

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY,
FLORIDA

CIVIL DIVISION

CASE NO. 09-68539 CA25

JOHN GIORDANO, individually, and
G&G ADDICTION TREATMENT,
INC., a Florida corporation,

Plaintiffs,

vs.

DONNA L. ROMEO, and XCENTRIC
VENTURES, LLC, an Arizona Limited
Liability Corporation,

Defendants.

#110⁰⁰
NON-FINAL

CLERK, CIRCUIT COURT
MIAMI-DADE COUNTY, FLA.
CIVIL DIVISION #129

2011 JAN 27 PM 2:34

FILED FOR RECORD

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant, XCENTRIC VENTURES, LLC, appeals to the District Court of Appeal, Third District of Florida, the order of this Court dated December 28, 2010. The nature of the order is a non-final order on Plaintiff's Motion for Temporary Injunctive Relief. A conformed copy of the order is attached.

**STACK FERNANDEZ ANDERSON
& HARRIS, P.A.**

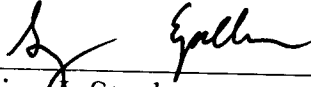
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
was served via U.S. mail and telecopy this 21st day of January, 2011 to:

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Final PA

ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTIVE RELIEF

THIS CAUSE HAVING come before this Court on Plaintiffs' Emergency Motion for Temporary Injunctive Relief against Xcentric, and the Court having ~~been~~^{PA} reviewed the Motions, Plaintiffs' Affidavit in Support, having heard argument of counsel and being otherwise fully advised in the premises, the Court makes the following findings:

1. Plaintiffs allege that Defendant Romeo published statements on Defendant Xcentric's website, www.ripoffreport.com, which statements are untrue, defamatory and injurious to the personal and business reputations of Plaintiffs. Romeo does not deny having made the statements, and the Court accepts as true that Romeo did in fact make such statements.
2. Specifically, Romeo stated that ~~Plaintiff G&G illegally dispensed medication and also~~^{PA} ~~stated~~ Plaintiff Giordano, G&G's president, is a convicted felon.

3. Having reviewed Plaintiffs' affidavit and having heard testimony, the Court is satisfied that these particular statements are false. Specifically, the Court points to the Florida Department of Children and Families' FBI Criminal Clearance Results for Mr. Giordano which demonstrates that Giordano is not a convicted felon.¹ ~~The Court also finds that~~ P.A.
~~G&G does not illegally dispense medication.~~
4. The Court finds that the statements referenced above are ~~defamatory per se~~, and, as *not true* P.A.
P.A. result, finds that Plaintiffs have a strong likelihood of success on the merits of the underlying action.
5. The Court has also previously entered a temporary injunction against Romeo, enjoining her from maintaining the statements about Plaintiffs on RipoffReport.com. Romeo did not oppose this injunction.
6. In accord with this Court's prior Order, Romeo actively approached Xcentric and demanded it remove the statements about Plaintiffs. Together with her demand, Romeo provided Xcentric with a copy of this Court's injunction. Xcentric has refused to remove the statements, and has purposefully disregarded a valid injunction entered by this Court against Romeo – an injunction of which Xcentric had complete knowledge.
7. Plaintiffs point to the statements on Xcentric's website which announces that their policy is never to remove any posting – even if requested to do so by the publisher of statements on their site. Consequently, Plaintiff's argue, they will suffer irreparable harm for which they have no adequate remedy at law unless the Courts enjoins Xcentric from maintaining the statements on its website.
8. Xcentric argues that the Court has no authority to enter an Order enjoining it from

¹ Plaintiffs filed the FBI investigative results in their Supplemental Filing in Support of their Motion for Temporary Injunctive Relief on February 16, 2010.

maintaining the statements on its website, because of immunity ostensibly provided by the Communications Decency Act ("CDA"), 47 U.S.C. § 230.

9. The CDA provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). It further states that "[n]o provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that . . . [is] harassing, or otherwise objectionable. . . or any action taken to enable or make available to information content providers. 47 U.S.C. § 230(c) (emphasis added). These provisions preempt contrary state law, but do not "prevent any State from enforcing any State law that is consistent with this section." 47 U.S.C. § 230(e)(3).

10. The Court specifically finds that the CDA does not categorically bar this Court from issuing an injunction against Xcentric.

11. Because Plaintiffs have a likelihood of success on the merits and have shown irreparable harm to their reputations and business, an injunction is appropriate. This is specifically so in this case, where by Plaintiffs and the publisher, Romeo, have demanded to have the statements removed, the Court has issued an injunction ordering Romeo to remove the statements, Romeo presented the injunction to Xcentric, and Xcentric has still refused to comply.²

12. The Court finds that in this situation, Xcentric refusal to comply with the Court's Order and the demand of the publisher to remove the statements, makes Xcentric the publisher

of the statements, ~~and therefore the publisher~~ ^{P-A} This is different from P-A determining that they are the publisher solely because of the posting.


² The Court notes that, in such an instance, Xcentric has forcibly exposed Plaintiffs to additional damage and has interfered with the parties' attempt and right to mitigate their damages. The Court does not believe that Congress intended to provide immunity from an equitable injunction in such a situation. See 47 U.S.C. § 230(c)(1), (e)(3).

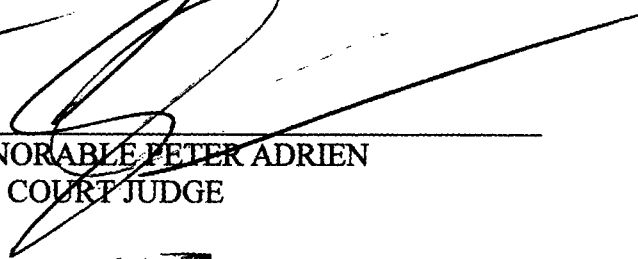
13. However, even if Xcentric were not treated as the publisher (and indeed, Plaintiffs do not seek to impose civil liability upon Xcentric), the CDA does not bar this Court from entering injunction relief.

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

- a. Plaintiffs' Motion for Temporary Injunctive Relief is GRANTED;
- b. Defendant Xcentric is immediately ENJOINED from maintaining the statements about Plaintiffs posted by Romeo on www.ripoffreport.com;
- c. Failure by Xcentric to comply with this injunction shall make Xcentric subject to contempt.

DONE AND ORDERED in Chambers, at Miami Dade County, Florida on this 28th
day of December, 2010.



THE HONORABLE PETER ADRIEN
CIRCUIT COURT JUDGE

Peter Adrien
Circuit Court Judge

Copies furnished to:
All counsel of record