

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

KATY JOHNSON,
individually,

Case No.

2003CA004867AF

Plaintiff,

vs.

TUCKER MAX,
individually,

Defendant.
_____ /

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MAY - 2 2003

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, KATY JOHNSON, individually, sues Defendant, TUCKER MAX, individually, for injunctive relief and damages and further alleges:

Introduction

1. Plaintiff brings this action for injunctive relief and to recover money damages and against Defendant. Defendant maintains an adult website which contains content which constitutes public disclosure of embarrassing private facts. Defendant has made use of Plaintiff's name, portrait photograph and other likeness to promote his website, books merchandise and career as an authority on "picking up" women. Defendant has committed a battery upon Plaintiff. Defendant's conduct as set forth below has caused and will continue to cause damages to Plaintiff unless enjoined.

Jurisdiction and Venue

2. This is an action for injunctive relief and damages in excess of \$15,000.00. This Court has subject matter jurisdiction over this case pursuant to Article

V, Section 5 of the Florida Constitution, Florida Statutes, Section 26.012, and in accordance with Florida common law.

3. This Defendant is subject to the jurisdiction of this Court pursuant to Florida's Long Arm Statute, § 48.193, Florida Statutes as certain complained of acts were committed within the State of Florida, more specifically, Palm Beach County, Florida.

4. Venue is proper in Palm Beach County, Florida because the causes of action as set forth herein accrued in Palm Beach County, Florida.

Parties

5. Plaintiff, KATY JOHNSON, is a resident of Delray Beach, Florida and is otherwise *sui juris*.

6. Defendant, TUCKER MAX, is a resident of Chicago, Illinois and is otherwise *sui juris*.

General Allegations Applicable to All Counts

7. Plaintiff is former Miss Vermont 1999 and Miss Vermont USA 2001.

8. Plaintiff maintains a children's website which details her personal and professional resume as well as a character education comic strip for young girls and related book and merchandise for purchase.

9. Plaintiff commercially exploits her name and likeness in connection with this business, and has never publicized any facts relative to her relationships, or her personal and/or intimate affairs.

10. Defendant maintains an adult website at which details his personal biographical information and private sexual exploits with various women, as well as

related books and merchandise for purchase including women's panties, thongs, aprons, jackets, shirts and hats (the "Website").

11. Defendant has, and continues to clearly identify Plaintiff on said Website, and has, and continues to post on said Website Plaintiff's name, likeness, photograph in several places in the form of advertising slogans, and links to "The Miss Vermont Story," a nine (9) page narrative which purports to detail private facts relative to his alleged intimate and sexual relationship between the Plaintiff and Defendant (the "Narrative"). Said Narrative is written as if it was fact and is intended to be understood as factual.

12. Throughout Defendant's written recollection of his relationship with Plaintiff, Defendant repeatedly characterizes the Plaintiff as unintelligent, naïve and/or promiscuous.

13. Defendant uses the highlighted words "Katy," "Katy Johnson" and "Miss Vermont" in various sections of the Website as hyperlinks to attract visitors to the portion of the Website which contains the narrative. In these same sections of the Website, Defendant offers his books and merchandise for sale. On the page of the Website which contains the actual Narrative, Defendant offers his merchandise and books for sale. Defendant even offers a link on his adult Website to Plaintiff's children's website without Plaintiff's consent.

14. Such characterizations, the narrative, as well as the use of Plaintiff's name, portrait, photograph and other likeness for such commercial, promotional and advertising purposes has directly and proximately caused great harm to her person, career and business, and continues to be the source of great embarrassment and harm. Such harm and embarrassment continues and escalates each day Defendant continues to make reference to Plaintiff, her likeness, her title as "Miss Vermont," the stories of Defendant's alleged intimate relationship with Plaintiff, and uses and displays portraits, photographs or images of Plaintiff.

15. Plaintiff has never consented to Defendant's use of her name, likeness, photographic images or title "Miss Vermont." Plaintiff has neither consented to public dissemination of facts or stories about her personal and intimate life.

16. Plaintiff has retained the undersigned firm to represent her in this matter and has agreed to pay it a reasonable fee for its legal and paralegal services.

17. All prerequisites to filing the herein action have been satisfied or waived and all conditions precedent have been met, excused or waived.

**COUNT I – UNAUTHORIZED USE OF NAME AND LIKENESS UNDER § 540.08,
FLA.STAT.**

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

18. Defendant has, and continues to make use of Plaintiff's name, portrait, photograph and other likeness for advertising and other commercial purposes.

19. More specifically, Defendant has, and continues to use the names "Katy," "Katy Johnson," "Miss Vermont," photographs of Plaintiff, as well as stories about Defendant's alleged intimate and sexual relationship with Plaintiff and a link to her children's website.

20. Such references to Plaintiff and her title have been utilized as "meta-tags" or "search terms" with various major search engines through which Defendant's adult Website is promoted and advertised.

21. Said uses of Plaintiff's name and likeness were, and are made, for advertising and other commercial purposes, including, but not limited to, promotion and advertising of Defendant's Website, merchandise, books, television appearances and career.

22. Neither Plaintiff, nor any agent of her, has ever consented to, or authorized said uses of Plaintiff's name, portrait, photograph or other likeness, or link to her website.

23. As a direct and proximate result of Defendant's past and continued use of Plaintiff's name, portrait, photograph and other likeness, Plaintiff has suffered great harm, embarrassment, and other damages.

24. Each day Defendant is permitted to continue his use of Plaintiff's name, portrait, photograph, or other likeness, Plaintiff's harm grows exponentially.

WHEREFORE, Plaintiff demands entry of a temporary and permanent injunction restraining and enjoining Defendant from further use of Plaintiff's name, portrait, photograph or other likeness including any references to "Katy," "Katy Johnson," "Miss Vermont," displays of photographs of Plaintiff, and from use of any other characterization of Plaintiff in any media, including, but not limited to, Defendant's website(s), television appearances, books, advertisements, press conferences and interviews, including any such press conferences and interviews about the instant litigation. Plaintiff further demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

COUNT II – COMMON LAW INVASION OF PRIVACY

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

25. Defendant has, and continues to publicly disseminate private facts of and concerning Plaintiff without her consent.

26. The matter which was, and is being, publicly disseminated by Defendant is of such a character that it is offensive and objectionable to a reasonable person of ordinary sensibilities.

27. Plaintiff has, in fact, objected to the public dissemination of these matters, and has, in fact, become offended thereby.

28. As a direct and proximate result of Defendant's past and continued public dissemination of said private facts, Plaintiff's privacy has been invaded and she has suffered great harm, embarrassment, and other damages.

29. Each day Defendant is permitted to continue his dissemination of said private facts, Plaintiff's harm grows exponentially.

WHEREFORE, Plaintiff demands entry of a temporary and permanent injunction restraining and enjoining Defendant from further dissemination of private facts, notwithstanding their truth or falsehood, including any references to "Katy," "Katy Johnson," "Miss Vermont" and any other characterization of Plaintiff in any media, including, but not limited to, Defendant's website(s), television appearances, books, advertisements, press conferences and interviews, including any such press conferences and interviews about the instant litigation. Plaintiff further demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

COUNT III – COMMON LAW BATTERY

Plaintiff re-alleges and incorporates herein by reference all allegations made in Paragraphs 1 through 17 above as if more fully set forth herein.

30. In August of 2001, in Palm Beach County, Florida, more specifically, in front of the restaurant Max's Grille in Boca Raton, Florida, Defendant made physical contact or impact with Plaintiff.

31. At such time, Defendant made such physical contact willingly, wantonly, and with malicious intent in order to cause harmful or offensive touching to the Plaintiff.

32. At such time, Plaintiff did, in fact, sustain a harmful and offensive bodily contact from the Defendant.

33. As a direct and proximate result of the harmful and offensive contact, the Plaintiff suffered bodily injury and sustained significant pain, suffering and other damages.

WHEREFORE, Plaintiff demands entry of judgment against the Defendant for compensatory damages, taxable costs as the prevailing party, attorneys' fees and all further relief which this Court deems just and proper under all of the facts and circumstances of this matter.

Respectfully submitted,

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