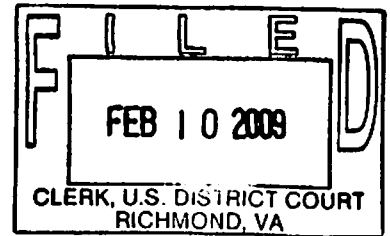


Victor E. Cretella III, Esq.

V.

David L. Kuzminski



Case Number: 3:08cv109

To:
United States District Court
Eastern District of Virginia – Richmond Division
701 East Broad Street, Suite 3000
Richmond, VA 23219

The Honorable Magistrate Judge Dennis W. Dohnal,

Post Trial Motion

Defendant moves that the verdict and trial be reversed, set aside, or thrown out based upon misconduct by the Plaintiff. During preparations for the trial, emails from the Plaintiff's computer located at PublishAmerica headquarters in Frederick, Maryland contained computer code designed to phish information from the Defendant's computer on which his exhibits were stored. This occurred right after the Court declined the Plaintiff's request to learn the identities of the originators of numerous exhibits presented by the Defendant. There is no way for the Defendant to know the scope of the phishing as it may have also provided the Plaintiff with defense strategies and other documentation but this should clearly be a concern when it comes to ensuring fair trials. Exhibits 1 and 2 of the phishing emails accompany this motion. Defendant's computer is available to be examined by the court at its leisure. Defendant suggests that any computers located at PublishAmerica where the Plaintiff originated his emails also be evaluated for evidence of such misconduct by the Plaintiff or his employer.

Defendant also moves for reversal of the verdict based on the following:

Libel is the favorite weapon of those in commerce, religion, and government to stifle criticism. In some countries, the defendants risk death for criticizing a religion or god. In some countries, defendants risk lengthy prison terms for criticizing a king, national party, or a flag. In some countries, defendants risk huge penalties that are typically out of line with what was said. Regardless, it remains a weapon against criticism meant to protect the public welfare. Rarely is it actually used to protect against an actual injustice. In the hands of the Plaintiff, it was clearly used as a threatening weapon against Christine

Norris to force her into silence and is being used as a weapon to discredit the Defendant's criticism of PublishAmerica. Exhibit 3 further underscores that this is occurring as a result of this trial. . In both of these instances, it's not in the best interests of the public welfare to permit the Plaintiff's actions to succeed

A complaint to authorities is useless unless it's identified or authorities wouldn't know what to investigate. The Defendant in writing his complaint could not very well inform the authorities without mentioning what the authorities should look for. Otherwise, the authorities would have no grounds upon which to base an investigation. Furthermore, Plaintiff failed to show malice. Had there been malice involved, the Court could expect to see the same letter posted by the Defendant throughout the Internet on many other sites. Such action did not occur. In fact, it was limited to a single writing site where the general public is unlikely to venture and only reflected the mood of those writers who likewise saw through the Plaintiff's actions for their real purpose and the letter was posted only for the welfare of the public.

Furthermore, the Plaintiff made no attempt to have the posting removed by contacting the Defendant. In fact, the Plaintiff made it apparent in court testimony that he was only slightly embarrassed by its presence. It became important to the Plaintiff only after the Defendant testified in an arbitration involving PublishAmerica after the Plaintiff went to work for PublishAmerica. At that time the Plaintiff worked directly for a business which is not recommended by the Defendant's web site known as Preditors & Editors. Preditors & Editors has been recognized nationally for seven consecutive years by no less an authority on writing than Writer's Digest. Plaintiff's goal has been to stifle legitimate criticism of his employer by besmirching the integrity of the Defendant and his site as was done within minutes of the verdict as shown in Exhibit 3. There is no other purpose because, as has been stated to the Plaintiff during the course of this action by the Court, getting money from the Defendant would be like getting blood from a turnip.

Plaintiff's claim that the Defendant's strong opinions referring to other issues on the Absolute Write forum also does not rise to a standard to show malice. Instead, those opinions held by the Defendant reflect what is current law or allowed in practice in many localities within the United States. Citizens have a right to be free of crime. As a result, some localities permit the publication of names and addresses for those involved in crimes such as the frequenting of prostitutes. Localities do this in order to urge those citizens not to support criminal activities by making their actions known and to protect the welfare of the public by letting them know of dangers that may surround them. In fact, Defendant stated his opinions on a site and at a time different from when he posted PublishAmerica employee information. The posting of any names also differed in intent because, though not established in testimony, the company those individuals worked for wanted contact to be by email but failed to maintain a contact list so others could reach them. In fact, the listing of employer/employee names on the Preditors & Editors site was prefaced with the following: "PA has stated it prefers communicating by email. If you have questions concerning PublishAmerica, you may want to contact one of the following at PA:". When known by the Defendant, their jobs were given to assist in contacting the right individual. Also, only their company addresses were given by the

Defendant. Those individuals were not being hounded across the Internet to their personal web pages by the Defendant. There was no statement beside their names indicating they should be held in shame. Additionally, not one filed any complaints with any court that they were being libeled and that's simply because they weren't. The Court should have pointed out to the Jury that expressing such opinions and reproducing public information, i.e. my letter to the Maryland Bar Association, were lawful activities. The two occurred in separate places and were only creatively joined by the Plaintiff to prove something that wasn't true.

Should individuals be held to a higher standard than the government when they publicize to others that they've asked for the authorities to investigate someone and provide a copy of their request? When the government announces it's investigating an entity and the government's words are published, they're not held accountable for libel. Is that not establishing a double standard for libel? This becomes very important to everyone since forum sites like Absolute Write are a part of the media and any standard applied affects First Amendment rights. Absolute Write does offer many of the same features that newspapers provide. They have educational features. They have entertainment topics. They publicize opinions just as do editors of newspapers. They feature news within whatever limits they choose to observe. They differ only in the fact that they allow the public to contribute directly in reporting rather than hiring a small set of employees to do the reporting. In doing so, they encourage citizen participation in freedom of the press. Much like the release of the Pentagon Papers, the release of this information was and is in the interest and for the welfare of the public. So, should a contributing reporter be held accountable for reporting a true event regardless of whether the reporter is also a part of that event?

Additionally, the Court may not be aware, but the Plaintiff's action is part of a full court press against more than just the Defendant. The Plaintiff and his employer have interjected themselves into another case in New Jersey. This is shown in Exhibit 4 involving a different plaintiff, the Defendant, and other defendants where the Plaintiff's accusations are not relevant. This information came into the Defendant's possession after the hearing for approving exhibits, but should be taken into consideration. In each of these cases, the Plaintiff and his employer are using libel as a tool to shut up any criticism about their activities. Because the Plaintiff was permitted to exercise attorney-client privilege, information that was not between a lawyer and client was able to be hidden until after all exhibits had been approved. The Court should have required the Plaintiff to divulge to the Court the full particulars of what the Plaintiff claimed was attorney-client privilege before ruling that those documents and meetings listed in the Plaintiff's privileged list were exempt especially since Plaintiff was in-house counsel for a significant portion of that time and courts tend to view such attorney-client privilege for in-house counsel as not having the same strength of protection given to lawyers from an outside firm. Furthermore, because there were allegations of crime or fraud on the part of PublishAmerica, limits to the privilege may apply depending on the situation being adjudicated. The crime-fraud exception can render the privilege moot when communications between an attorney and client are themselves used to further a crime or fraud. In *Clark v. United States*, the US Supreme Court writes that "A client who consults

an attorney for advice that will serve him in the commission of a fraud will have no help from the law." The crime-fraud exception does not require that the crime or fraud discussed between client and attorney be completed to be triggered. Likewise, the attorney should not receive help from the law. Again, the Court should have insisted upon viewing the privileged information prior to ruling. This omission placed the Defense at an unfair disadvantage.

During the trial, the Court may have erred in permitting the Plaintiff to produce the book into evidence that had not been approved previously as an exhibit for the Plaintiff. This was particularly damaging because the Plaintiff claimed he purchased a book as new when it clearly wasn't. The book had been inscribed by its author to someone else and had obviously been sold as used. Still, the Plaintiff claimed he purchased it as new and produced no documentation to support his claim. This damaged proof the Defendant produced showing that PublishAmerica was not removing books from sale for which it no longer held any print rights by producing confusing evidence for the jury to consider. The Plaintiff's production of that book and related testimony concerning that book should have been ruled as inadmissible and the court should have admonished the witness for false testimony and instructed the Jury to disregard his claim.

The Plaintiff also introduced two exhibits which had not been approved beforehand. While the Defendant granted the inclusion of those two documents, the Defendant also requested that the other documents with which those were bundled be admitted as well. The Court failed to respond to the Defendant's request. This produced a situation where the Court unfairly permitted the Plaintiff to pick and choose from exhibits that had previously been barred.

During the trial, Plaintiff's attorney several times gave testimony in relating facts that hadn't been established, particularly in his opening. Particularly disturbing is the repetition of a false statement from the first hearing under Judge Spencer claiming the Defendant hated PublishAmerica. An examination of the court documents will clearly show that was a deliberate attempt on the Plaintiff's part to place false evidence before the jury. The Court should have been more forceful in restricting the Plaintiff's attorney from giving testimony especially since the Defendant could not cross-examine the Plaintiff's attorney.

The Court may have erred as well in rushing the Defense to finish its presentation with its assurances that the jury would go through the all of the evidence. As a result, not all of the exhibits were presented orally in the trial. The sheer volume of the exhibits presented by the two sides was clearly much more than the jury could have examined during the roughly two hours it was out which included lunch time. Since it's now clear that the Court could not guarantee that the jury would review all of the exhibits, the Court should not have assured the Defense that the jury would do so. Then the Defense would not have felt pressured to prematurely adjourn its presentation.

Lastly, the Court should consider whether its failure to rule definitively on the Plaintiff's open attempt to interfere with the planned closing arguments of the Defendant was in err.

This left the Defendant wondering just what exactly was permitted and caused the Defendant to proceed with a weak closing.

A handwritten signature in black ink, appearing to read 'David L. Kuzminski', with a large, stylized flourish at the end.

David L. Kuzminski
2581 Pinehurst Drive
Petersburg, VA 23805

Defendant

United States District Court
Eastern District of Virginia - Richmond Division
701 East Broad Street, Suite 3000
Richmond, VA 23219

Certificate of Service

I hereby certify that I delivered or mailed a true copy of the Defendant's Post Trial Motion by first class mail this 10th day of February, 20098, to the United States District Court, Eastern District of Virginia - Richmond Division and to Victor E. Cretella III, Esq.'s attorney D. Hayden Fisher, Esq. at 2512 Hanover Avenue, Richmond, Virginia 23220.

A handwritten signature in black ink, appearing to read "David L. Kuzminski", written over a horizontal line.

David L. Kuzminski
2581 Pinehurst Drive
Petersburg, VA 23805

Defendant