plaintiffs' Rule 26(a)(1) materials. (Pickle Aff. ¶ 8). The Maritime-SDA-Online.org version includes a December 6, 2006, rebuttal by Thorvaldsson in which he asserts that Abrahamsen and he were both in Norway at the time Shelton insisted that Abrahamsen was in Florida with Linda Shelton. Thorvaldsson also asserts in this rebuttal that 3ABN still asserted that the alleged rendezvous in Florida had taken place, and that that rendezvous was the basis for Shelton's demand for a divorce. (Pickle Aff. Ex. H at p. 5).

The Defendants have already submitted to the Court documents that demonstrate how important Linda Shelton and Abrahamsen's alleged vacations together in Florida, elsewhere in the United States, and abroad are to the Plaintiffs, if their own words can be taken at face value. A further perusal of Shelton's correspondence from March 19 through October 5, 2004, demonstrates yet further how fixated he was on the topic of vacations, and in particular the planned trip to Florida. (Pickle Aff. ¶ 9, Ex. I–N).

In a November 1, 2004, post by Norm Finch on ClubAdventist.com, we find an October 26, 2004, email by Shelton to Norm Finch, claiming that Linda Shelton had actually been vacationing with Abrahamsen before Linda Shelton allegedly sought help from Attorney John Drew in getting a divorce. (Pickle Aff. Ex. O at pp. 2, 5). This was followed two days later by a post from Inge Anderson in which she copied part of a communication from Thorvaldsson in which Thorvaldsson claimed that he was fired by Shelton for insisting that Abrahamsen was in Norway with himself rather than in Florida with Linda Shelton. (Pickle Aff. Ex. P at p. 2).

On March 17, 2005, Thorvaldsson posted part of an email from Thompson in which Thompson claimed, "We have evidence, but not proof that Linda and the Dr. did meet in Florida

as planned in February, and it is no secret that they did meet in Norway in June as planned." (Pickle Aff. Ex. Q).

In summary, the Plaintiffs have claimed for years that the alleged trip to Florida constituted a key piece of "evidence" for why Linda Shelton ended up jobless and husbandless. And that alleged trip is the only one presently known that can make another key piece of "evidence," the finding of the pregnancy test kit on May 7, 2004, anything other than a bad joke.

C. "... 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. "

If the Plaintiffs truly don't care, why have they gone to the expense and trouble to oppose the instant motions by drafting and filing their opposition memorandum?

The Defendants have already pointed out the importance of the alleged Florida trip in relation to the Plaintiffs' pregnancy test kit "evidence" against Linda Shelton. Since the Plaintiffs have questioned the relevancy of the alleged Florida trip, the Defendants believe it helpful to narrow the timing of the alleged vacations Shelton claims occurred prior to the divorce.

That Shelton claimed vacations actually taken were what led to the divorce is clear. (Doc. 100-11). Thus these alleged vacations must have taken place, if they took place at all, prior to Shelton's decision to end his marriage to Linda Shelton. Thus, the alleged vacation(s) had to have taken place prior to Shelton's announcing to Linda Shelton's daughter, sister, and brother-in-law on April 27 through 29, 2004, that his relationship with Linda Shelton was over. (Pickle Aff. Ex. R–U). The trigger point for Shelton's decision to end his relationship with Linda Shelton appears to have been the fact that Linda Shelton had followed her family's advice by hiding Shelton's gun. (Pickle Aff. Ex. R–S). Shelton also cited "spiritual adultery" and the planned trip to Florida, among other things. (Pickle Aff. Ex. T–U). On April 29, 2004, Shelton wrote Linda Shelton and offered to buy her half of their house. (Pickle Aff. Ex. V).

Thus, the planned trip to Florida in April 2004 (a) is claimed by the Plaintiffs and Brenda Walsh to have really taken place, (b) is the only potential rendezvous that would make the May 7, 2004, finding of the pregnancy test kit anything other than a bad joke, and (c) is the only possible vacation that coincides with Shelton's claim that vacations actually taken led to his divorce, since he decided to end his relationship with Linda Shelton by April 27, 2004.

D. "... 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."

First of all, Brenda Walsh specifically asserted that Linda Shelton's ticket was used while Brenda Walsh's was not, and documents from Delta Airlines will address this assertion. (Doc. 100 ¶ 8). Second, Thompson asserts that one of the lines of evidence that supports the idea that Linda Shelton did indeed go to Florida was that "she had tickets to go." (Doc. 100-17 p. 4). Documents from Delta Airlines will test the soundness of this purported "evidence." Third, it seems reasonable to assume that Linda Shelton would in the short term after her termination continue flying with Delta Airlines in order to either use her SkyMiles for free flights or to continue accumulating SkyMiles. After all, the receipts from the purchase of Brenda Walsh and Linda Shelton's tickets do document different SkyMiles account numbers for the two women. (Doc. 100-5; Doc. 100-6).

Now if the Plaintiffs are here arguing that the Defendants need to broaden their discovery efforts, the Defendants can consider doing so. However, it might make more sense to begin with just subpoenaing the carrier known to have issued the tickets in question. Requesting Delta Airlines to also produce documents pertaining to any additional tickets pertaining to Linda Shelton for a limited period of time would not be unduly burdensome.

E. "... Defendants have *again* neglected to provide the Court with their proposed language describing the subpoenaed documents ...."

Exhibits W–X attached to Pickle Aff. contain proposed language for the subpoenas in question. However, the proposed language may need to be altered in order to comply with the requirements of those being subpoenaed. In particular, additional language may need to be added in order to properly identify which Arild Abrahamsen of Norway the Defendants are seeking information about from a Port Director of U.S. Customs and Border Protection or other federal official or federal agency. The Defendants do not wish to trouble the Court by having to seek leave to make such additions or alterations.

F. "... 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."

The Plaintiffs here attempt to once again limit the Defendants' discovery efforts. How can the Defendants possibly know what third parties they will need to subpoena when they still have not obtained the bulk of the documents they have requested from the Plaintiffs?

Additionally, the Plaintiffs have a history of contacting third-party recipients of the Defendants' subpoenas, and encouraging them not to comply with those subpoenas. The Plaintiffs' motion to quash filed in the Southern District of Illinois so stated. (Pickle Aff. Ex. Y at ¶ 7).

The process of seeking leave of the Court before issuing a subpoena by necessity gives the Plaintiffs a longer opportunity to engage in such obstructive behavior. Requiring the Defendants to give such a list before the Defendants have received the documents requested from the Plaintiffs, and before the Defendants have had an opportunity to assemble the documents necessary to demonstrate to the Court the need for issuing those subpoenas would give the Plaintiffs an even longer opportunity to engage in obstructionism.

G. "... documents from Delta will not demonstrate whether 3ABN paid for personal trips that were not reimbursed."

The Defendants never asserted that they would. The Defendants stated, "Information from Delta Airlines regarding the disposition of Linda Shelton and Brenda Walsh's tickets may also further confirm whether 3ABN paid for personal, vacation air travel." (Doc. 99 p. 7). The foundation must first be laid. Were either Linda Shelton or Brenda Walsh's tickets used? If not, were they exchanged for other tickets, and if so, were those other tickets for personal travel or business travel? Depending on the answers to these questions, there might not have been anything to reimburse for.

H. "To determine this, Defendants will need to seek information from Linda Shelton herself and/or 3ABN."

Seeing that Plaintiff 3ABN neglected to take advantage of such an excellent opportunity to file proof of reimbursement in connection with its opposition memorandum, the Plaintiffs could move this Court to take leave to correct that oversight. The Defendants would not oppose such a motion, or the portion of a broader motion that sought such relief.

However, the Defendants believe that it would have made more sense for Brenda Walsh herself to pay for the tickets upfront rather than reimburse 3ABN later. What advantage would there have been to Brenda Walsh for her to reimburse 3ABN later? Since the receipts for both tickets show separate Delta SkyMile accounts, Brenda Walsh would have gotten her SkyMiles for the trip even if she had paid for the tickets herself to begin with. (Doc. 100-5; Doc. 100-6).

Thus the Defendants are fairly certain that 3ABN will not be able to produce proof of reimbursement.

I. "... Defendants use the Robert Pickle affidavit to provide his monologue interpretation that [*sic*.] an attached series of email and an 'investigative report' posted by Defendants on their Internet site."

The Plaintiffs felt that the investigate report in question was so relevant to this case that they produced it in their Rule 26(a)(1) materials. (Pickle Aff. ¶ 20). The topic was of such interest to the Plaintiffs that in their Rule 26(a)(1) materials they also produced *133* pages of the

BlackSDA.com thread entitled, "Why Did Linda Buy the Pregnancy Test Kit?" (*Id.*).

J. "But none of the information Defendants have presented provide direct evidence of misrepresentations ...."

How so?

Around the spring of 2008, Brenda Walsh stated that Linda Shelton bought Brenda Walsh's ticket against Brenda Walsh's wishes, when the fact of the matter is that Brenda Walsh reserved the tickets of both Linda Shelton and herself on March 4, 2004, and Brenda Walsh then instructed Dee Hilderbrand to purchase those tickets within 24 hours. (Doc. 100 ¶ 8, Doc. 100-4).

While Thompson asserted on June 13, 2006, that 3ABN had evidence that Linda Shelton did go to Florida, he denied on July 3, 2007 that 3ABN could prove that she really did go. (Doc. 81-11 p. 25; Doc. 100-17 p. 4). While Thompson asserted on July 7, 2007, that Linda Shelton could not be contacted during the alleged Florida trip of April 4–9, 2004, Shelton told Abrahamsen on April 7, 2004, that he had spoken with Linda Shelton on April 6. (Doc. 100-17 p. 3; Doc. 100-18 p. 1).

While on March 25, 2004, and later Shelton accused Linda Shelton of committing "spiritual adultery," at other times he tried to lead people to think that he never did so. (Doc. 81-10 p. 27; Doc. 100 ¶¶ 22–23; Doc. 100-22 p. 1). While on July 7 and October 27, 2004, Shelton asserted that he had foiled a planned trip to Florida and that that trip had been canceled, on September 15, 2004, he instead asserted that Linda Shelton had taken vacations with Abrahamsen prior to their divorce, and that it was those vacations that led to the divorce. (Doc. 100-12; Doc. 100-7 p. 2; Doc. 100-11).

K. "In other words, Defendants fail to provide factual their damaging theories – the very conduct which led to this lawsuit in the first place."

This statement is connected to the Plaintiffs' comments regarding the Defendants' investigative report. Thus, the Plaintiffs affirm what their Rule 26(a)(1) materials indicate: The

Defendants' investigative report about the pregnancy test kit is indeed relevant to this lawsuit, for "the very conduct" exhibited by the Defendants in that investigative report is what "led to this lawsuit in the first place."

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

What is at issue is whether the Defendants will assert an unclean hands defense on their own behalf, not on behalf of Linda Shelton and Abrahamsen.

An unclean hands defense may be asserted "where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that [the party] seeks in respect to the matter in litigation." *Keystone Driller Co. v. General Escavating Co.*, 290 U.S. 240, 245 (1933). The Plaintiffs allege in their Complaint that the Defendants' publications are motivated by the allegedly wrongful termination of Linda Shelton, and imply that the Sheltons' divorce is also a factor. (Doc. 1 ¶¶ 39–40, 50). If the basis for Linda Shelton's termination and divorce was fraudulently contrived by the Plaintiffs, if the Plaintiffs engaged in a global campaign of disparagement and defamation against Linda Shelton and Abrahamsen, and if the Defendants' publications (which led to the instant case) sought to counter the Plaintiffs' global campaign of defamation, then certainly the unconscionable acts of the Plaintiffs have an immediate and necessary relation to the equity that the Plaintiffs seek.

M. "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."

Since "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense" (Fed. R. Civ. P. 26(b)(1)), subpoenas can certainly be used to gather information to support a defense of unclean hands.

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

Discovery is not yet complete, and the Plaintiffs make this request in a memorandum opposing a discovery-related motion. The Plaintiffs should instead file a dispositive motion at an appropriate time in order to dispose of an unclean hands defense.

CONCLUSION

The Plaintiffs have put at issue in their complaint Linda Shelton's termination and divorce, which the Plaintiffs have many times over the last four years asserted were based on (a) alleged vacations of Linda Shelton with Abrahamsen, including one allegedly taken in April 2004 in Florida, and (b) Shelton's finding of a pregnancy test kit. The subpoenas at issue in the instant motions go to the question of the validity of these assertions, as well as to the questions of private inurement, an unclean hands defense, and the veracity of the Plaintiffs and Brenda Walsh,. The motions should be granted so that these subpoenas *duces tecum* may be issued.

Respectfully submitted,

Dated: September 30, 2008

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AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavit and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: September 30, 2008

/s/ Bob Pickle
Bob Pickle