

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PARK WEST GALLERIES, INC.,

Plaintiff,

CASE NO. 08-12247

HON. LAWRENCE P. ZATKOFF

vs.

BRUCE HOCHMAN, FINE ART
REGISTRY and THERESA FRANKS,

Defendants.

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on March 19, 2009

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on a Motion to Consolidate Cases 08-12247 and 08-12274 filed by Plaintiff (Docket #5), a Motion to Stay Discovery filed by Defendants Fine Art Registry and Theresa Franks (Docket #10), and a Motion to Quash Subpoena filed by third parties WKMG-Orlando and Mike Holfeld (Docket #13). The Court finds that the facts and legal arguments pertinent to the foregoing Motions are adequately presented in the parties' papers, and the decision process will not be aided by oral arguments. Therefore, pursuant to E.D. Mich. Local R. 7.1(e)(2), it is hereby ORDERED that the Motions be resolved on the briefs submitted, without this Court entertaining oral arguments.

II. BACKGROUND

Plaintiff, a Michigan corporation, is a private art gallery that conducts business throughout the United States and, at least as it pertains to the sale of art on cruise ships, throughout the world. Defendant Fine Art Registry, LLC, an Arizona limited liability company ("FAR"), operates a

website dedicated to, in part, exposing fraudulent practices and unethical behavior in the art world.

Defendant Theresa Franks (“Franks”) is an owner of FAR. Defendant Bruce Hochman (“Hochman”), who performs appraisals of Salvador Dali art works, is retained as an expert by FAR. In 2007, Hochman participated in an interview with David Phillips (“Phillips”). Plaintiff alleges that the content of many articles published on the FAR website is false and defamatory as to Plaintiff, including (1) some statements made by Hochman in his interview with Phillips, (2) many articles written by Phillips, and (3) other articles that identify Phillips as the Publications Director.

III. ANALYSIS

A. Motion to Consolidate

Shortly after commencing this action (Case No. 08-12247), Plaintiff filed a substantially similar defamation case against Phillips (Case No. 08-12274) (the “Phillips case”). Although Plaintiff did not sue all the parties in one action, Plaintiff moved to consolidate the Phillips case with this case shortly after filing them. After reviewing the complaints in both cases, the Court finds that the facts of the Phillips’ case generally are related to those in this action. Moreover, all Defendants in this case, as well as Phillips (the sole defendant in the Phillips case), agree that the two actions should be consolidated. As Defendants and Phillips correctly noted, however, Plaintiff mistakenly suggested that this action and the Phillips case be consolidated before Judge Sean Cox, the District Judge initially assigned to the Phillips case. As the instant action was filed earlier, however, E.D. Mich. L.R. 83.11(b)(7) dictated that the Phillips case would be reassigned to the undersigned. Therefore, the undersigned is the appropriate judge to preside over the consolidated action.

Accordingly, for the reasons set forth above, Plaintiff’s motion to consolidate Case No. 08-12274 with and into Case No. 08-12247 is granted.

B. Motion to Stay Discovery

Defendants FAR and Franks asked the Court to stay discovery pending the Court’s resolution of their Motion to Set Aside Default and, assuming that was granted, the Motion to Dismiss they

would file thereafter. Both of those motions have since been filed, and the Court has issued a decision on each motion. As a result of the Court's rulings on those motions, Plaintiff can now proceed against Defendant FAR on the merits.

Accordingly, as the period for which FAR and Franks sought a stay has expired, the Court denies as moot the motion to stay discovery.

C. Motion to Quash Subpoena

Plaintiff served a subpoena duces tecum on non-party movants WKMG-Orlando and Mike Holfeld (collectively, "Channel 6"). The Court notes that the date by which Channel 6 was ordered to tender the documents had passed more than two weeks prior to the filing of the motion to quash. The Court also notes that Plaintiff never responded to Channel 6's motion, and Plaintiff has never filed a motion to compel regarding the subject matter of that subpoena duces tecum. Accordingly, although the Court finds that Plaintiff is not challenging the motion to quash subpoena, the Court also finds that the issue raised by the motion has been rendered moot. Accordingly, Channel 6's motion is denied as moot.

IV. CONCLUSION

Accordingly, and for the reasons set forth above, the Court hereby ORDERS that:

1. Plaintiff's Motion to Consolidate is GRANTED;
2. The Motion to Stay Discovery filed by FAR and Franks is DENIED; and
3. The Motion to Quash Subpoena filed by Channel 6 is DENIED.

IT IS FURTHER ORDERED that Case Nos. 08-12247 and 08-12274 hereafter be consolidated under Case No. 08-12247.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: March 19, 2009

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on March 19, 2009.

s/Marie E. Verlinde

Case Manager
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