

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

BIBLE & GOSPEL TRUST,)
)
Plaintiff,)
)
v.)
)
TIMOTHY J. TWINAM, et al.,)
)
Defendants.)
_____)

Case No. 2:07-cv-17

SPECIAL MOTION TO STRIKE

Defendant Timothy J. Twinam hereby submits this Special Motion to Strike pursuant to 12 V.S.A. § 1041. When citizens such as Mr. Twinam find themselves defendants in a lawsuit resulting from their exercise of the core constitutional right to free speech, this new Vermont statute affords a special procedure to challenge the suit (a “SLAPP” suit):¹ “A defendant in an action arising from the defendant’s exercise, in connection with a public issue, of the right to freedom of speech . . . under the United States or Vermont Constitution may file a special motion to strike under this section.” 12 V.S.A. § 1041(a). Defendant Twinam has submitted an affidavit supportive of this motion. 12 V.S.A. § 1041(e)(2) (court should examine the

¹ “SLAPP” is an acronym for Strategic Lawsuit Against Public Participation.

pleadings and supporting and opposing affidavits in deciding special motions to strike).²

This Special Motion to Strike is applicable to the supplemental state law claims of conversion and tortious interference with contractual relations because, under the Erie doctrine, 12 V.S.A. § 1041 governs state-law claims in federal court.³ *See Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337 n.4 (2d Cir. 2006).

The Exclusive Brethren is a religious organization with a world-wide membership of approximately 45,000 as of 2005; Plaintiff Bible & Gospel Trust (“BGT”) owns the copyright to the Brethren’s religious writings. *Bible & Gospel Trust v. Wyman*, 354 F.Supp.2d 1025, 1027 (D.Minn.2005). Mr. Twinam is the present owner and operator of a website, Peebs.Net, which serves to support and facilitate communication within a community of people who have left the Exclusive Brethren or who seek to leave it. The website is open to the public over the Internet. The public may view the website, read its content, and post messages expressing opinion, seeking information, or providing facts on certain “forums” that

² A Special Motion to Strike must be filed within 60 days of the complaint being filed unless good cause is shown for enlarging such time. A motion establishing such good cause is attached.

³ Defendant Twinam also notes that Plaintiff BGT has filed no support of its claim of an amount in controversy of \$75,000 or greater for its claims based on diversity jurisdiction: conversion and tortious interference with contractual relations.

are open to the public.⁴ With the exception of the posted messages on the “forums”, Mr. Twinam does all of the writing for Peebs.Net. Mr. Twinam moderates the “forums” to assure that no profanity or scandalous material is posted, but otherwise the “forums” consist solely of posts authored by members of the public. *See* Affid. of T. Twinam at 1-2.

Vermont’s 12 V.S.A. § 1041 includes four potential definitions of “the exercise, in connection with a public issue, of the right to freedom of speech.” The two applicable here are: (1) a “written . . . statement concerning an issue of public interest . . . [in] a place open to the public”; and (2) a “statement . . . concerning . . . an issue of public interest . . . which furthers the exercise of the constitutional right of freedom of speech . . .” 12 V.S.A. § 1041(i)(3) & (4).

Mr. Twinam has exercised, in connection with a public issue, his right to freedom of speech by writing for Peebs.Net. Attached to Mr. Twinam’s affidavit is a six-page listing of articles about the Exclusive Brethren featured in media from all over the world and archived on Peebs.Net; the Exclusive Brethren, therefore, represents an issue of public interest. *See DuBoff v. Playboy Enterprises International, Inc.*, 2007 WL 1876513 at *7-8 (D.Or.) (noting broad application of term “issue of public interest” in Oregon and California anti-SLAPP cases to include statements on national talk-radio show about single consumer’s dealing with Oregon retailer and statements concerning dispute among factions of cat breeders).

⁴ Certain “members-only forums” are closed to the public.

Mr. Twinam's written statements are in a place open to the public. *See* 12 V.S.A. § 1041(i)(3). Mr. Twinam's statements also further the exercise of the constitutional right to freedom of speech. *See* 12 V.S.A. § 1041(i)(4).

When a defendant files a Special Motion to Strike, the burden falls on the plaintiff to prove that: "(A) the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and (B) the defendant's acts caused actual injury to the plaintiff." 12 V.S.A. § 1041(e)(1). If the plaintiff does not meet his or her burden, "[t]he court *shall* grant the special motion to strike." *Id.* (emphasis added). If the Court grants the motion to strike, it "shall award costs and reasonable attorney's fees to the defendant." 12 V.S.A. § 1041(f)(1).

BGT cannot meet its burden on either point. BGT cannot demonstrate that Mr. Twinam's exercise of his right to freedom of speech was "devoid of any reasonable factual support [or] any arguable basis in law." Mr. Twinam's speech is far from "devoid" of reasonable factual support. Mr. Twinam is a former member of the Exclusive Brethren and he speaks from both his own and other ex-Exclusive Brethren members' knowledge and experience. *See* Affid. of T. Twinam at 2. Indeed, BGT does not claim that Peebs.Net contains any inaccuracies.

Mr. Twinam avers in the attached affidavit that he has not, to the best of his knowledge, copied, possessed, or published any of Plaintiff BGT's "proprietary"

materials.⁵ Mr. Twinam also avers that he has not interfered with the contractual relationship that exists between Plaintiff BGT and Richard Wyman, the owner of a previous website. *See id.* at 3-4.

Second, Plaintiff BGT can show no actual injury. *See Religious Technology Center v. Lerma*, 1996 WL 633131 *15 (E.D. Va. 1997) (minimum damages awarded to Church of Scientology for copyright infringement because of lack of harm and due to defendant's limited resources) (unpublished).

Plaintiff BGT cannot meet its burden to sustain this lawsuit. In passing 12 V.S.A. § 1041, the Vermont Legislature made the following findings: “(1) There has been a disturbing increase in lawsuits brought primarily to chill the valid exercise

⁵ Plaintiff apparently claims the former contents of two websites, which closed in 2003, as “proprietary.” BGT argues that it “enjoys exclusive rights” to two different, former websites and certain contents thereof, and that Defendants Twinam and Peebs.Net “published, distributed and/or otherwise used material and/or content [from those websites] that is protected by Plaintiff’s proprietary rights.” Complaint at 7. Mr. Twinam copied nothing from those two former websites. In 2005, Mr. Twinam discovered that certain material from one website was still available on the Web Archive Project, a public internet site which searches for and copies material of interest from the Internet and preserves it on its own “archive” website, even after the originating website ceases to exist. Mr. Twinam copied one section from the Web Archive Project: the “Guestbook.” The “Guestbook” was an open “forum” much like the current public “forums” on Peebs.Net, where members of the public could post messages as a way of communicating with each other. The “Guestbook,” therefore, is a compilation of the free speech of every person who posted written statements there. To the best of Mr. Twinam’s knowledge, that website’s owner did not post comments in his own “Guestbook.” The “Guestbook” is not “proprietary” material of the Plaintiff BGT, nor copyrighted, but rather the product of the Guestbook’s contributors. *See Affid. of T. Twinam* at 4-5.

As to the third and final claim of copyright violation, Mr. Twinam has repeatedly put the Plaintiff on notice that he has not copied, does not possess, has not published, and does not intend to publish the Copyrighted Materials (as defined in the Complaint, at 4). *See id.* at 4. Mr. Twinam expects to file a summary judgment motion to this effect in the near future.

of the constitutional rights of freedom of speech and freedom to petition government for the redress of grievances”; and “(2) It is in the public interest to encourage continued participation in matters of public significance, and this participation should not be chilled through abuse of the judicial process.” 2005, Adj. Sess., No. 134, § 1.

Defendant Twinam is a perfect example of the type of individual that Vermont’s 12 V.S.A. § 1041 is designed to protect. The Exclusive Brethren practice the “doctrine of separation” from the world. This practice includes the banning of radios, television, cinema, theater, and university education. Internet access, where available, is highly filtered. The Exclusive Brethren increasingly operate their own schools and may marry only within the sect. When someone chooses to leave the Exclusive Brethren or is excommunicated by the fellowship, they lose all connection with their family and other loved ones who remain inside. This process is called being “withdrawn from” and allows for no social, domestic or church contact from church members, even from one’s spouse and children. Ex-members may not receive notice of close family members’ births, marriages, and deaths. *See* Affid. of T. Twinam at 2-3.

Peebs.Net is designed to facilitate communication among ex-Exclusive Brethren members, to provide support for those who have recently left, and to help reunite families whose ties have been severed by the Exclusive Brethren’s doctrine of separation. A number of professional counselors and psychologists are available

within the “forums” to assist the needs of many ex-Exclusive Brethren members. The website also includes a list of available counselors. *See id.* at 3.

This is not the first lawsuit brought by Plaintiff BGT against ex-members attempting to facilitate communication between and among each other. For example, in 2003 a lawsuit was filed against the owner of another website; that lawsuit eventually resulted in a settlement and closure of two websites run by ex-members. Given the importance of secrecy to the Exclusive Brethren and their willingness to litigate to further that interest, Mr. Twinam takes great care to operate Peebs.Net in accordance with the law. *See id.*

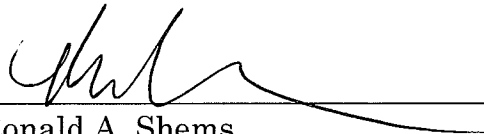
Lawsuits such as the Plaintiff's are designed to harass, intimidate, and chill free speech. Accordingly, citizens such as Mr. Twinam may challenge their basis so as not to become buried in legal fees fending off litigious plaintiffs seeking to chill their speech and that of others who would otherwise engage in speech about the same public issues.

Indeed, Mr. Twinam has repeatedly claimed that this is “SLAPP” suit. On November 7, Mr. Twinam filed a pleading entitled “Further Statement to the Court” with this Court (and served the Plaintiff) seeking to dismiss this matter as a so-called “SLAPP” suit. *See also* “Supporting Statement to Court” at 2 (filed with Answer on 4/11/07); “Supplemental Information” at 3 (faxed to Court on 4/18/07); and “A Further Statement to the Court” at 3 (faxed to Court on 8/16/07).

WHEREBY, Defendant Twinam respectfully requests that this Court grant Defendant's Special Motion to Strike, dismiss the state law claims of conversion and tortious interference with contractual relations with prejudice, and award costs and reasonable attorney's fees to the Defendant for all work associated with litigating those two claims. 12 V.S.A. § 1041(f)(1) ("If the court grants the special motion to strike, the court shall award costs and reasonable attorney's fees to the defendant.").

Dated: March 6, 2008 at Burlington, Vermont.

Respectfully submitted by:



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