IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CHRISTOPHER M. COMINS,

CASE NO.: 09-CA-015047-O

Plaintiff/Counterdefendant,

vs.

MATTHEW FREDERICK VAN VOORHIS,

Defendant/Counterclaimant.
_____/

DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Defendant Matthew Van Voorhis (hereinafter "Van Voorhis", or the "Defendant"), by and through counsel, brings this Motion for Summary Judgment under Florida Rule of Civil Procedure 1.510(b) in response to the claims brought by Plaintiff, Christopher Comins (hereinafter "Comins," or the "Plaintiff"). Defendant's memorandum of points and authorities supporting this motion is set forth below.

1. The pleadings, discovery responses, and other materials filed with the court demonstrate that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law.

2. Plaintiff failed to give Defendant pre-suit notice of his defamation claim, as required by Florida Statutes § 770.01. This failure to provide pre-suit notice, as required by law, bars Comins' claims.

3. Defendant's statements were matters of opinion and, moreover, made about a public figure. As a matter of law, Comins cannot sustain a defamation cause of action based on Van Voorhis' comments.

4. Defendant's statements do not constitute intentional and unjustified conduct that would give rise to a claim for tortious interference with business relationships. As a matter of law, Comins cannot sustain a tortious interference cause of action based on Van Voorhis's comments.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction

Defendant brings this Motion for Summary Judgment against the pending claims of defamation and tortious interference with business relationships. First, Plaintiff failed to give Defendant pre-suit notice of his defamation claim, as required by Florida Statutes § 770.01. This failure to provide pre-suit notice, as required by law, bars Comins' claims. Additionally, Defendant's statements were matters of opinion and, moreover, made about a public figure. As a matter of law, Comins cannot sustain a defamation cause of action based on Van Voorhis' comments. Finally, Van Voorhis' statements do not constitute intentional and unjustified conduct that would give rise to a claim for tortious interference with business relationships. This Court should thus grant judgment to the Defendant as to all claims.

II. Statement of Facts

On May 19, 2008, Plaintiff repeatedly shot two Siberian Huskies while onlookers begged him to stop. A video depicting this incident was posted on YouTube, the popular user-generated video website. Thousands of people watched the video, with many leaving appalled messages in response to what they saw.

The media quickly seized upon the video, investigating further and releasing stories about the incident beginning on May 23, 2008. (Def.'s Answer Exhs. A, C-K.) The Orlando-area local affiliates of Fox and NBC, as well as local stations WKMG Local 6, CF News 13 and WFTV, were among the traditional news sources to report on Comins' assault of the dogs. (Def.'s Answer Exhs. E-K.) The Orlando Sentinel covered this event (Def.'s Answer Exh. C), as did the National Enquirer (Def.'s First Amended Counterclaim Exh. S), and users of CNN's "iReport" service (Def.'s Answer Exh. D).

From this traditional media coverage, secondary media coverage – blogs, small websites and message boards – discussed the story. One of these bloggers to secondarily report on the story was Van Voorhis on his blog, Public Intellectual, found at <publicintellectual.wordpress.com>. Van Voorhis first covered this story on June 6, 2008, almost two full weeks *after* the story was covered by outlets such as Fox and NBC (*see, e.g.*, Def.'s Answer Exhs. E-K), and 18 days after Comins' shooting incident. In all, Van Voorhis wrote two blog posts containing content Comins alleged was defamatory in his Complaint. True and correct copies of these posts, titled "Christopher Comins: Barbarian Hillbilly Dog-Assassin (w/ Friends in High Places)" and "Christopher Comins Husky-Shooter Update: Chris Comins May Face Charges," are attached as Exhibit A and Exhibit B, respectively.

On May 13, 2009, Comins filed a Complaint against VanVoorhis, alleging three counts of defamation and one count of tortious interference with business relations. Comins filed the First Amended Complaint in this case on September 20, 2010. Van Voorhis filed an Answer and Counterclaim, which he later amended, filing a First Amended Answer and Coutnerclaim. Defendant has twice moved to dismiss this case, once on June 7, 2010, due to Comins' efforts to delay the proceedings until his pending criminal trial was concluded, and again on August 25,

2010, due to Comins' failure to give Van Voorhis pre-suit notice required by Florida Statutes § 770.01.

III. Legal Standard for Summary Judgment

A party is entitled to summary judgment as a matter of law when it can demonstrate that there is no genuine issue as to any material fact. *See* Fla. R. Civ. P. 1.510; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) ("[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported Motion for Summary Judgment; the requirement is that there be no genuine issue of material fact"). It is a well-settled matter of Florida law that summary judgment is granted only when questions of law remain for a court to consider. *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 643 (Fla. 1999), *citing Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985).

If the moving party seeks summary judgment with respect to a claim or defense upon which it bears the burden of proof at trial, its burden must be satisfied by affirmative, admissible evidence. By contrast, when the non-moving party bears the burden of proving the claim or defense, as Comins does in this case, the movant can meet its burden by pointing out the absence of evidence supporting the claim or defense. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

IV. None of Comins' Claims can Withstand Summary Judgment

For this Court to entertain Comins' claims against Van Voorhis, the Plaintiff must establish that there is a question as to any material fact relevant to his causes of action against Defendant. At the heart of this dispute are three issues that Comins must establish:

-Comins was entitled to bring suit against Van Vorhis despite failing to provide pre-suit notice;

-Van Voorhis defamed Comins in his blog posts and other statements; and

-Van Voorhis' statements intentionally and unjustifiably impeded Comins' business activities.

Based on the circumstances surrounding this case, there is no factual issue whatsoever; as a matter of law, the Court should enter judgment in favor of Van Voorhis on all these claims. Indeed, Comins has not brought these claims in good faith, but rather in an attempt to harass and silence Van Voorhis' free expression.

A. Comins' Failure to Follow § 770.01 Bars His Claims Against Van Voorhis.

Florida law requires plaintiffs to send pre-suit notice to defendants in anticipation of all defamation and slander actions. At least five (5) days before commencing such action, the plaintiff must serve notice on the defendant identifying the broadcast or publication the plaintiff alleges to be false and defamatory. Fla. Stat. § 770.01 (2010). This provision, which is intended to allow corrections or retractions by publishers and foster settlements in lieu of legal action, applies to **all civil litigants, both public and private, in defamation actions**. *Wagner, Nugent, et. al. v. Flanagan*, 629 So.2d 113 (Fla. 1993).

All plaintiffs are required to comply with Chapter 770's provisions in any defamation case. *Wagner, Nugent, et al.*, 629 So. 2d at 115. In *Wagner, Nugent, et al*, the Florida Supreme Court held that the provisions of Chapter 770 applied to all defamation cases, making compliance a prerequisite for any defamation suit. *Id.* at 115. Thus, as this Honorable Court has already noted, a plaintiff's failure to comply with § 770.01 compels the court to dismiss the complaint for failing to state a cause of action. *Mancini v. Personalized Air Conditioning & Heating*, 702 So. 2d 1376, 1377 (Fla. 4th DCA 1997), *citing Gifford v. Bruckner*, 565 So. 2d 887 (Fla. 2d DCA 1990); *Davies v. Brossert*, 449 So. 2d 418 (Fla. 3d DCA 1984); *Cummings v. Dawson*, 444 So. 2d 565 (Fla. 1st DCA 1984).

The fact that a publisher makes statements online does not excuse compliance with § 770.01, as the statute's "other medium" language has been held to apply to the internet and internet forums. *Alvi Armani Medical, Inc. v. Hennessy*, 629 F. Supp. 2d 1302, 1307 (S.D. Fla. 2008) *citing Canonico v. Calloway*, 35 Med. L. Rptr. 1549 (Fla. Cir. Ct. Feb. 22, 2007). In *Holt v. Tampa Bay Television, Incorporated*, the trial court held that the phrase "other medium" in § 770.01 includes the internet. 34 Med. L. Rptr. 1540, 1542 (Fla. Cir. Ct. March 17, 2005) *aff'd* 976 So. 2d 1106 (Fla. 2d DCA 2007). The court could find no justification for excluding the internet from the statute's reach, as it "has become a recognized medium for communication to the masses." 34 Med. L. Rptr. at 1542.

Van Voorhis is a columnist and political commentator, publishing articles on his own personal web log, Public Intellectual <http:// publicintellectual.wordpress.com>. Van Voorhis maintains this internet website as an online magazine, and thereon publishes editorial and news articles regarding current events, similar to any other media outlet. As publisher of an

online/internet magazine and as a columnist/editorialist, Van Voorhis was entitled to pre-suit notice pursuant to § 770.01 prior to the filing of the case at bar.

Comins has failed to provide proper notice to Van Voorhis under § 770.01. Comins' original Complaint was devoid of any mention of this required pre-suit notice. In his First Amended Complaint, Comins alleged that he had written correspondence with Van Voorhis and the University of Florida Police Department. (Pl.'s First Am. Compl. ¶ 21.) Despite this allegation, Comins has put forth no proof that this correspondence, if any, complied with § 770.01, nor could he, as the documents he relies upon as somehow "close enough" to a § 770 notice are not even close.

It is not enough for pre-suit notice to allege defamation, but it must state with particularity the statements believed to be defamatory. See § 770.01; *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607 (Fla. 4th DCA 1975). In Orlando Sports Stadium, the Fourth District Court of Appeal held that pre-suit notice that complies with § 770.01 must not merely identify the article plaintiff claims is defamatory, but the precise false and defamatory statements contained within that publication. Id. The First District Court of Appeal reached a similar conclusion in *Gannett Florida Corporation v. Montesanto*; the Court noted that the following text was insufficient, as a matter of law, under § 770.01:

> Pursuant to Florida Statute 770.01, you are hereby notified that a civil action for libel will be brought against The Gannett Florida Corporation in the Circuit Court of Volusia County Florida, after five days from the service of this notice for the publication in the newspaper "Today" on or about May 10, 1970, of the attached article which was false and defamatory in that it imputed a crime to my client, Mr. Carmen Montesano. 308 So. 2d 599 (Fla. 1st DCA 1975).

The appeals court found that this notice was insufficient to give the plaintiff a right to sue under § 770.01. *Gannett*, 308 So. 2d at 599-600. Because there was no specificity as to the defamatory or false statement Gannett allegedly published, the court found Montesanto's notice,

like that in this case, woefully failed to meet to the requirements of § 770.01. *Id.* Consequently, the judgment he initially received against Gannett was reversed on appeal for this reason. *Id.* Any judgment that Comins may receive would be similarly reversed on appeal for the same reason.

Failing to satisfy § 770.01's conditions, Comins has not crossed the threshold necessary to bring, let alone sustain, his case. The first correspondence from Comins' counsel, Frank H. Killgore, to Van Voorhis occurred by letter on March 23, 2009. A true and correct copy of this document is attached as Exhibit C. Notably, the letter was addressed to "M. Frederick Voorhees" – the pen name of Van Voorhis – and was sent care of the University of Florida. Comins has presented no evidence to rebut Van Voorhis' contention that he never received this or any other written correspondence from Comins prior to suit.

In this letter of March 23, 2009, Comins' counsel does not specify a single blog entry or statement that allegedly is false or defamatory. Instead, the letter refers to Comins' spurious fear for his safety arising from allegedly threatening comments made by unknown third parties. (Exh. C at 1.) The only content that Comins' attorney requested to be removed was Comins' personal and business contact information, and any threatening comments against him. (Exh. C at 2.) Falling short of the standard demanded in *Gannett* and *Orlando Sports Stadium*, Comins did not merely fail to identify specific false and defamatory statements – he did not even identify that defamation was the issue; instead focusing on the blog's anonymous comments. It seems that his defamation claim was a mere afterthought.

Through counsel, Comins then contacted the Criminal Investigation Division of the University of Florida Police Department ("UFPD") in an effort to uncover Van Voorhis' identity. A true and correct copy of the UFPD Offense Report memorializing this event is attached as

Exhibit D. This telephone communication with the UFPD was not, and did not translate into, a written notice of defamatory or false statements on Van Voorhis' blog. (Exh. D at 2-3.) Comins' stated concern for contacting the UFPD was, as in the March 23 letter to Van Voorhis, purported fear generated by anonymous threats left on the site. (See Exh. C, Exh. D at 2-3.) Comins' counsel raised concerns for Comins' physical safety with the UFPD, as the Public Intellectual blog was operated on the University of Florida's servers, but did not identify any of the specific posts or content on Van Voorhis' blog as false or defamatory. (Exh. D at 2-3.). The Incident Report indicates that Van Voorhis "was very willing to remove the requested items from the blog" (Exh. D page 3), but contains no record of Kizzar requesting the removal of material outside the scope of "death threats" and Comins' contact information. In short, it is evident both in the UFPD Offense Report (Exh. D) and in Detective Daymon Kizzar's initial email to Van Voorhis (Exh. E) that the police department's involvement in this case was based on a concern for Mr. Comins' personal safety. Detective Kizzar's task was to "determine if a crime had been committed" (Exh. D page 3)—and not, as Comins implies, to serve as messenger of a § 770.01 notice on behalf of a defamed civil plaintiff.

Comins cannot claim that he was frustrated or prevented from giving proper pre-suit notice to Van Voorhis under § 770.01 due to not knowing his correct name and address. In fact, Comins correctly identified Van Voorhis in the subject suit and served him with the summons and complaint at his home address just two months after his counsel sent the letter attached as Exhibit C. It is undisputed that Comins' counsel, through the University of Florida, obtained the factual information necessary to provide proper notice to Van Voorhis under § 770.01 prior to filing suit; he simply chose not to do so.

Comins' attorney once again sent a letter, this time to "Matthew Frederick Vanvoorhis" at his home address on May 26, 2009, inviting him to discuss and remove the blog's content. A true and correct copy of this letter is attached as Exhibit F. No specific defamatory or false statements are identified in this correspondence, as required by § 770.01. (Exh. F.) Further disqualifying this correspondence from complying with § 770.01 is the fact that it was sent almost two full weeks *after* Comins filed suit against Van Voorhis on May 13, 2009. (*See* Compl., Exh. F.) Under § 770.01, pre-suit notice in all defamation actions must be sent at least five (5) days before filing suit. Even if this correspondence had identified Van Voorhis' allegedly false and defamatory statements, it would be untimely under § 770.01 and thus improper notice.

Even more frustrating, when this case was first filed in May of 2009, in an effort to avoid protracted litigation, Van Voorhis offered (through counsel) to let Comins edit his publication as Comins saw fit, and to delete portions of the article that Comins found objectionable. With that goal in mind, on June 3, 2008 the parties agreed to stay the proceedings with the understanding that Comins would communicate to Van Voorhis which sections of the article he would like removed. (See Exhibit G, Correspondence between counsel.) Over seven months passed, during which time Comins failed to take advantage of the opportunity to identify "defamatory" passages and request their removal. Then, in January of 2010, Comins unilaterally decided that he would insist upon pressing the case forward with the lawsuit.

Although not dispositive, it is worth noting that the § 770 issue was not merely sprung upon Mr. Comins at some late date. As early as February 17, 2010 counsel for Van Voorhis raised this issue with Counsel for Mr. Comins. (See Exhibit H.) At that point, a prudent party would have simply dismissed the case, issued a § 770 notice, and then (failing compliance with

the notice) would have re-filed. Mr. Comins, instead, dug in his heels and now must be hoisted on his own petard.

Comins' initial Complaint failed to allege that he gave pre-suit notice to Van Voorhis under § 770.01. This failure to allege pre-suit notice gave rise to an Amended Motion to Dismiss and a hearing was held before this Court on September 10, 2010. At the hearing, in an attempt to avoid a dismissal of the Complaint for failure to allege that pre-suit notice was given, Comins' counsel represented the following to the Court:

> Well, Your Honor, we did serve presuit notice, so there might be a little bit of confusion here as to whether the conditions preceding were actually complied with.
>
> We served Mr. Van Voorhis with notice on March 23rd, 2009. Now, that may not have been properly pled, but to the extent it wasn't, we would request leave to amend to allege that we have complied with all conditions precedent.
>
> We did have communications with Mr. Van Voorhis' counsel, as well, several months back wherein we confirmed with him that we did serve this notice on him March of 2009, prior to filing suit. (Exhibit I, Transcript of Proceedings on September 10, 2010; 8:2-14.)

Based *entirely* upon Comins' counsel's representation to the Court at the hearing that pre-suit notice was given, the Court granted the Amended Motion to Dismiss with leave to amend.

Comins filed his First Amended Complaint on September 20, 2010, alleging that he "complied with Fla. Stat. § 770.01in an abundance of caution by serving notice in writing on Defendant care of the University of Florida on March 23, 2009 identifying the articles which Plaintiff alleges to be false and defamatory." (Pl.'s First Am. Compl. ¶ 21.) Comins then filed his Second Amended Complaint on November 3, 2010, wherein he alleges the following: "Defendant is not a media defendant, and therefore Plaintiff was not required to provide him with pre-suit notice before instituting this action. However, even if this Court finds Defendant was entitled to pre-suit notice, which Plaintiff denies, Plaintiff has either satisfied all conditions

precedent to bringing this lawsuit or such conditions have been waived or excused by Defendant's Conduct. (Pl.'s Second Am. Compl. ¶ 21.) Despite Comins' allegation that pre-suit notice identifying the allegedly false and defamatory material was given, the undisputed fact is that what Comins claims to be pre-suit notice was patently deficient in numerous ways, as described fully in the foregoing paragraphs.

In light of Comins' pre- and post-filing correspondence to Van Voorhis, seen in Exhibits C and F, there is no factual dispute as to the insufficiency of Comins' purported pre-suit notice. Compliance with § 770.01 is mandatory, and *Orlando Sports Stadium* and *Gannett* make it clear that the notice must specifically identify the false or defamatory statements at issue. On their face, Comins' letters – addressing only the threats made against him by unknown third parties – fail to meet this standard. Thus, the Court has no choice but to grant judgment on this issue to Van Voorhis as a matter of law and dismiss Comins' Complaint as to Counts I-III.

B. Van Voorhis' Statements Do Not Constitute Defamation.

Comins seeks compensation for Van Voorhis' alleged defamation contained within the blog posts attached as Exhibits A and B. To be considered defamation in Florida, a statement must be: 1) published, 2) false, 3) made with reckless disregard for the truth or knowledge of its falsity when concerning a public official, or negligently when concerning a private person, 4) have actual damages, and 5) defamatory (harmful to the target's character) in nature. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214 n. 8 (Fla. 2010).

Van Voorhis' statements fall short of this standard for several reasons. Rather than being verifiable claims, Van Voorhis' blog posts were statements of pure opinion and characterizations of Comins that, in context, no reasonable person would interpret as statements of fact. See

Dockery v. Fla. Democratic Party, 799 So. 2d 291, 296-97 (Fla. 2d DCA 2001); *From v. Tallahassee Democrat*, 400 So. 2d 52, 58 (Fla. 1st DCA 1981). Van Voorhis parodied Comins only after traditional media outlets reported Comins' dog shooting, thus affording Van Voorhis' statements a higher degree of constitutional protection as statements made about a public figure discussing a matter of public concern. See *Mile Marker Inc. v. Peterson Publishing, LLC*, 881 So. 2d 841, 845 (Fla. 4th DCA 2002).

1. Van Voorhis' Complained-of Statements Were Matters of Opinion.

Only statements of fact, and not opinions, can be defamatory, whether we analyze this case under the First Amendment or merely under Florida defamation law . The Supreme Court has held that there "is no such thing as a false idea," ensuring that individual opinions are protected by the U.S. Constitution. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 339-40 (1974). Constitutionally protected statements of opinion are made based on information known or available to the speaker as a member of the public. *Town of Sewall's Point v. Rhodes*, 852 So. 2d 949, 951 (Fla. DCA 4th 2003); *Morse v. Ripken*, 707 So. 2d 921, 922 (Fla. 4th DCA 1998). The determination of whether a statement is one of opinion or fact is left to the courts. *Morse*, 707 So. 2d at 922; *Zambrano v. Devanesan*, 484 So. 2d 603, 606 (Fla. 4th DCA 1986).

Van Voorhis' commentary on Comins' dog-shooting incident was predicated on a publicly available YouTube video, which was viewed thousands of times and referenced in numerous mainstream media reports, from respected publications, predating the allegedly defamatory blog posts. (*See* Def.'s Answer Exhs. A, C-K.) Van Voorhis did not add any facts that were not available in the YouTube video or prior media reports to his blog posts, nor did he insinuate that he possessed any non-public information about Comins' incident; in fact, Van

Voorhis even included the YouTube video of Comins' attack in both blog posts. (Exhs. A and B.) As such, Van Voorhis' coverage of this event was secondary reporting and a matter of pure opinion. (*See Id.*)

Comins specifically complains about the following statements from Van Voorhis' June 2008 blog posts (Exhs. A and B):

-"Comins apparently just drives around with his gun waiting for excuses."

-"One can sense his hunger, his salivating over the opportunity to kill something."

-"Comins circles his kill like a predator deciding which fresh victim to devour first."

-"One of Comins shots . . . whizzes by the crowd."

-"Carelessly, he points his barrel directly at the human bystanders."

(Pl.'s First Am. Compl. ¶ 12.) These statements editorialize events Van Voorhis viewed on the internet, as could the post's readers. (*See* Exhs. A and B.) Van Voorhis was clearly rendering his opinion of the events depicted in the footage – and he provided the footage along with his commentary. As footage of the underlying event was available to his blog readers, Van Voorhis' statements were self-evident as commentary and characterization, and thus protected speech for which a defendant may not be held liable – not in this country.

Florida's courts have routinely found these types of statements to constitute protected opinion. For example, when a defamation defendant made a claim that a prominent businessman owed more than $500,000 in taxes and was under investigation by the federal government; even though this was not true, the statements were held to be protected speech. *Dockery*, 799 So. 2d at 296-97. Similarly, a newspaper's allegations of a country club tennis pro's poor skills and inability to assist members were not defamatory, as they constituted the author's opinion – again, protected speech. *From*, 400 So. 2d at 58. In both cases, the courts determined that no

reasonable person would interpret the speakers' statements as factual, and thus as a matter of law, defamation liability could not attach.

Van Voorhis' statements should receive similar treatment. The video upon which Van Voorhis reported and related events were available for the reading public, and even provided within his blog posts. A reasonable person, having immediate access to the discussed video, would not have interpreted Van Voorhis' descriptions of Comins as statements of fact, but would see them for what any reasonable person should – commentary and opinion on the pre-existing media event. Van Voorhis' interpretations of Comins' actions and expressions do not misrepresent what can be observed in the video.

2. Van Voorhis' Statements Constitute "Rhetorical Hyperbole" and Are Not Defamatory.

Comins flaunts and highlights the extreme language used by Van Voorhis in a cynical attempt to gather sympathy to his cause. The tenor and color of Van Voorhis' language does not, as Comins seems to imply, heighten the offense – rather it heightens the statements' protected status. When the words used by the speaker are incendiary and inflammatory, they have a greater tendency to suggest that they are protected opinion – and thus they are protected as rhetorical hyperbole. The spicier the language, the less likely the words will be considered to be defamatory, as objective readers will not read fiery and passionate rhetoric as statements of fact. *Greenbelt Coop. Pub. Ass'n v. Bresler*, 893 U.S. 6, 14 (1970).

This "rhetorical hyperbole" doctrine, laid down in *Greenbelt* is fully approved of by Florida's appellate courts. In *Seropian v. Forman*, a letter sent to 400 people accusing Plaintiff of being an "influence peddler" and receiving unlawful compensation was held to be rhetorical

hyperbole, as none who read the letter would believe it to be a representation of fact. 652 So. 2d 490, 492-93, 496, 498 (Fla. 4th DCA 1995).

While Comins may not take kindly to the words Van Voorhis used to describe his conduct, it is undeniable that the conduct that Van Voorhis wrote about verifiably occurred – and occurred in a manner consistent with Van Voorhis' statements. This renders Comins' claims legally unsupportable. Indeed, to establish his claims for defamation, Comins must meet the burden of proving that Van Voorhis' statements of fact (if any) were false. *Zorc v. Jordan*, 765 So. 2d 768, 772 (Fla. 4th DCA 2000). Van Voorhis' choice of language – "salivating," "devouring" and "whizzing" provide clear notice that the Defendant is editorializing, and this hyperbolic language would leave a reasonable reader with no doubt that they are not reading a purely factual account. (Exhs. A and B.) To prove defamation occurred, Comins must prove that Van Voorhis' observations of the video, which contain non-falsifiable claims including Comins' perceived state of mind, the perceived proximity of bullets to a crowd of people, and the manner of Comins' behavior, were false statements **of fact**. (*See Id.*) This is a burden that, as a matter of law, Comins cannot meet. As such, Van Voorhis is entitled to judgment in his favor.

3. Van Voorhis' Statements do not Meet the "Actual Malice" Standard Needed to Defame Chris Comins, a Public Figure.

As a public figure, Comins is held to a higher standard in pursuing his defamation action. To prove defamation, a public figure must show that the false information was published with actual malice – knowledge that the statement was false – or a reckless disregard for the truth. *N.Y. Times Co. v. Sullivan, 376 U.S. 254* (1964). In Florida, a two-step approach is used to determine whether an individual is a public figure: First, the court must determine whether the

person is involved in a "public controversy," or a matter that reasonable people would expect to affect people beyond its immediate participants, *Gertz*, 418 U.S. at 323; *Mile Marker*, 881 So. 2d at 845-46; Second, after defining a public controversy, the court must further determine whether the Plaintiff played a sufficiently central role in the controversy to be considered a public figure. *Gertz*, 418 U.S. at 323; *Mile Marker*, 881 So. 2d at 846; *Della-Donna v. Gore Newspapers Co.*, 480 So. 2d 72, 75 (Fla. 4th DCA 1986).

Comins' own pleadings in other related cases attest to the significant public attention generated by this incident. For example, when it suited him, he noted "the case investigation turned into a high profile matter and generated a great deal of local and national publicity." (State of Florida vs. Christopher M. Comins, Case No. 2008-CF-017830-A-O, 9th Cir., Orange Cty.; Defendant's Motion to Dismiss at 4.) He further admits that there was an extraordinary amount of public attention upon his conduct by submitting documents claiming that the Orange County Sheriff and the State Attorney received "out-of-the-ordinary communications urging that Mr. Comins be vigorously prosecuted for animal cruelty", and attributed this to "continuing publicity and high public interest". (Id. at 5.) In yet another defamation lawsuit that Comins filed against the very dogs' owner, Christopher Butler, he highlights the significant publicity surrounding this event generated by "the postings on You Tube and the wakeboard website, and [Butler's] interviews in the newspaper and on television and radio publicity surrounding this event". (Christopher M. Comins v. Christopher M. Butler, 2008-CA-025248-O, 9th Cir., Orange Cty.; Compl. at ¶ 44.)

The facts of this case, and Comins' own court filings and sworn statements support the finding that Comins is a public figure – a finding the Court may make as a matter of law. A reasonable person would not have to "expect" that Comins' dog-shooting episode would affect

outsiders; it demonstrably did. In addition to news outlets reporting on the story (Def.'s Answer Exhs. A, C-K), groups formed on the popular social networking site Facebook, found at <facebook.com>, calling attention to this event (Def.'s Answer Exhs. N-P). Furthermore, there were several public protests and organized rallies, coinciding with Comins' court dates. The protests themselves drew media attention Reflected in Comins' Complaint and First Amended Complaint, a number of unknown individuals left comments on Van Voorhis' blog posts, expressing outrage over the YouTube video of Comins shooting the dogs. (Exhs. A and B; Pl.'s First Am. Compl. ¶¶ 17-18.) These circumstances fulfill the requirement of a "public event," as the actions obviously had consequences reaching beyond the individuals immediately involved, just as in *Mile Marker*. 881 So. 2d at 845. Additionally, there were at least two petitions to elected officials, each signed by more than one thousand individuals each (the first was signed by 5,793).

As for Comins' role in the controversy, this factor tilts heavily in favor of finding that he is a public figure. Comins is central to the controversy over his shooting of two dogs, as his actions were caught on a tape that was widely circulated and reported on by other media outlets. Whether he likes it or not, when a defamation plaintiff is the target of widespread public attention due to the shocking nature of his actions, he becomes a public figure. See *Gertz v. Welch, PRoxmire, Etc.* *See also N.Y. Times Co.*, 376 U.S. at 254. In consideration of these facts, as a matter of law, Comins is a public figure and, even if his public status is limited in scope, faces the heightened burden demanded by New York Times v. Sullivan – he must show, by clear and convincing evidence, that Van Voorhis' statements were made with actual malice or reckless disregard for the truth. *Mile Marker*, 881 So. 2d at 846-47; *From*, 400 So. 2d at 58.

Comins cannot meet the burden of showing Van Voorhis acted with either actual malice or reckless disregard for the truth. Established in Sections 1 and 2, Van Voorhis' statements were not intended, nor interpreted to be factual, but were clear pure opinion and commentary provided in response to a newsworthy video of the Plaintiff depravedly shooting two dogs. Defendant's statements are non-falsifiable statements of opinion and, lacking any factual element, logically cannot be made with reckless disregard for the truth or actual malice.

Even if this Court made a bizarre turn and found other than that Comins is a public figure, Van Voorhis' statements consist of opinions and are, as a matter of law, not defamatory. *From*, 400 So. 2d at 58. However, the sheer amount of media attention and public reaction to Comins' own actions captured on the YouTube video leads to an inescapable conclusion that he is. As such, Comins must prove actual malice or reckless disregard for the truth to sustain his defamation causes of action. Comins cannot do so, and the absence of evidence establishing either condition warrants this Court granting judgment to Van Voorhis on these claims in Counts I-III.

4. Even if Construed to be Factual, Van Voorhis' Statements are not Defamatory.

Even if this Court interprets Van Voorhis' commentary as factual statements, and fails to find that Comins is a public figure, Comins still could not prevail in a defamation claim. Minor factual inconsistencies and embellishments, even if construed as fact rather than opinion, do not convert a statement that's "substance or gist conveys essentially the same meaning" into defamation. *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705-06 (Fla. 3d DCA 1999). In

that case, the court held that the court must consider "all the words used," and not merely a particular sentence or phrase. *Cuban Am. Nat'l Found.*, 731 So. 2d at 705.

Even in cases where there are isolated false facts, under the "substantial truth doctrine," isolated and cherry-picked errors or falsehoods will not sustain a cause of action for libel. See *Masson v. New Yorker Magazine*, 501 U.S. 496, 517 (1991) (A "statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'"). See also, *New York Times v. Sullivan*, 376. U.S. at 270-72 (multiple false facts, unflattering to the plaintiff, did not support a defamation claim).

Even if Van Voorhis botched some of the factual details of Comins' shooting, the gist of his report – namely, that Christopher Comins shot two dogs on film – remains true to the video and numerous other reports available on the internet and in the mainstream press. The law of defamation is not strict liability, as Comins wishes it to be, and a minor mistake that does not alter the main purpose of Van Voorhis' statements would not be sufficient for this Court to allow a jury to decide whether the statements were libelous. *Id.* at 706-07. Though Van Voorhis' statements were of his opinions, even if they were factual in nature, he would be entitled to judgment in his favor.

C. Van Voorhis' Statements did not Tortiously Interfere with Comins' Business Relationships.

Defendant's exercise of his free speech rights did not result in tortious interference with Comins' business relationships or expectancies. To prevail on his tortious interference claim, Comins must prove four elements: 1) Existence of a business relationship (not necessarily evidenced by contract); 2) Defendant's knowledge of the relationship; 3) Intentional and

unjustified interference with that relationship by Defendant, and; 4) Plaintiff's damages as a result of that relationship's breach. *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1127 (Fla. 1995); *Linafelt v. Beverly Enterprises-Florida, Inc.*, 745 So. 2d 386, 389 (Fla. 1st DCA 1999).

1. Van Voorhis' Conduct was Neither Intentional nor Unjustified.

When determining whether a defendant's conduct is an intentional interference with a plaintiff's business relationship, courts consider the following factors:

1) the nature of the actor's conduct;

2) the actor's motive;

3) the interests of the other with which the actor's conduct interferes;

4) the interests sought to be advanced by the actor;

5) the social interests in protecting the freedom of action of the actor and the contractual interests of the other;

6) the proximity or remoteness of the actor's conduct to the interference; and

7) the relations between the parties.

Seminole Tribe v. Times Publ'g Co., 780 So. 2d 310, 315 (Fla. DCA 2001); *Smith v. Emery Air Freight Corp.*, 512 So. 2d 229, 230 (Fla. 3d DCA 1987); *McCurdy v. Collis*, 508 So. 2d 380, 383 (Fla. 1st DCA 1987). Central to this analysis is whether the interference is improper or not under the circumstances of the case. *Seminole Tribe*, 780 So. 2d at 315.

In *Seminole Tribe*, the court found that the paper did not engage improperly and unjustifiably interfere with the tribe's business relationships. *Id.* at 318. The court in that case reached its conclusion after balancing the business, social and political concerns represented by

the plaintiff's and defendant's respective activities. *Id.* at 316-17. Similarly, in *Smith*, the court held that the defendant's motion for directed verdict should have been granted as a matter of law. 512 So. 2d at 230. The defendant's exclusion of the plaintiff from the defendant's workplace was justified under the circumstances and served the purpose of preventing workplace altercations, rather than depriving the plaintiff of a business advantage. *Id.*

The Court is justified in reaching a similar conclusion in this case. The nature of Van Voorhis' conduct was premised on passing on news and opinion to readers of his blog, rather than a letter-writing campaign or other course of conduct intended to harass those with whom Comins had a business relationship. This is related to Van Voorhis' motive, which was to raise awareness of Comins' activities, as reported by various news outlets and seen on YouTube. (*See* Def.'s Answer Exhs. A, C-K.). The interests advanced by Van Voorhis are freedom of speech and information, allowing others to see and discuss Comins' newsworthy shooting incident, and furthered the social interests of society as a whole in debating current events.

Prior to this litigation, initiated by Comins, the parties had no relationship, and Van Voorhis was aware of Comins only by virtue of internet reports of his shooting incident, which he then discussed on his blog. Comins has not produced any evidence of business disruption and, even if he does in the future, as a matter of law, it will be too far removed from Van Voorhis' writings to be attributable to them.

2. Van Voorhis' Statements do not Directly and Intentionally Interfere with Comins' Business Relationships.

Van Voorhis' conduct, lacking a direct relationship with any harm Comins' business suffered, cannot constitute tortious interference. In addition to being intentional and unjustified,

tortious interference with business relationships must be direct – a causal source of business harm – and intentional. *Lawler v. Eugene Wuesthoff Mem. Hospital Ass'n.*, 497 So. 2d 1261, 1263 (Fla. 5th DCA 1986); *Ethyl Corp. v. Balter*, 386 So. 2d 1220, 1224 (Fla. 3d DCA 1980).

As seen in *Lawler*, indirect adverse business effects do not rise to the level of direct interference needed to sustain a tortious interference claim. 497 So. 2d at 1263. In that case, the defendant's termination of Lawler's staff privileges caused Lawler's business to suffer, as he could no longer offer the same level of service to his patients. *Id.* Even if Van Voorhis suggested that a boycott of companies doing business with Comins was a way to achieve justice, Comins has not presented evidence that Van Voorhis made phone calls to his business associates or otherwise took direct steps to interfere with those relationships. Even if others have done so, a lack of evidence as to Van Voorhis' involvement precludes an intentional, direct relationship between Van Voorhis' actions and Comins' alleged harm.

The Third District Court of Appeal's language in *Balter* summarizes Van Voorhis' situation neatly: "There is no such thing as a cause of action for [tortious] interference which is only negligently or consequentially effected." 386 So. 2d at 1224. Even if Van Voorhis' coverage was correlated with interference in Comins' business relations, Van Voorhis bears no direct responsibility for the actions of third parties or business associates, just as the hospital in *Lawler* bore no liability for a loss of business arising from ending Lawler's staff privileges. 497 So. 2d at 1263. Under Comins' logic, every unfavorable review of a restaurant or service that would lead current or potential customers to view it unfavorably would be a basis for a tortious interference claim.

Van Voorhis used his free speech rights to identify Comins' connections that have, to date, supported him throughout the criminal and civil litigation arising from the dog shooting

incident. Like the hospital in *Lawler*, Van Voorhis merely engaged in lawful conduct that has unintentionally and indirectly - if at all - affected Comins' business relationships. Without proof that Van Voorhis has pursued the entities and individuals with whom Comins has business relationships and sought to denigrate those connections, there is no legal basis for Comins' claim to reach a jury. As a matter of law, Van Voorhis' statements cannot constitute a tortious interference with business relations, and Van Voorhis is entitled to judgment in his favor as to the claims raised in Count IV.

CONCLUSION

Van Voorhis is entitled to judgment in his favor on all claims. As a matter of law, Comins cannot create a factual dispute as to whether he complied with § 770.01; his failure to satisfy its conditions bars him from bringing his defamation claims. Even if those claims were properly brought, Van Voorhis' statements were pure opinion within the scope of Florida law. The blog posts about which Comins complains contain non-falsifiable statements that no reasonable person would interpret as a statement of fact. Comins is a public figure who must show Van Voorhis acted with actual malice or reckless disregard of the truth in making his statements, a burden he cannot meet. Even if Van Voorhis' statements are interpreted as statements of fact, their inaccuracy, while conveying the truthful "gist" of Comins' shooting incident, is not a proper basis for Comins to hold Van Voorhis liable for defamation.

With respect to Comins' tortious interference claim, Van Voorhis' statements do not constitute an intentional and unjustified interference with Comins' business. Within the context of Comins' headline-grabbing shooting incident, Van Voorhis' reporting was neither unjustified nor intentional; it also had no relationship or effect on his business. In light of the context in

which Van Voorhis' statements were made, this Court can determine that not only were his statements not defamatory, but not an intentional interference with Comins' business relations, either. Thus, the Court should grant Van Voorhis' Motion for Summary Judgment as to all claims.

Respectfully submitted this 15th Day of March, 2011,

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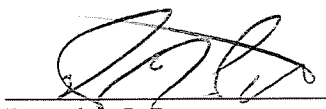
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been electronically filed with the Court using the Clerk's ECF system, which will automatically notify Frank H. Killgore, Jr., Esq. and Christopher M. Harne, Esq., Killgore, Pearlman, Stamp, Ornstein & Squires, P.A. 2 S. Orange Ave., 5th Floor, P.O. Box 1913, Orlando, FL 32802-1913, this 15 day of March, 2011.

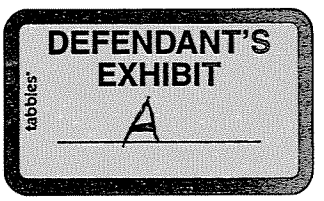


Douglas J. Petro

Christopher Comins: Barbarian Hillbilly Dog-Assassin (w/Friends in High Places)

June 6, 2008 by Matthew Frederick

Chris Comins is the most dangerous brand of hillbilly; he owns a gun but rarely gets an excuse to use it. Hunters and target shooters at least have an outlet for their rage. Comins apparently just drives around with his gun waiting for excuses.



On May 19th, he found one: what appeared to be two wolves playing with a herd of cattle.

It wasn't his land; nor do the cows belong to him. But Comins was all too eager to help out when his business partner, landowner/developer Daryl Carter—who's squatting on the land until urban sprawl reaches that part of Orlando—informed Comins of the wolf invasion. They contacted the cow-owner, Laura Rutherford, and informed her that her cows were being attacked by vicious wolves. (Developers in Florida sprinkle livestock on their land for tax purposes. Both Carter and Comins are in bed with Orange County Mayor, Rich Crotty).

Meanwhile, a small crowd of passersby had pulled over. They too evidently believed the animals were wolves, though none of them saw the wolves threaten the livestock in any way. Perhaps Comins thought

they'd all think he was a hero; perhaps he reveled in the attention from an audience as he strutted out masculinely into the field where the wolves were playing. Brandishing his two pistols, this was to be Comins' big moment, his noble victory against the wild. He aimed, and...

POP!

POP!

His first two shots missed the wolves completely. Witnesses assumed Comins was merely attempting to scare them off.

Then... **POP!** ... one wolf yelps, tumbles to the ground.

At that moment, someone's desperate whistles and screams resonated outward from the crowd. "Hey!! Hey!!"

The other wolf ran to the side of its fallen comrade.

"Hey!! Please don't shoot them."

That's when it all becomes clear to those watching on the side of the road—the horror of what is occurring; the reason for the frantic screams.

"Oh my God, it's two dogs!"

"That's the owner."

The mood changes in the crowd. People fifty feet away can see the dogs' collars—as the shooter must have been able to, from point blank range.

One can recognize in Comins a sense of urgency as he takes aim again. One senses his hunger, his salivating over the opportunity to kill something.

The owner, Chris Butler, runs hysterically toward the scene, calling his pets' names. His Siberian husky named Hoochie flops around on the ground, painfully dying. Hoochie's best friend, Raley, sits there confused, not sure whether to obey his owners calls or stay with his injured pal. He tilts his head and looks curiously at the madman, oblivious to the danger. Until...

POP!

Raley drops. But both huskies are still moving. The shooter circles his kills like a predator deciding which fresh victim to devour first. Comins realizes he has but a few seconds to finish them off. He looks up at the devastated man running toward him.

"Those are my dogs! Please don't shoot my dogs!" the man cries.

But unmoved, Comins turns back to his targets. He takes time to steady his hand, knowing he'll only get a few more chances to kill this man's dogs. So he inches up, within a few feet, to get a good look at both victims before he finishes them off.

Hoochie tries to get up, but something malfunctions inside and the dog falls again.

POP! POP! Two more shots two more misses.

Now the dogs are between the gunman and the stunned spectators. One of Comins shots (audible at 0:41) whizzes by the crowd.

Raley gets up and tries to flea toward his owner.

POP!

The dog falls again, but then gets up and keeps running. Life or death.

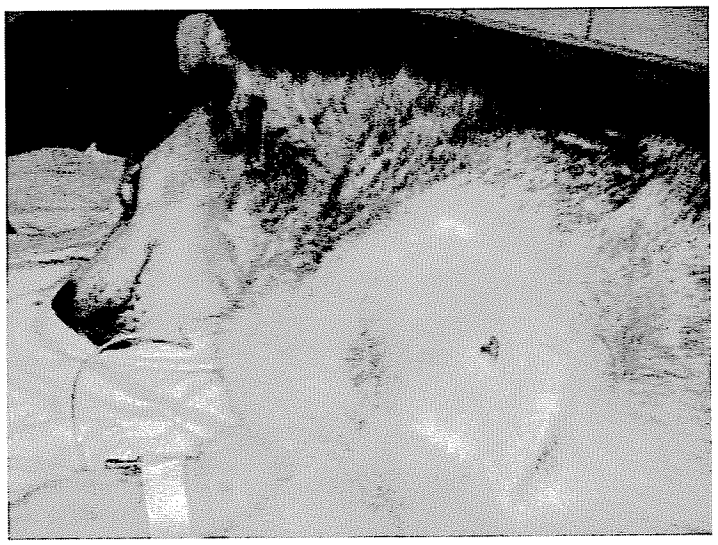
"Please stop shooting my dogs!" Butler wails.

Commins appears determined to nail the evasive mutt, so much so that he forgets about the many human bystanders in the distance, behind the wounded dog he's shooting at. Carelessly, he points his barrel directly at the human bystanders.

POP!

Another bad shot; another stray bullet zooms past the pedestrians (audible at 0:47).

Comins walks briskly after Raley, who despite four gunshot wounds, escapes to the safety of his owner's arms. In the distance Hoochie is barely moving.



For the second time during the exchange, the shooter appears to reach into his back pocket, as if switching weapons. Pure adrenaline runs through him. He is pissed at the dogs, and at himself for sucking at firing handguns. I wonder what he's thinking?

Screw these dogs for not dying! Screw this man for screwing up my target practice fun! ***Screw this!***

But he realizes he can't keep shooting Raley with the dog so close to Butler, so Comins turns back to

Hoochie. Somehow, despite having been shot three times, Hoochie has risen to his feet again. Somehow his four legs still hold him, even though one of those legs has been shattered by a bullet. Hoochie sees that Raley is safe now; Hoochie wants to be safe, too.

It's now clear to everyone that these dogs are dogs—not wolves—and that they pose no threat to the cows. Any law that might have protected the testosterone-crazed hillbilly maniac the first eight times he pulled the trigger has seized to apply now. But Christopher Comins aims at Hoochie anyway, one last bullet. Laws are just *suggestions* when you're buddies are the ones in charge with making and enforcing them!

POP!

Hoochie doesn't move again after that. Sixty spectators are speechless, as the grief stricken Butler jumps on top of his dog's motionless body, an effort to protect his pet from further bullets. The dog owner is devastated, paralyzed; his grief is unbearable, even to the stranger from Ireland who knows him only through her viewfinder. When a person hurts like that, the pain is contagious. His anguish becomes ours; we bleed together. We've tried to tell ourselves human beings are inherently good and kind and caring; but the world stops making sense to us when someone like Christopher Comins comes along reminds us otherwise. Some people truly don't care at all. They savor the suffering of others. It hurts like hell to know people like that exist.

By now the people on the side of the road are blaring their horns, making sure Comins knows there are witnesses—just in case he was mulling over taking out Butler, too. As Comins exits the field carrying his empty handguns, he passes the cows, who for the first time act genuinely afraid. His alibi will claim he was there to protect them; how ironic that they scurry now to get as far as possible from this dangerous billy-bob.

Comins later told police he only fired because he believed the huskies to be wolves, and because they were physically attacking him. No charges were pressed initially because it was Butler's word against Comins'. Then, a few days after the incident, a good Samaritan Irish tourist came forward with this video of the entire incident, which happens to refute the shooter's entire story.

The unveiling of the YouTube video sparked Internet forum debates as well as an online petition drive, with thousands of strangers demanding that Comins be charged, if not with a crime than at least for Butler's $4000 vet bills.

Police have reopened the investigation, but any sort of conviction will be tricky because the perpetrator is well-connected in Orlando.

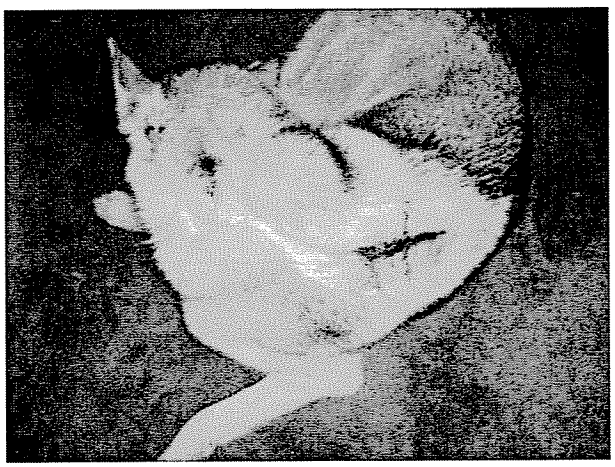
Christopher Comins owns CustomFab, which builds special steel-pipe products for Walt Disney World and NASA. Moreover, Comins and Carter attend prayer groups with Orange County Mayor Rich Crotty (in fact, Carter and Mayor Crotty have made the news before for shady land deals). Crotty was appointed Mayor by Jeb Bush in 2001. Additionally, Comins has generously funded the Bush administration. In short, Comins is in bed with a group of folks who know how to get away with stuff. And it shows.

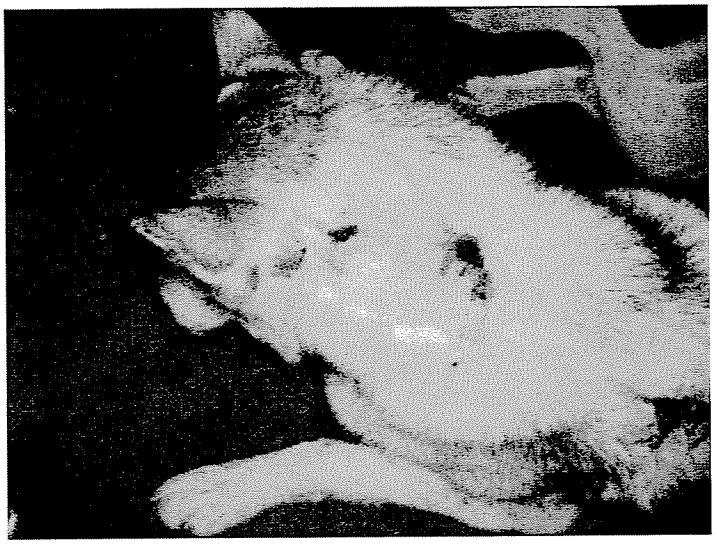
After all, Christopher Comins' recent shootout with the Siberian huskies was not the first time he failed to act reasonably with his firearm. In 2005, he was charged with "Improper exhibition of a firearm" when he focused his gun's laser site on his girlfriend's son's forehead. He pleaded no contest to a lesser charge and served one year probation. Some saw this slap-on-the-wrist as a slap-in-the-face to justice.

What happened to the dogs?

RALEY

Raley was shot four times, including once in the back of his head. He is expected to recover, and is now back at home with his owner, Chris Butler.

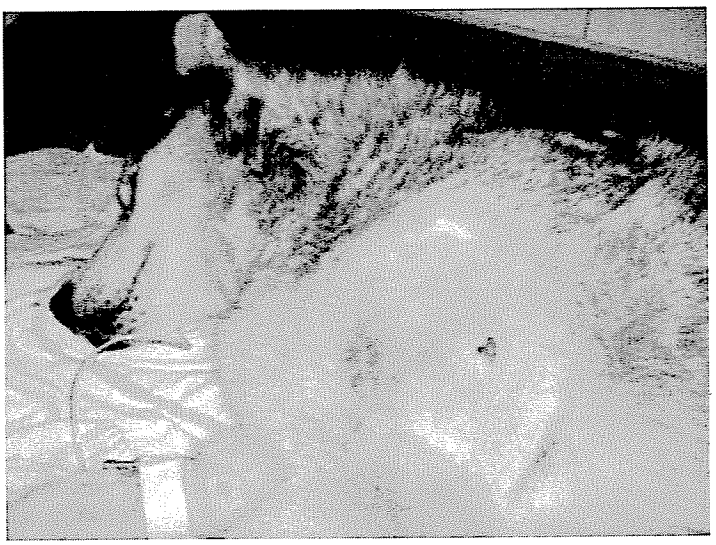




HOOCHIE

Hoochie was shot four times. The first bullet entered his eye and exited out the back of his skull. That's why he's running in circles in the video. The final shot went through and out his chest, and appeared in the video to be fatal. Hoochie has not yet returned home from the vet. It was not clear initially if he would survive. After several weeks, he was finally stable enough to undergo surgery (to remove his eye).

Shortly after Hoochie's right eye was removed, the vet notified Chris Butler that his dog's fractured leg would require surgery as well.



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Posted in Chris Comins, Christopher Comins, Christopher M. Comins, Custom Fab, Custom Fab Inc., CustomFab, Daryl Carter, Disney, Florida, George W. Bush, Jeb Bush, Maurice L. Carter, Maury L. Carter, Maury L. Carter & Associates, NASA, Orange County, Orlando, pets, Rich Crotty | Tagged Bush, Business, Chris Butler, Chris Comins, Christopher Comins, Christopher M. Comins, Custom Fab, Custom Fab Inc., CustomFab, CustomFab Inc., Daryl Carter, Disney, dogs, gun control, guns, Hoochie, Ireland, Laura Rutherford, Maurice L. Carter, Maury L. Carter & Associates, NASA, Orange County, Orlando, pets, Politics, Raley, real estate, Rich Crotty, Siberian huskies, Walt Disney World | 180 Comments

Like 4 bloggers like this post.

180 Responses

1. *on June 6, 2008 at 10:44 pm | Reply Lew Scannon*

   What a tragedy. That a person gets so much enjoyment from taking the life of another living thing for no other purpose than pleasure is a sign of mental illness, which seems to be prevalent in this current administration.

2. *on June 7, 2008 at 10:58 am | Reply gwhite13*

   I could barely watch the video when it first went public and will never watch it again. Reading your account of the incident just sickens me all over again. Thanks for keeping this alive and exposing Comins and all those associated to him.

Christopher Comins Husky-Shooter Update: Chris Comins May Face Charges

August 17, 2008 by Matthew Frederick

Readers of this blog may recall the Lake Nona-area dog-shooting fiasco. On May 19th, a wealthy business elite by the name of Christopher M. Comins fired nine shots at a pair of Siberian huskies in a field in central Florida.

For a brief time, it seemed likely that this man's violent act would go unpunished. The Orange County Sheriff's Office initially concluded that Comins' behavior was legit and legal. The wounded huskies had been bothering cattle; the cows appeared concerned for their calves.

The predator Chris Comins has a prior record of violence, an improper exhibition of a firearm, after having pointed a gun at his stepchild's head in 2005. But he also has deep pockets, and knows "important" people.

Usually that's sufficient when mean people do bad things and want to get away with them.

But like Hoochie and Raley, this story refuses to die. Christopher Comins, a savvy businessman, figured he could talk his way out of trouble by concocting an elaborate story, in which the pets acted like vicious wolves, first trying to eat the cows and then turning their wild fangs on Comins himself, who, fearing for his life, fired only in self-defense. He didn't anticipate having to contend with real footage that documented the events and debunked the Comins' version of them. But the emergence of a YouTube video a few days after the shooting did just that, sparking a global outcry.

The Orange County Sheriff's Office is now asking the State Attorney's Office to file a misdemeanor charge against Christopher Comins, according to a recent article in the Orlando Sentinel:

> Investigators on Monday recommended that (Comins) be charged with animal cruelty.
>
> After reviewing the videotape and interviewing more than 20 witnesses, investigators concluded that the last shot Comins fired crossed the line, sheriff's Cmdr. Stephen Garrison said. That shot occurred after the dogs' owner, Christopher Butler, jumped a fence and ran to his pets, who had escaped from his street less than two miles away.
>
> "We didn't feel there was justification to shoot" the last shot, Garrison said.
>
> "Where Butler is physically in control of the first dog and the second dog is having difficulty standing or moving far, the need to continue shooting the second dog to protect the cattle is no longer required," the sheriff's report states.

In addition to whatever charges the state brings against him, Comins also faces a civil lawsuit, filed by the dogs' owner, Chris Butler.

> An Orlando businessman criticized for shooting two huskies in a pasture near Lake Nona in May faces a civil lawsuit over the dogs' injuries.
>
> The lawsuit seeking more than $15,000 in damages was filed Thursday in Circuit Court by Christopher Butler, who owns the dogs, Hoochie and Railey, according to Orange County court records. Veterinary bills for the dogs wounded seven times exceeded $7,500.
>
> Christopher Comins also is accused of endangering the dogs' owner as well as motorists and bystanders who stopped to watch the pets chase cattle within view of the Central Florida GreeneWay.

Posted in Chris Comins, Christopher Comins, Daryl Carter, Florida, Orange County, Orlando, Orlando Sentinel, real estate, YouTube | Tagged Central Florida GreeneWay, Chris Butler, Chris Comins, Christopher Comins, Christopher M. Comins, dog lovers, dogs, Florida, gun control, gunman, Hoochie, huskies, Lake Nona, Orlando, Orlando gunman, Orlando shooter, Raley, shooter, YouTube | 19 Comments

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5 ALSO MEMBER OF NEW YORK & TEXAS BAR
6 ALSO MEMBER OF NEW YORK & ILLINOIS BAR
7 BOARD CERTIFIED CONSTRUCTION LAWYER

March 23, 2009

M. Frederick Voorhees
PERSONAL & CONFIDENTIAL
c/o University of Florida
Computing and Networking Services
Room 112, SSRB, Stadium Road
P. O. Box 112050
Gainesville, FL 32611-2050

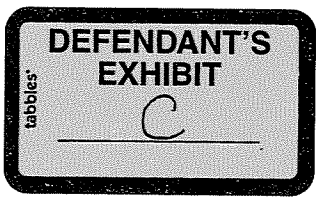
Re: Death Threats Resulting on your blogging site
Hillbilly Barbarian

Dear Mr. Voorhees:

Please be advised that our firm is legal counsel for Custom Fab, Inc. and Christopher Comins. This correspondence serves as a cease and desist demand to protect the physical well-being of both Mr. Comins and the employees of Custom Fab. While we appreciate the freedom of expression and freedom of the press, these freedoms still come with responsibilities; and, the recent postings on your blogging site involving Mr. Comins has violated these freedoms and is tantamount to reckless endangerment of another's well being.

Specifically, your blog site includes a recent entry on March 3, 2009, that lists the work address of Mr. Comins, and then encourages others to seek out Mr. Comins and kill him. This blog entry is followed on March 11, 2009 with an entry from someone who states, "I just have to kill this man." It is our position that your participation in creating this forum, and thereafter allowing others to use your forum as a vehicle for encouraging others to locate and seek out to kill someone, makes you potentially liable for any harm which may befall either Mr. Comins or the employees of Custom Fab from these individuals.

For the safety of all those involved, we request that you delete this blog site in its entirety. At the very least, we strongly encourage you and formally demand that you remove all references to our client's home and business addresses and telephone numbers.



It is our desire to work with you to resolve this issue and ensure the safety of our client and his employees without seeking court intervention, as this is in the best interests of all parties. However, if we do not hear anything from you confirming the removal of our client's personal contact information, and all threatening comments thereto, you will leave us with no choice but to institute legal proceedings.

Again, we cannot emphasize how vital it is for you to **IMMEDIATELY** remove our client's personal and business contact information, and all threatening comments thereto. These postings continue to encourage death threats against our client, and should not be propagated by you.

We are willing to assist you in any way, and only desire to preserve the well-being of our client. Please contact our firm immediately upon receipt of this letter.

Very truly yours,

Frank H. Killgore Jr.

SIGNED IN HIS ABSENCE TO AVOID DELAY.

Frank H. Killgore, Jr.

FHK:jk

91 7108 2133 3936 0322 2751

Offense Number	Offense Description					CAD Incident No
UFPD09OFF000796	**14 INFORMATION**					**UFPD09CAD031532**
Range of	**04/06/2009**	**18:18**	Reported		Arrived	Completed
Occurrence:	**04/06/2009**	**18:18**	**04/06/2009**	**18:18**	**04/06/2009 18:19**	**04/06/2009 18:19**

ADDRESS OF OCCURRENCE

No.	Di	Street	A/L	City	ST	Zip
27		**UNIVERSITY POLICE (CID)**		**GAINESVILLE**	**FL**	**32611**

(GEO) (Latitude / Longitude)
EAST - 4A - 1D - **29.644253 / -82.342898**

Business **KILGORE, PEARLMAN, STAMP, ORNS** MBI ID: **UFPD09MBI000086**
Business Type: **Complainant**

No.	Di	Street	A/L	City	ST	Zip
2		**S ORANGE AVE 5TH FLOOR**		**ORLANDO**	**FL**	**32801**

(GEO) (Latitude / Longitude)
- - -

PERSONS

[OP/OTHER] MNI ID: **UFPD09MNI002985**

Last	First	Middle	Title	R	S	DOB	Age
COMINS	**CHRISTOPHER**	**M**		**W**	**M**	**11/03/1958**	**50**

Hgt	Wgt	Eyes	Hair	I.D. No.	St	Type	Ethnicity:
6'02"	**0**		**SDY**	**C552113584030**	**FL**	**E**	**Not of Hispanic Origin**

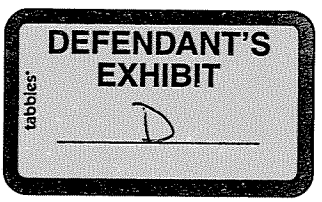
Residence: **Within state**
Extent of Injury: **N/A** Verify For Rape Exam: **No** Treated For Rape Injury: **No**
General Appearance:
Demeanor:
Clothing:
Clothing Description:
Probable Destination:
Birth Location: * none reported *
Address:
10505 TYSON RD ORLANDO FL 32832 Phone: 407-859-3954
Occupation:
* none reported *

[OP/OTHER] MNI ID: **UFPD09MNI003468**

Last	First	Middle	Title	R	S	DOB	Age
VANVOORHIS	**MATTHEW**	**FREDERICK**		**W**	**M**	**11/17/1980**	**28**

Hgt	Wgt	Eyes	Hair	I.D. No.	St	Type	Ethnicity:
	0			**S63311934**	**MA**		**Not of Hispanic Origin**

Residence: **Within state**
Extent of Injury: **N/A** Verify For Rape Exam: **No** Treated For Rape Injury: **No**
General Appearance:
Demeanor:
Clothing:
Clothing Description:
Probable Destination:
Birth Location: State: MA Citizenship: US
Address:
3538 NW 46TH GAINESVILLE FL 32605 Phone: 413-454-4729



Occupation:
* none reported *

Weapon
Location Category
Location Type
Location Description
Location Status
Number of Premises Burglarized 0
Target
Entry Method
Point of Entry (POE)
POE Visible From
Point of Exit
Suspect Actions
Circumstances
Weather
Lighting Condition
Security Used
Crime Scene? : No
If NO, Explain :

Crime Scene Officer:
Physical Evidence Collected: 0

< NARRATIVE >

DATE	TIME	TYPE	OFFICER REPORTING	CALL #	REP TAKER	EDIT DATE	EDIT TIME
4/8/2009	08:36	INITIAL	KIZZAR, DAYMON L	095	SSUMMERS	5/5/2009	08:16

Status: APPROVED BRITON S SUMMERS 5/5/2009 08:16

CAD INCIDENT DISPOSITION CODE: [14] [Y] [] []

On 04/06/2009 Sgt. Summers gave me a letter from the law firm of Killgore, Pearlman, Stamp, Ornstein & Squires, P.A. In the letter attorney Frank Killgore wrote that he was representing Custom Fab Inc, and Christopher Comins. Included in the letter were Blogs that were initiated by an individual that goes by M. Frederick Voorhees.

Mr. Killgore stated in the letter, that their client, Mr. Comins, was in fear for his safety due to some threats that have been made in the blog. Mr. Killgore also stated that Voorhees uses a UF server to write the blog. Mr. Killgore goes on to say that if the UFPD does not act on these threats that his firm would take legal action against the University of Florida.

After spending a couple of hours reading the blog, I found three entries that would constitute a threat to Mr. Comins. On June 9, 2008 at 1141 hours, a blogger that goes by the name Dave posted "Yo Chris, I got your name and address now! And I am a much better shot than you fuckface! I am coming for you".

The second threat was posted on July 12, 2008 at 1356 hours by "EC&TC". The entry stated " Do you have a wife? Do you have a son?(wait yeah you do...you pulled a gun on him like 3 years ago) Do you have a nice house? Do you have a nice car? Well don't get used to it ahole!!! I am personally going to make sure that your life is hell for the rest of your life!!!**

You WILL be hearing from me.

The third entry was posted on March 16, 2009 at 1301 hours by "Summer". The entry stated, "I JUST HAVE TO KILL THAT MAN"

I spoke to Mr. Comins on 04/08/2009. Mr. Comins told me that he does fear for his safety since reading these blogs. Mr. Comins also stated that he still continues to get death threats via his business phone and personal Cellular phone. Mr. Comins' attorney, Mr. Killgore, told me this morning, that he wishes to have the blog shut down or to have the threatening comments removed from the blog. I informed Mr. Killgore that once I determined that a crime has been committed, and that the crime was committed on the University of Florida, then I would be able to take action. I informed Mr. Killgore that if a crime was committed and if it was committed outside of my jurisdiction, then I would forward the information to the proper jurisdiction.

5/5/2009 08:20 INVESTIGATIVE KIZZAR, DAYMON L 095 SSUMMERS 5/7/2009 07:41
Status: APPROVED BRITON S SUMMERS 5/7/2009 07:41

On 04/08/2009 I sent two subpoenas to the state attorney. A copy of the subpoenas were placed into case management.

On 04/21/2009 I received the returned subpoena from Automattic, the owner of the blog site. In the subpoena, was a phone number. I called the number and left a voice mail, and was called back a couple of hours later. The person that called back told me that he was the person that posted the comments on the blog, but that he was unaware of any threats that had been posted. I informed him that there were 3 or 4 death threats towards Mr. Comins and that his attorneys would like for the threats and Mr. Comins personal information to be deleted from the blog. The person I was speaking to was very willing to remove the requested items from the blog.

I asked the person for his name and other information which he was reluctant to provide. After several minutes of talking back and forth, I finally told the person that I would continue to subpoena his phone records, and student records since I thought he was a U.F. student. The person finally gave me the name of Matthew Frederick Vanvoorhis, d.o.b. 11/17/1980. Mr. Vanvoorhis verified that he was a student at U.F. and that he was reluctant to provide his information because he was scared that Mr. Comins would come after him. Mr. Vanvoorhis was worried that he was going to face criminal charges and problems with U.F. and I told him that I did not have any criminal charges at this time, nor could I think of any issues that he would have with the university.

I will make contact with the attorneys office today, 04/27/2009, and advise them to review the blog site and to see if the items they wish to have removed, have been.

CASE STATUS: CLO
STATUS TYPE: UF1
DATE: 05/04/2009

< END OF NARRATIVE >

Offense Status **Closed**	**No** -- Cleared # Clearances **0** Clearance Date Clearance Type Except. Clear. Type Age Classification	Reporting Officer **095 KIZZAR, DAYMON L** **UFPD\DETECTIVE**
Warr./Arr. No.		*Forward for Approval / Followup To : **UFPD\CID LIEUTENANT REPORT REVIEW**

Supervisor				Case Screening Supv.			Investigator
APPROVED **BRITON S SUMMERS**		**Yes**	Concur	**Yes**			**095** **KIZZAR, DAYMON L**
Date	Time	**No**	PtlF/U	**Yes**	Date	Time	
05/07/2009	**07:41**	**No**	InvF/U	**Yes**	**04/07/2009**	**02:09**	

Report Last Modified **05/07/2009 12:49**

« Back to Search Results | Archive | Report spam | Delete | Move to Inbox | Labels ▼ | More actions ▼

Blog reference Mr. Comins

Inbox | X CC Orlando | X

from **Kizzar,Daymon L** <dkizzar@ufl.edu> hide details 4/22/09 Reply ▼
to M.Frederick.Voorhees@gmail.com
date Wed, Apr 22, 2009 at 9:11 AM
subject Blog reference Mr. Comins
mailed-by ufl.edu

Mr. Voorhees,

My name is Daymon Kizzar, I work for the University of Florida Police Department. I was recently contacted by the attorney who is representing Mr. Comins. Mr. Comins and his attorney are concerned about the death threats that have been posted on your blog. Would you please contact me at the number listed below so we can discuss this matter. Thank you .

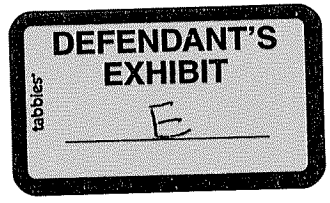
Detective Daymon Kizzar
University Of Florida Police Dept
Criminal Investigaion Division
Tel: (352)392-4705
Fax: (352)846-1770

Reply Forward

New w
Print a
Collap
Forwar
Turn o

More abc

Criminal A
DUI Attorr
Best Polic
Police Dis



KILLGORE, PEARLMAN, STAMP, ORNSTEIN & SQUIRES, P.A.

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2 CERTIFIED CIRCUIT COURT MEDIATOR
3 ALSO MEMBER OF DC & WEST VIRGINIA BAR
4 ALSO MEMBER OF MARYLAND BAR
5 ALSO MEMBER OF NEW YORK & TEXAS BAR
6 ALSO MEMBER OF NEW YORK & ILLINOIS BAR
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FAX: (407) 839-3635

OF COUNSEL
CHRISTOPHER W. HAYES
BRENDA J. NEWMAN

Sender's email address:
fhkillgore@kpsos.com

May 26, 2009

Matthew Frederick Vanvoorhis
3538 N.W. 46th Place
Gainesville, FL 32605

Re: Christopher M. Comins v. Matthew Frederick Vanvoorhis

Dear Mr. Vanvoorhis:

Our law firm has the pleasure of representing Christopher M. Comins. As you are aware, I tried to call you recently to discuss this matter. At this time, a lawsuit has been filed against you regarding the damages being experienced by my client from the representations made in your website.

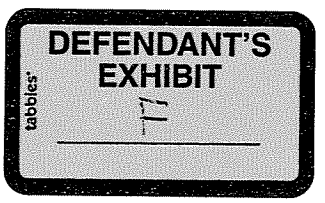
We understand you have now been served with the suit. We would still welcome the opportunity to talk with you about the lawsuit before your time expires to file a response to the Complaint. Should you desire to discuss the foregoing, we encourage you to call.

Very truly yours,

Frank H. Killgore, Jr.

FHK:jk

cc: Client



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JEROME H. MOONEY[1, 6;]
MARK P. BINDER[1;]
MARC J. RANDAZZA[2,4=]
DEREK B. BRETT [2,5]
OF COUNSEL
A. DALE MANICOM[1]

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[2]ADMITTED IN FLORIDA
[3]ADMITTED IN INDIANA
[4]ADMITTED IN MASSACHUSETTS
[5]ADMITTED IN DISTRICT OF COLUMBIA
[6]ADMITTED IN UTAH

[;]A CALIFORNIA PROFESSIONAL CORPORATION
[=]A FLORIDA PROFESSIONAL ASSOCIATION
[-]A UTAH PROFESSIONAL CORPORATION

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(407) 975-9150

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LOS ANGELES, CALIFORNIA 90025-1176
FAX (310) 442-0899
(310) 442-0072

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1205 J STREET, SUITE B
SAN DIEGO, CA 92101-7500
FAX (619) 239-1717
(619) 232-3255

SALT LAKE CITY OFFICE
100 BANK ONE TOWER
50 WEST BROADWAY
SALT LAKE CITY, UT 84101-2006
FAX (801) 364-3406
(801) 364-6500

June 4, 2009

Via E-Mail Only
fhkillgore@kpsos.com
Frank H. Killgore, Jr., Esq.
Killgore, Pearlman, Stamp, Ornstein & Squires, P.A.
2 S. Orange Ave., 5th Floor
Orlando, FL 32801

Re: ***Christopher M. Comins v. Matthew Frederick Van Voorhis***
Case No. 09-CA-15047
Circuit Court for the Ninth Judicial Circuit, Orange County, FL

Dear Mr. Killgore:

Thank you very much for your time yesterday. I like your unorthodox approach to this matter, and I think that it did nudge the parties a little closer together. Mr. Van Voorhis has provided me with this MS Word version of his article so that you and your client can use "track changes" and propose your edits to it.

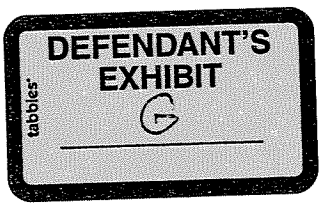
While I can not guarantee that Mr. Van Voorhis will accept any and all proposed changes, I can guarantee that he will review them with an open mind. I can say that Mr. Van Voorhis and I spoke after our conversation, and he is of the opinion that since his article does not contain any legally actionable statements, that any settlement of this matter will require the reimbursement of his attorneys' fees expended as of the date of settlement.

My client and I look forward to discussing any proposed changes and an amicable resolution of this matter.

Very Truly Yours,

Marc J. Randazza
MRandazza@FirstAmendment.com

MJR/ja
cc: Client
Encl.



LAW OFFICES
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A PARTNERSHIP OF PROFESSIONAL BUSINESS ENTITIES

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LAWRENCE G. WALTERS[2;]
JEROME H. MOONEY[1, 6;]
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DEREK B. BRETT [2,5]
OF COUNSEL
A. DALE MANICOM[1]

[1]ADMITTED IN CALIFORNIA
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REPLY TO
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SALT LAKE CITY, UT 84101-2006
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July 10, 2009

Via E-Mail Only
fhkillgore@kpsos.com
Frank H. Killgore, Jr., Esq.
Killgore, Pearlman, Stamp, Ornstein & Squires, P.A.
2 S. Orange Ave., 5th Floor
Orlando, FL 32801

Re: ***Christopher M. Comins v. Matthew Frederick Van Voorhis***
Case No. 09-CA-15047
Circuit Court for the Ninth Judicial Circuit, Orange County, FL

Dear Frank:

This letter is to confirm our agreement, reached in our telephone call of June 3, 2009. On that date, we discussed some potential non- adversarial resolution strategies for *Comins v. Van Voorhis*, and you agreed that we could have an extension of indefinite length. We agreed that if either party intended to file anything in this case, that they would give the other party advance notice. I propose that we give one another 21 days notice before filing anything.

If this does not accurately portray your recollection of events, please contact me to correct my memory.

Very Truly Yours,

Marc J. Randazza
MRandazza@FirstAmendment.com

MJR/ja
cc: Lawrence G. Walters, Esq.

Re: Comins v. VanVoorhis - Letter

Marc J. Randazza, Esq. [mjrpa@me.com]

You forwarded this message on 4/9/2010 2:31 PM.

Sent: Wednesday, February 17, 2010 1:56 PM
To: Christopher M. Hame [CHarne@kpsos.com]
Cc: Jill Kerce [jkerce@kpsos.com]; Frank Killgore [fhkillgore@kpsos.com]; Kevin Wimberly [kevin@firstamendment.com]

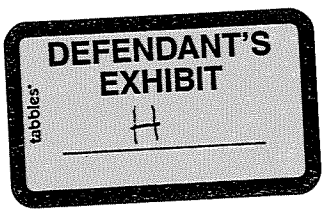
Chris,

I disagree with point 1. It seems that Fla. Stat. 770.01 was not followed when this case was filed. The purpose of 770.01 is to mitigate damages in defamation cases. Since no 770.01 notice was filed, either the case is void *ab initio* or the complaint itself is the 770.01 notice. The failure to mitigate will be, I believe, admissible. Naturally, we can dispute that in a hearing later on. But thank you for your thoughts on it.

With respect to point 2, we again run into the 770.01 problem. If your client wishes to provide us with a 770.01 notice regarding statements on his legal defense fundraising page, and the 770.01 notice conforms with that statute, we will consider the statements and respond. After that, if the response is not to Comins' liking, I would imagine that he can then file another claim after alleging that he has complied with 770.01. If not, we are simply at a loss as to what statements on his fundraising site could be considered to be legally defamatory, and despite my best efforts to divine what could have offended Mr. Comins, all I can come up with is that he is upset that Mr. Vanvoorhis did not default and is raising funds to use in his own defense.

-Marc
On Feb 17, 2010, at 10:16 AM, Christopher M. Hame wrote:

> Marc:
>
> 1) The offer to suggest edits to the articles through MS Word was an offer to compromise a disputed claim during early settlement negotiations. As such, the offer, along with any relevant conduct or statements made in negotiations of the offer, would be inadmissible under Fla. Stat. s. 90.408. In any event, those early settlement negotiations were short-circuited by additional postings from your client.
>
> 2) We were referring to more than your client's fund-raising effort. We were referring to specific statements contained within the new postings.
>
> We will get back to you regarding the timing and location of Mr. VanVoorhis's deposition.
>
> Thanks,
>
> Chris
>
> Christopher M. Hame, Esq.
> Killgore, Pearlman, Stamp, Ornstein & Squires, P.A.
> 2 South Orange Avenue, 5th Floor
> Orlando, Florida 32801
> www.kpsos.com
> 407/425-1020
> 407/839-3635 (fax)
>
> CONFIDENTIALITY STATEMENT: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, YOU ARE HEREBY NOTIFIED that any dissemination, distribution or copying of this communication is strictly prohibited. If you are not the intended recipient of this message, please notify sender and destroy any printed version and delete this email. This communication may contain nonpublic information about individuals and businesses subject to the restrictions of the Gramm-Leach-Bliley Act. You may not directly or indirectly reuse or re-disclose such information for any purpose other than to provide the services for which you are receiving the information.
> IRS Circular 230 Notice: Pursuant to recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice expressed above was neither written nor intended by the sender or this firm to be used and cannot be used by any taxpayer for the purpose of avoiding penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the advice should be considered to have been written to support the promotion or marketing by a person other than the sender or this firm of that transaction or matter, and such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.



-----Original Message-----
From: Marc J. Randazza [mailto:randazza@me.com]
Sent: Monday, February 15, 2010 5:15 PM
To: Christopher M. Harne
Cc: Kevin@firstamendment.com Wimberly; Jessica Aponte
Subject: Comins v. VanVoorhis - Letter

Chris,

Regarding your letter of January 12, 2010: I just want to make sure that we have some issues in it cleared up -- mostly so that the obvious misunderstandings do not grow into larger variants of themselves.

1) There was never an agreement that Mr. VanVoorhis would "remove his defamatory blog postings." Mr. Vanvoorhis has always taken the position that there are no defamatory blog postings. Nevertheless, Mr. Vanvoorhis took the time to convert his posting into MS Word format, at your client's request. Mr. Vanvoorhis then provided the file to your firm, to transmit to your client, and your client was to be given the ability to use "track changes" in MS Word to suggest edits to the blog posting.

Mr. Comins was apparently unwilling to do so. Naturally, this will be part of our defense regarding Comins' failure to mitigate his damages.

2) The "additional material" that you refer to in your letter is, apparently, Mr. Vanvoorhis' attempt to raise funds for his legal defense. Mr. Vanvoorhis would seem to have the right to raise funds to pay for his legal bills -- incurred as a result of Mr. Comins' lawsuit, which we believe to be without factual or legal support.

With respect to Mr. Vanvoorhis' deposition:

I will re-check with him regarding possible dates for that. Mr. Vanvoorhis is currently working on his Ph.D. dissertation. Accordingly, his schedule is a little bit tough to work with. I would imagine that if your client would be willing to allow him to appear telephonically at a court reporter's office in Gainesville, that it might be easier for him to schedule. Why don't you let me know if that is a possibility, and I'll get back to you with some possible dates once we know whether we're dealing with him traveling or not?

In any event, I would imagine that the outcome of his criminal trial will bear directly upon his defamation claims. It is my position that pressing forward with a deposition before Mr. Comins is either convicted or acquitted, and before the testimony in that case is fully heard, would be a bit premature. Given that his trial starts in a few weeks, I presume that waiting until the verdict is rendered would not present much of a hardship.

Please let me know your client's position.

-Marc

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2009-CA-015047-O

CHRISTOPHER COMINS,

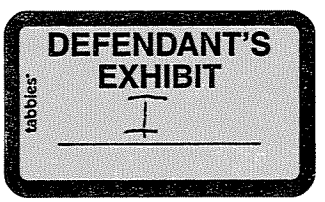
Plaintiff,

vs.

MATTHEW FREDERICK VAN VOORHIS,

Defendant.

The transcript of proceedings held before the Honorable John Marshall Kest, Judge of the Circuit Court, Orange County, Florida, on September 10, 2010, beginning at 9:00 a.m., at 425 North Orange Avenue, Room 17-A, Orlando, Florida, before Ivette Milian, Shorthand Reporter, and Notary Public, State of Florida at Large.



APPEARANCES:
CHRISTOPHER M. HARNE, ESQUIRE
Kilgore, Pearlman, Stamp, Ornstein & Squires, P.A.
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PROCEEDINGS

THE COURT: Good morning. Who's on the phone?

MR. RANDAZZA: Good morning, Your Honor. This is Mark Randazza appearing on behalf of Matthew Van Voorhis.

THE COURT: Okay. Let me go ahead and get everything on the record while we're waiting for Mr. Van Voorhis to come forward.

This is Christopher M. Comins versus Matthew Frederick Van Voorhis. Is that correct?

MR. JONES: Yes.

THE COURT: It's always nice to know I'm in the right case. Okay. It's case number 2009-CA15047-O.

Counsel, put their names on the record and who you represent. Spell your last name, if you would, for the court reporter, please.

MR. HARNE: Thank you, Your Honor. Chris Harne, H-A-R-N-E, for the Plaintiff, Christopher Comins.

MR. PETRO: Appearing at the courtroom, Douglas Petro, P-E-T-R-O, appearing for the Defendant, Matthew Van Voorhis.

THE COURT: And on the phone, once again, please.

MR. RANDAZZA: Appearing telephonically, Marc, that's Marc with a C, John Randazza, R-A-N-D-A-Z-Z-A.

THE COURT: All right. We can only have one

person handling the argument in this matter for Mr. Van Voorhis; who is that going to be?

MR. PETRO: That's going to be me, Your Honor.

THE COURT: Okay. Thank you. Let's hold off a few minutes until the missing individual arrives.

So it will help everybody, I believe, I have read everything that you sent to me. I believe we have a Motion to Dismiss. We have a Motion to Stay, which looks like it may be moot, maybe it's not, and we have an opposition of a Motion to Stay which is actually styled, Opposition in Motion to Dismiss. Hopefully I got all these pieces read over the weekend as well as the cases.

Are there any other things we're supposed to be hearing today?

MR. PETRO: The -- and, again, since there's so many Motions to Dismiss that deal with different things but, the one that we're here to argue first on is the presuit notice --

THE COURT: Okay. And I've read that and I've read the case law on that.

MR. PETRO: Okay.

THE COURT: What do you believe we're here on, Mr. Harne, anything?

MR. HARNE: The first Motion to Dismiss notice

was on the -- the issue of the 5th Amendment assertion. And then there was an amended Motion to Dismiss, I believe, which added the presuit notice.

THE COURT: I thought the motion -- there's a motion to stay. And it's in the body of the language, it's not in the style of the case that I have.

MR. HARNE: And that's our motion.

THE COURT: Okay. Is that your Motion to Dimiss also, or is it just a Motion to Stay?

MR. HARNE: It's just a Motion to Stay. We're the Plaintiffs and we have --

THE COURT: Well, the reason I ask that, and I don't mean to interrupt you -- well, I do mean to interrupt you. I apologize for interrupting you.

What I have read suggested that the trial was August 20th in this matter and that, therefore, that may be moot. What happened to the August 20th trial?

MR. HARNE: The August 20th trial was moved. It's now October 18th. So it's about a month away from now.

THE COURT: Okay. Why was it moot?

MR. HARNE: I believe the prosecution recommended that it be moved and it was moved.

MR. PETRO: The motion that you read was obviously read before the trial had been moved.

THE COURT: I understand that. And that's why it looked like it may have been moot if that trial had already occurred.
MR. PETRO: Right.
THE COURT: All right. We can wait a few more minutes for Mr. Van Voorhis. The problem is I have others at 9:30 that I need to get to.
MR. PETRO: I certainly understand.
(A break was taken.)
MR. PETRO: Your Honor, this is Matthew Van Voorhis. He's the Defendant in the case.
THE COURT: Good morning, sir.
MR. PETRO: We apologize for the tardiness.
THE COURT: That's okay. We understand what it's like downstairs.
All right. Mr. Van Voorhis, as I was indicating earlier I've had a chance to read all of the motions, all of the case law that's attached to them and the memorandums that were incorporated into some of the motions. Hopefully, I've got everything covered in this matter and we're ready to go forward.
Which motion would you like heard first gentlemen? It makes no difference to me.
MR. PETRO: Your Honor, I believe ours was noticed first.

THE COURT: Okay. Why don't you tell the court reporter which one that is.
MR. PETRO: Certainly. This is what is styled as Defendant's Amended Motion to Dismiss Complaint. It was previously filed in August. We, just the other day, amended it only as to the undersigned counsel due to a scribner's error in our office. We left Mr. Randazza off.
THE COURT: And thank you for putting that under there because otherwise I read the motion trying to figure out what the changes --
MR. PETRO: Sure thing. And we just wanted it to be clear that it wasn't anything new of substance.
THE COURT: All right. Let's go ahead. As I said, I've read the motions.
MR. PETRO: Yes, sir, jumping right into it.
Your Honor, Florida Statute 770.01 provides that notice must be given to Defendant in a libel or slander suit. And it's our contention in this case that presuit notice pursuant to that section --
THE COURT: Can I interrupt you for second?
MR. PETRO: Yes, Your Honor.
THE COURT: Having read it --
MR. PETRO: Yes, sir.
THE COURT: -- Mr. Harne, how do you get around

the Mancini case?
MR. HARNE: Well, Your Honor, we did serve presuit notice, so there might be a little bit of confusion here as to whether the conditions preceding were actually complied with.
We served Mr. Van Voorhis with notice on March 23rd, 2009. Now, that may not have been properly pled, but to the extent it wasn't, we would request leave to amend to allege that we have complied with all conditions precedent.
We did have communications with Mr. Van Voorhis' counsel, as well, several months back wherein we confirmed with him that we did serve this notice on him March of 2009, prior to filing suit.
THE COURT: In reading Mancini and the cases really that come from that, Mancini doesn't seem to have been overruled even though it is a district court case and not -- I mean, federal district court case, not district court case, it seems to be pretty clear in this matter. And I think you do need to plead that as a prerequisite.
My inclination is to grant the Motion to Dismiss with Leave to Amend to allow you to do what you need to.
Let me ask the moving party. Is there any other

basis for your Motion to Dismiss other than the statutory prerequisite?
MR. PETRO: Well, as the -- it is the statutory prerequisite. It's a hard and fast rule.
THE COURT: Well -- and I'm saying, I'm going to give him an opportunity to amend though.
MR. PETRO: Well, and it puts us into that situation where dismissal -- the statute of limitations is run.
THE COURT: There's a relation in that provision, I believe, in this matter. Do you believe that this statute of limitations would be with prejudice?
MR. PETRO: That's our position and that's my belief. Do I have -- have I prepared case law to provide to the Court to that effect, not today, Your Honor?
THE COURT: I'm not even sure, in the medical malpractice arena under 766, the presuit notice, that you get away with dismissing it with prejudice. I think there's a relation.
So, I think, under the law you -- they are entitled to the dismissal, which is what the Court's finding is, without prejudice, and it gives you an opportunity to amend as to that.
MR. HARNE: Thank you, Your Honor.

Page 10

THE COURT: Is there anything else we need to deal with on your Motion to Dismiss?
MR. PETRO: Just, in my thinking, I was thinking, may be analogous to the presuit requirements under 768 with the sovereign immunity statute where if the notice hasn't been given within the three and a half years, I think that --
THE COURT: Well, here there's --
MR. PETRO: -- is more analogous to this.
THE COURT: Here, it's not the allegation I suspect is going to be that it was not given, that it was given but it's not been properly pled. And there's a distinction if it's not been given at all. You may think the position is, I've been given or it's not adequate, but I think that position is going to be based on what Counsel just told me that they did give notice, it was just not properly pled in the complaint or not pled in the complaint. And they'll go ahead and add that. I think you would then tack that to your motion -- a subsequent motion to dismiss.
MR. PETRO: Right.
THE COURT: You would not be precluded from that, certainly.
MR. PETRO: Right. And I think that would bring us to the other issue of then engaging in discovery

Page 11

which ducktails into the other motions.
So if we understand you correctly, the Motion to Dismiss on our Amended Motion to Dismiss is granted without prejudice for leave to amend.
THE COURT: Let's get away from the legal basis for just a moment and just talk practical.
Are there any other areas in which you have concerns with the, I don't want to call it quality of complaint, but I can't think of another word for it, so that we can get any amendments done at the same time? I'm not going to hold you to this. I'm just saying, if you can give Counsel notice of that, he can go amend his complaint, he can amend it if there's any other way that he needs to, so we don't have to be back here too many times.
MR. PETRO: I think, once we -- you know, they're claiming the presuit notice was given. Once we see the -- what presuit notice was given, we may have arguments as to the adequacy of it.
THE COURT: That's a separate matter, sure.
MR. PETRO: Sure, a separate matter.
THE COURT: How much time do you need to amend? It makes no difference to the Court, it's up to the two of you.
MR. HARNE: Ten days.

Page 12

THE COURT: Okay. That's fine.
MR. VAN VOORHIS: I'm sorry, am I allowed to speak?
THE COURT: You need to speak to your attorney. You can't really address the Court.
MR. VAN VOORHIS: Okay. Can we -- I don't know that I necessarily agree that --
THE COURT: Why don't you do this. There's a young lady over here who's really good at what she does. She takes down everything that's said, and a confidential conversation you have with your attorney becomes a part of the record. You don't want to do that. So lean over to him and whisper to him or step outside if you want to talk to him. Okay?
MR. PETRO: Two seconds.
THE COURT: Go right ahead.
(A break was taken.)
THE COURT: All right. With regard to the Motion or Amended Motion to dismiss, are there any other matters that we need to deal with?
MR. PETRO: Your Honor, I guess, if they're going to then plead that they did give proper presuit notice --
THE COURT: Well, we don't know what they're going to plead.

Page 13

MR. PETRO: Well -- so they're granted leave to amend, and we assume that since our motion was that they failed to give presuit notice, that they're going to allege that presuit notice.
THE COURT: I don't know. We'll find out when that comes --
MR. PETRO: Then that gets us to discovery matters.
THE COURT: All right. Let's deal with the Motion to Discover.
Your position of the -- the defense is that your discovery is being stymied in this matter by the 5th Amendment privilege?
MR. PETRO: Yes, Your Honor.
THE COURT: Is it primarily the deposition of the Plaintiff that you're trying to take? Is that the big concern.
MR. PETRO: Depositions, written discovery, everything. They've refused to respond to any discovery that's been propounded.
THE COURT: Okay. Response.
MR. HARNE: Thank you, Your Honor.
THE COURT: And, again, I have read your responses.
MR. HARNE: Okay. And we did move for a stay.

We're not saying we want to proceed to trial without answering Mr. Van Voorhis' discovery request or without submitting our client, obviously, to a deposition. We're simply asking that we be able to wait until the criminal matter ends so that we can answer all of their questions without any fear of criminal prosecution based upon those answers.

And that's why we moved for a stay and asserted the 5th Amendment privilege in abundance of caution.

We moved for a stay of all discovery because we simply thought that it would be easier and that that would be the proper way to proceed in accordance with the Brancaccio case --

THE COURT: Can you spell that for the court reporter, please?

MR. HARNE: Yes, Your Honor. It's Brancaccio versus Mediplex Management of Port St. Lucie, Inc. Brancaccio is B-R-A-N-C-A-C-C-I-O.

The cite is 711 So.2nd 1206 from the 4th DCA.

THE COURT: Okay.

MR. HARNE: Do you want me to proceed --

THE COURT: Please. I've already read it.

MR. HARNE: Okay. Thank you, Your Honor.

The Defendant has cited a few divorce cases to support their notion that it is improper for a

Plaintiff to assert a 5th Amendment privilege when they're the Plaintiff in a civil action and that that is using the 5th Amendment essentially as a sword and a shield.

We have cited a case that is much more on point which is the Brancaccio case that I just mentioned.

In the Brancaccio case they were asking for a -- the Plaintiff was a defendant in a murder case at the same time that he was a plaintiff in civil action. He was waiting for retrial in the murder case and during that time he sued the psychiatric hospital that had been treating him for negligent treatment. This happened immediately prior to the expiration of a two-year statute of limitation.

The trial court dismissed his civil action stating essentially on what the divorce cases have said in this matter which is that you can't use the 5th Amendment as a sword and shield. And citing the cases cited by Mr. Van Voorhis, the Minor case and the Stockham (phonetic) case.

The 4th DCA reversed. They distinguished this case from the Minor and Stockham cases primarily on factual basis.

First of all, this was not a divorce case just like our case is not a divorce case. Therefore, in

those cases, there wasn't a statute of limitations concern. In those cases --

THE COURT: Is there a statute of limitations concerning your case?

MR. HARNE: There potentially is. Not only do we expect there to be an argument made by Mr. Van Voorhis that the statute of limitations began to run upon the first posting of the -- of the blog article, but we've heard here today in this hearing that they do anticipate making that argument.

Now, we oppose that. We believe that there's a different statute of limitation --

THE COURT: But that's for another day.

MR. HARNE: That's for another day. The point is, they're going to make that argument. And so we certainly face the jeopardy of losing Mr. Comins' right to bring this civil action.

Also, big difference between the divorce cases, the Minor and Stockham case and this case. And the Brancaccio court pointed this out is that we're not looking to use the 5th amendment as a sword and a shield. We're looking, at like they said in Brancaccio, for a temporary shield and that's it. There's a definite end to when we will be seeking this stay of discovery and it's at the end of the criminal

proceeding.

We're not asking to go to trial without answering the questions. We're simply asking that we put this on hold and not have to make a choice between our constitutional rights or Mr. Comins' constitutional right to assert his 5th Amendment privilege and his right to bring a civil action and protect his civil rights.

Additionally, as the Brancaccio court pointed out, although anyone can make an argument that a delay could be prejudicial, and there's a prospect that it could harm the defendant's ability to defend his case, there's no real evidence of that. And --

THE COURT: Well, you can't take the deposition of the Plaintiff bringing the action. There's obviously a harm. If he can't talk to the Plaintiff under oath and commit the plaintiff's position on the record, isn't that almost pro se? I mean, almost, per se, a prejudice?

MR. HARNE: But the issue is whether a delay in taking the plaintiff's deposition will be prejudicial. We're not saying he can never take Mr. Comins' deposition. Certainly, if we were, that would be prejudicial.

THE COURT: But isn't the evidence in the case

Page 18

each day, as delayed, getting older? The memories of individuals who might have some knowledge get older and get less exact. Isn't that one of the reasons that most people try and take a deposition or a statement early on?

MR. HARNE: Well, it certainly is. But there's no evidence that that's happening here. And, again, I think it's important to know that, as we cited in our response that we filed with the Court, Mr. Van Voorhis himself suggested abating these proceedings completely until the end of the criminal trial for his own benefit.

So I do find it difficult to believe that now it is prejudicial to him to delay the proceedings when they suggested it several times themselves.

The fact is, it wouldn't be prejudicial. Mr. Van Voorhis' deposition has not taken place. We are not asking for it at this time. We're asking for a stay of all discovery. We're not just trying to protect our client with a shield, we're not pursuing Mr. Van Voorhis' deposition, and we don't think that anyone will be prejudiced by this at all.

THE COURT: Okay. Response. And, again, I have read your response.

MR. PETRO: While the Plaintiffs say they have

Page 19

not -- they are not seeking Mr. Van Voorhis deposition, they did submit discovery. And discovery was answered. You know, hundreds of pages, deposition dates were given for Mr. Van Voorhis. And that's when Defendant put on the brakes and said, wait a minute, 5th Amendment, I don't want to engage. And I think the real question for this Court is at what point is enough enough, and how long will the Defendant be allowed to delay the civil action that he brought?

THE COURT: When is the trial reset for?

MR. PETRO: It's my understanding the criminal trial has been reset for October 18th.

THE COURT: And who is the judge in that case?

MR. HARNE: It is Judge Leblanc.

MR. PETRO: And it has twice been moved. We have no knowledge one way or the other whether it could be moved again.

The real -- one of the real problems that we're having here, as you mentioned, the delay, memories fade, evidence gets, you know, perhaps lost, mishandled, mismanaged. If you're dealing with other agencies they might have potential evidence. And quite frankly, the Defendant, beyond just saying in a blanket way, I want to assert my 5th Amendment right, he's not identified any specific discovery request

Page 20

that has been made of him in this case that could somehow jeopardize him in his criminal trial.

THE COURT: Okay. Response, it's your motion.

MR. HARNE: Thank you, Your Honor. Certainly, what we thought would be the easier thing to do for everyone would be to stay the proceedings. And that's the result that the 4th DCA in the Brancaccio case eventually arrived at is that the most fair thing to do for everyone involved would be to abate the proceedings until this threat of criminal liability passed and not put the civil plaintiff in a position where he had to choose between his constitutional rights and his civil rights to bring this action.

Now, certainly, if some of the discovery could be responded to without any threat of a 5th Amendment concern, then we can proceed that way as well. And we were just trying to do what was really the most convenient route for everyone essentially.

THE COURT: Okay. When were the criminal charges filed and when was the information filed?

MR. HARNE: It was, at least, in probably mid 2009 I would say.

THE COURT: So it would have been after this Complaint was filed or before? Because the Complaint was filed May 13th.

Page 21

MR. HARNE: No, it was before the Complaint was filed. And, I apologize, I don't have --

THE COURT: That's all right. Obviously the Complaint --

MR. PETRO: It was 2008, Your Honor.

THE COURT: The Plaintiff in this matter filed a Complaint knowing that he had criminal procedures on him, knowing that he may have to invoke his 5th Amendment right. He does have a right to invoke that but not to the detriment of the Defendant who has suit and who has been brought to court on this matter unwillingly.

What I'm going to do is deny your motion to stay in its entirety and grant it in part with the following conditions. You told me the trial has been moved to October 18th in front of Judge Leblanc.

I'm going to order the Plaintiff to provide notice to the Defendant of any hearings on any motions to continue that trial and to provide copies of any motions to continue that trial. They can file, if they wish, a motion to intervene in the criminal case if they want to make Judge Leblanc aware of the effect of it.

I'm going to ask Counsel to put in the order that the Court is staying this matter only until the

criminal case is resolved with the understanding that the longer it occurs, the more prejudice is occurring to the Defendant.

I'm only going to stay this matter as to the taking of the Plaintiff's deposition as two matters involved in the criminal case. They can take an initial deposition of other background matters that are not related if they want to get that.

They will have an opportunity to complete that deposition afterwards, so they're not waiving anything by taking that deposition early.

Secondly, they may continue moving forward with paper discovery in this matter or any other discovery. The Plaintiff has a right to assert his 5th Amendment right. The Court will rule on any assertion of the 5th Amendment right if there's an issue as to whether it's appropriate.

I will advise both counsel that this court has a standing rule that if you are at a deposition and an issue comes up and somebody moves to certify a question, you do not have to certify during the depo, get a hearing date and come in front of me. All you need to do is call my judicial assistant, she'll get me out of trial or out of hearing and I'll rule on it right there and you can continue on with the

deposition on the matter.

But, Defendant, you can move forward with discovery, other than questions that involve -- well, you can pose any questions you want, they can assert their 5th Amendment privilege whenever they wish. And if you think it's inappropriate, the Court will rule on it. You may depose the Plaintiff but only as to matters that they do not object to on a good faith basis asserting their 5th Amendment privilege without prejudice to retaking or completing the deposition at a later date.

If in fact this matter is continued off of the October 18th docket, we need another hearing set, because the inclination of this Court, I don't know how long the docket is going to be of Judge Leblanc on October 18th, but the Court is inclined to terminate this stay at the completion of that docket unless an additional motion is filed and a subsequent hearing is held.

Defense is -- I mean, it's your motion -- or, Plaintiff, it's your motion, do you have any questions about the Court's ruling?

MR. HARNE: No, I don't, Your Honor.

THE COURT: Defense, do you have any questions about the Court's ruling?

MR. PETRO: No, Your Honor. We'll get the transcript.

THE COURT: You'll prepare an order to go ahead and get it set up so both of you can see it on this matter.

All right. Gentlemen, thank you very much.

Is there any outstanding discovery right now?

MR. PETRO: There is. Two defendants.

THE COURT: All right. I'm going to go ahead and require that be responded to within 15 days, either by a specific objection setting forth the 5th Amendment right and why it is appropriate in that.

And as to anything that's not objected to, you need to go ahead and respond within 15 days.

Does that give you enough time?

MR. HARNE: Yes, Your Honor.

THE COURT: Okay. Thank you.

MR. PETRO: Thank you, Your Honor.

(The proceedings were terminated.)

CERTIFICATE

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, IVETTE MILIAN, Shorthand reporter and Notary Public, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and accurate record.

Dated this 18th day of September 2010.

IVETTE MILIAN,
Shorthand Reporter
Notary Public, State of
Florida At Large.