UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 17-22281 CIV- COOKE/GOODMAN

HERALDS OF THE GOSPEL FOUNDATION, INC, et al.

Plaintiffs,

vs.

ALFONSO BECCAR VARELA, et al.

Defendant
_____/

Response to Motion to Strike

I, Alfonso Beccar Varela, Defendant, in the above styled cause, respond to the Plaintiffs "Motion to Strike portions of Defendant's Answer".

Filing of the Answer is not in contravention with the TRO:

1. Plaintiff claims that the Answer is "in direct contravention to this Court's Temporary Restraining Order" (TRO), but he doesn't address the fact that the Answer was posted on July 11th (as shown in the postmark included in the filing) and the first (unofficial) notice that I received of the TRO was on July 13th, and thus at the time that I prepared and sent the answer, the TRO was not in force. I believe that I am in full compliance with the TRO as I eliminated the Videos from all publicly accessible servers that I control directly or indirectly.

2. In any case the definition of what constitutes a violation of the TRO for the Plaintiffs seems to be a moving target: in the Report and Recommendation that is incorporated by reference in the TRO, Judge Goodman wrote that: "Compliance with the injunctive relief would **only** require Defendants to **refrain from posting or disseminating the Videos at issue**, as well as any other confidential videos that may have been illicitly acquired by the Defendants. Plaintiffs are not asking the Court to enjoin the Defendants from engaging in lawful conduct, including but not limiting to, the exercise of Defendants' First Amendment rights." (Emphasis is mine). That seems very straight forward.
3. But ignoring Judge Goodman's instructions (and as stated in previous filings) Plaintiff sent an email on July 13th requiring that I erase past entries authored by me and others and published in the blogs "www.tfpheraldos.blogspot.com" and "www.inperterritus.com", and that I consent to strike the portions of the Answer referenced in his filing. Curiously, when Plaintiff actually filed his "Motion to Strike" he didn't refer to the blog posts. From this I infer that he has now realized that he needs to backtrack, at least partially, in his attempt to overreach.
4. In any case I filed a motion for clarification and I will follow any further instruction issued by the Court.

The "Status quo ante"

5. Plaintiffs fail to define what the statu quo prior to the disclosing of the nine videos was. A simple review of my blog ("www.tfpheraldos.bogspot") shows that my exposure of the Plaintiff's concealed practices dates from well before the publication of the Videos. The

Plaintiff's attempt to silence me two years ago through the messages sent by Mr. Millan (as shown in the Complaint and in the Answer) is one evidence of this statement.

6. The Videos simply reinforced and provided additional dramatic evidence to my ongoing reporting. They certainly proved "transformative" because, as acknowledged by the Plaintiff, the Videos brought my criticism to the attention of serious journalists (one of them, Mr Tornielli, is a co-author of a book with the Pope), which in turn caused the resignation of the Plaintiff's leader and the intervention of the Vatican. Therefore, the restoration of the "statu quo ante" cannot go beyond the strict removal of the videos from my blog, which I have already done. To silence my comments does not restore any statu quo, but would simply mean the satisfaction of the Plaintiff's desire of silencing the truth.

The Standard under Fed. R. Civ P. 12(f) is not met:

7. Of course, I agree that the Court has the power to strike portions of my Answer. But "The Federal Rules of Civil Procedure have long departed from the era when lawyers were bedeviled by intricate pleading rules and when lawsuits were won or lost on the pleadings alone. The courts should not tamper with the pleadings unless there is a strong reason for doing so." Jurista v. Amerinox Processing, Inc., 492 B.R. 707, 742 (D.N.J. 2013) That is why "Striking a pleading is a drastic remedy which should be used sparingly, partly because of the practical difficulty of deciding cases without a factual record." (ibid) and "[…] the courts view **motions to strike** portions of a complaint with such disfavor that many courts will grant such a motion only if the portions sought to be stricken as immaterial are also prejudicial or scandalous. Makuch v. FBI, 2000 U.S. Dist. LEXIS 9487 *, 2000 WL 915767 (D.D.C. Jan. 6, 2000)

8. None of the points mentioned by the Plaintiffs are "redundant, immaterial, impertinent, or scandalous matter" (USCS Fed Rules Civ Proc R 12(f)).

The content of the Videos is not Copyright protected

9. The Plaintiff suggests that the mere discussion on the Videos is a copyright infringement. But, if we follow the Plaintiffs logic (and as we have already stated in the Answer) the **content** of the Videos is not protected by Copyright: Circular 56 of the US Copyright Office (reviewed: 07/2014) makes the following distinction: "Copyright registration for a sound recording alone is neither the same as, nor a substitute for, registration for the musical, dramatic, or literary work that is recorded." The fact that the basis for the copyright infringement claim is based on an alleged assignment contract between the cameraman doing the VIDEO RECORDING and the Plaintiff and not by the people that make the remarks proves this. Thus, if the content of the Videos is not protected by Copyright, it cannot be the basis to strike references to its content from my Answer.

The alleged Confidentiality Agreement is res inter alios acta

10. The Plaintiff claims that the posting of the videos was in violation of an alleged Confidentiality Agreement and so are the references made in the Answer. But they agree that I am not even a party (nor we had any knowledge about) that agreement. That aspect of the claim is thus directed to the DOEs named in the Complaint and is "res inter alios acta" in my respect and thus cannot be used as a basis to strike references and comments to the Videos in my Answer.

Tortious Interference requires knowledge of the contract

11. The Plaintiff claims that I committed "tortious interference" with respect the above-mentioned Confidentiality Agreement. But, as stated in my Answer, one of the elements to substantiate that claims is that I had knowledge of the agreement, which I didn't. Thus this claim also cannot be used to support the Motion to Strike.

Trade Secret definition requires an assessment of "independent economic value"

12. The other matter raised by the complaint is about an alleged trade secret violation. And this matter makes the content of the Videos relevant to my defense. It is a requirement that the alleged trade secret has "Independent Economic Value" (both under the Defend Trade Secrets Act ("DTSA") and the Florida Uniform Trade Secrets Act ("FUTSA")). But "to have independent economic value, the secret information must afford the owner a competitive advantage by having value to the owner and potential competitors." *Daimler-Chrysler Servs. N. Am., LLC v. Summit Nat'l, Inc.*, 289 Fed. Appx. 916, 922 (6th Cir. 2008); *see also Mike's Train House*, 472 F.3d at 410-11. In other words, information has independent economic value if it "would be useful to a competitor." *Id.* (citing *U.S. West Commc'n, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1993). The Minnesota Supreme Court, one of the first states to interpret the "independent economic value" element of the Uniform Trade Secrets Act, held that secret information has independent [**34] economic value [*844] "[i]f an outsider would obtain a valuable share of the market by gaining [the] information." *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 900 (Minn. 1983). Giasson Aero. Sci., Inc. v. RCO Eng'g, Inc., 680 F. Supp. 2d 830, 843-44 (E.D. Mich. 2010)

13. The Plaintiff thus included in its Complaint an inaccurate description of the content of the Videos with the hope that it could convince the Court of such "independent economic value". As I have pointed out in the Answer and I will prove during these proceedings, the actual content of the Videos doesn't fit the definition of either statute. Thus, it is central to my defense to analyze what is actually said and done in the Videos.

The content of the Videos is essential to prove my "Fair Use" Defense

14. The Plaintiffs do not prove that the portions of my answer that they want to strike, and the Exhibits that they want to delete, are immaterial or impertinent to my defense. Plaintiff's would desire to limit this case to a simple copyright matter, as if all that is at stake is the supposed artistic or literary abilities of the cameramen that recorded the Videos. But as I state in my defense the use of the Videos is in any case a "fair use" under the Copyright Act because it was transformative as it was used as part of an information effort about the true beliefs and nature of the Plainitffs activities. Thus, it is essential for the Court to understand what that context is and what is the underlying reality.

This case is a about Public Interest and Freedom of Speech

15. What is at stake is my right to freedom of speech and the right of the public, the Vatican and the rank and file of the Plaintiff's followers and donors, to learn about the concealed practices of an insider group (a minority, as acknowledged by the plaintiff itself). For example, a plaintiff that sues a defendant for "aggression" must be prepared to address the defendant's argument that it was a case of "self-defense". Logically it will be easier for plaintiff to ignore, delete and suppress as immaterial and impertinent, any circumstance that could help prove such a defense. Fed. R. Civ. P. 12(f) is not designed to

"crop the picture" or "edit facts" in order to present them in the most favorable light for Plaintiff´s interests.

16. The interpretation of the TRO wished by the Plaintiff's basically amounts to the total silencing of criticism to their associations. The damage to the public from this silencing is not sufficiently covered by the U$25.000 bond. The Plaintiff attempts to limit the controversy to a pure copyright matter in favor of the rights assigned by a cameraman, without accepting any discussion about the consequences of their actions to their donors, to their "patients" and to their recruits. For example, as the Plaintiff acknowledges, the "healing prayers" are either used for treating healthy people that just happen to be possessed by an evil spirit, or they are used for treating people who suffer from mental or other ailments. If the case is the latter, doing so without any medical advice amounts to illegal practice of medicine. The damages derived from treating medical cases as if they were spiritual ones cannot be bonded with the U$25.000. As the Court can probably see, we are not discussing the copyrights of a cameraman recording some private meetings, but something much more significant.

Conclusion

1. For all the above stated reasons, I pray the Court to reject the Motion to Strike and to keep my Answer as it was presented.

Respectfully submitted, July 24, 2017

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I hereby certify that a true and correct copy of the foregoing was served by Mail on July 24, 2017 to parties of record on the Service List below.

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