

At an IAS Part 18 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at ~~60~~ Centre Street, New York, New York on the 22 day of November, 2005

71 Thomas

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PRESENT:

Lottie E. Wilkins

Honorable Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
ELIZABETH COMBIER,

Index No: 115354/99

Plaintiff/Appellant

-against-

ORDER TO
SHOW CAUSE

FRED ANDERSON, CHARLES AMSTEIN,
J. RICHARD FREY, THE SESSION, THE
TRUSTEES, THE DEACONS OF MADISON
AVENUE PRESBYTERIAN CHURCH individually
and collectively in office on or about
March 31, 1998, and thereafter, with the
exception of SESSION MEMBER ERIC SELCH
and THE PRESBYTERY OF NEW YORK CITY,

Defendants/Respondents

----- X
UPON reading and filing the annexed Affirmation of IRVIN LEDERER,
ESQ., dated the 31st day of October, 2005, the exhibits annexed thereto and
upon the pleadings and proceedings heretofore had herein;

LET the plaintiff-appellant, ELIZABETH COMBIER show cause before
the Honorable Justice WILKINS, Part 18 to be held at the
courthouse located at 71 THOMAS, Rm. 104, ~~60 Centre~~ Street, New York, New York on the 6 day
of December, 2005, at 9:30 a.m. on the forenoon of that day or
as soon thereafter as counsel can be heard, why an Order should not be
entered pursuant to CPLR Section 6301 issuing a Preliminary Injunction and

Temporary Restraining Order enjoining and restraining the plaintiff-appellant, ELIZABETH COMBIER, her agents, servants, and/or employees and all other persons acting under her or on her behalf, from publishing an "investigative report" of alleged "corruption and fraud" regarding the above-captioned action on the website "parentadvocates.org" and

"withoutaprayero relief.com," from the day which the Order To Show Cause is signed until the ^{hearing on this order} conclusion of this action, together with such other and further relief as this Court may deem just and proper.

ORDERED, that pending the hearing of this Motion a Temporary Restraining Order be issued pursuant to CPLR Section 6301, ^{for the aforementioned relief requested herein}

ORDERED, that service of a copy of this Order and the papers upon which it is based and the Temporary Restraining Order and Preliminary Injunction herein, be made on or before the 25 day of November, 2005 by serving ^{a copy on the Plaintiff} copies thereof on ~~The E-Accountability Foundation,~~ ~~Parentadvocates.org,~~ 315 East 65th Street, Suite ~~4C,~~ New York, New York 10021, ^{personally} by regular mail.

oral argument required

LWJ
Lottie E. Wilkins

ENTER:

LWJ

J.S.C.
Lottie E. Wilkins

LWJ
BC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
ELIZABETH COMBIER,

Plaintiff/Appellant

Index No: 115354/99

AFFIRMATION IN
SUPPORT

-against-

FRED ANDERSON, CHARLES AMSTEIN,
J. RICHARD FREY, THE SESSION, THE
TRUSTEES, THE DEACONS OF MADISON
AVENUE PRESBYTERIAN CHURCH individually
and collectively in office on or about
March 31, 1998, and thereafter, with the
exception of SESSION MEMBER ERIC SELCH
and THE PRESBYTERY OF NEW YORK CITY,

Defendants/Respondents
----- X

IRVIN LEDERER, ESQ., an attorney duly admitted to practice law
before the courts of the State of New York, affirms to the truth of the
following under the penalties of perjury, upon information and belief, as
follows:

1. I am associated with the Law Offices of MICHAEL E. PRESSMAN,
ESQ., attorney for the defendants-respondents FRED ANDERSON, CHARLES
AM STEIN, J. RICHARD FREY, THE SESSION, THE TRUSTEES, THE DEACONS
OF MADISON AVENUE PRESBYTERIAN CHURCH individually and collectively
in office on or about March 31, 1998, and thereafter, with the exception of
SESSION MEMBER ERIC SELCH and THE PRESBYTERY OF NEW YORK CITY in
the above-captioned matter (hereinafter referred to as "ANDERSON"), and
as such, I am fully familiar with the facts and circumstances based upon a
review of the file maintained by my office.

2. This Affirmation is respectfully submitted in support of the within
Order To Show Cause requesting: an Order issuing a Temporary Restraining
Order and Preliminary Injunction pursuant to CPLR Sections 6301,

restraining and enjoining the plaintiff, ELIZABETH COMBIER, her agents, servants, and/or employees and all other persons acting under, or on her behalf, during the pendency of this action from posting an "investigative report" of alleged "corruption and fraud" regarding the above-captioned action on the website "parentadvocates.org" and "withoutaprayero relief.com".

BACKGROUND FACTS

3. This action was commenced by service of a Summons and Complaint on or about July 29, 1999. Issue was duly joined by service of Answer and Combined Demands on behalf of defendants on or about September 22, 1999. A copy of pleadings are annexed as Exhibit "A".

4. This is an action to recover damages for intentional infliction of emotional distress. Plaintiff set forth numerous claims of misconduct allegedly committed by defendants-respondents, which she believed amounted to intentional infliction of emotional distress.

5. By motion, originally filed in April of 2003, the defendants were granted partial summary judgment by the Honorable Marilyn Shafer. Such Order dismissed the great majority of plaintiff's claims. Such Order was served upon plaintiff with Notice of Entry on January 19, 2004. A copy of the Order with Notice of Entry is annexed hereto as Exhibit "B."

6. On February 23, 2004, plaintiff served a Notice of Appeal. Plaintiff notwithstanding the service of the Notice of Appeal never perfected her appeal within the nine month period required by the First Department rules Section 600.11 (a) (3) requiring that all appeals must be filed within nine months from the date of service of a Notice of Appeal. At no time prior to the end of the nine month period did the plaintiff move to extend the time to perfect the Appeal.

7. As a result of plaintiff's failure to perfect her appeal, your affirmant's office moved to Dismiss the appeal. An Order was issued granting the relief and the appeal was dismissed. A copy of the Order is annexed as Exhibit "C". Plaintiff interposed a motion to vacate the Order dismissing her appeal and to consider new evidence. The Appellate Division First Department issued an Order dated May 26, 2005, denying plaintiff's motion for re-argument and/or reinstatement of the appeal.

8. Two trial were held. The first ended in a mistrial and the second with a jury verdict in favor of the defendants. Plaintiff has appealed from the denial of her motion to set aside the verdict and from the judgment entered after trial. The first appeal has been perfected and defendants served a Respondents' Brief on November 1, 2005.

9. Plaintiff also sought a stay of enforcement of the judgment granting defendants-respondents \$700 for costs against plaintiff.

10. During the course of this litigation plaintiff has had multiple legal representatives and has also appeared pro se as she is doing in the appeal currently pending. Since appearing pro se, plaintiff has served and filed numerous motions and documents that are incomplete and improper, and continues to do so. She continues to harass and make frivolous and outlandish claims and threats against defendants.

11. Your affirmant's office is in receipt of correspondence from plaintiff, dated October 14, 2005. This correspondence is written by plaintiff on behalf of the E-Accountability Foundation, of which plaintiff serves as president. A copy of the October 14, 2005 correspondence wit attachments is annexed hereto as Exhibit "D." Similar correspondence was sent to Guide One Insurance Company, the insurance carrier for the defendants as well as to the defendants. A copy of the letter to Guide One (without exhibits) is annexed as Exhibit "E".

12. The letter indicates that the E-Accountability Foundation is a not for profit organization that holds people accountable for their actions on the Internet. They post "investigative reports on the website parentadvocates.org and are developing the website withoutaprayerforrelief.com for public exposure of corruption and fraud." (See Exhibit "E"). The correspondence further states that the E-Accountability Foundation is researching the topic of "...how Guide One Insurance Company works with churches, how legal fees are paid and by whom, and if church personnel are covered for torts and criminal acts." They are looking at "one case in particular for [their] story, and that is Combiere v. Anderson, Index #115354/99" which is the within captioned action. Plaintiff is claiming to be an "investigator," but is looking into an action to which she is a party, and for which an appeal is currently pending. In her letter, plaintiff requests that your affiant's office, Guide One and defendants, supply her with proof of various "claims" regarding the within action, as to assist her in the "investigation." Notwithstanding the fact that the documents plaintiff seeks to obtain are confidential and privileged attorney work product, plaintiff's threat to publish the results of her purported "investigation" on the internet is completely nonsensical and constitutes harassment of her adversary their insurance carrier and counsel, during the pendency of the action. Plaintiff is not a non-party investigator as she claims, rather, she is a party to the action she herself is investigating.

PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

13. Defendants' have filed the within Order To Show Cause for a Preliminary Injunction and Temporary Restraining Order pursuant to CPLR Section 6301 et seq., enjoining and restraining the plaintiff ELIZABETH COMBIER and other persons acting under or on her behalf, during the pendency of the action from publishing an "investigative report" of alleged

corruption and fraud regarding the above-captioned action on the website "parentadvocates.org" and "withoutaprayero relief.com".

14. CPLR Section 6301 states:

"A preliminary injunction may be granted in any action where it appears that defendant threatens or is about to or is doing or procuring or suffering to be done an act in violation of the plaintiff's right with respect to the subject of an action and intending to render the judgment ineffective ... "

15. It is respectfully submitted that this Honorable Court must grant an Order enjoining plaintiff from publishing outrageous allegations of "corruption" and "fraud" regarding Guide One Insurance Company, the defendants and your affirmant's law firm during the pendency of an action to which plaintiff is both a party to and a purported "investigator."

16. The defendants and their carrier will suffer immediate and irreparable harm if the Temporary Restraining Order and Preliminary Injunction are not granted. Defendants have no adequate remedy at law, and equity balances in favor of moving defendants since plaintiff would lose nothing if an injunction were granted, as opposed to defendants and their insurance carrier suffering harm to their reputations absent the injunction.

17. Plaintiff is threatening to post the results of her "investigative report" about the within action, from which an appeal is currently pending. Should plaintiff prevail on appeal, your affirmant's office will have to re-litigate this action. As such, defendants will suffer immediate harm, for which there is no adequate remedy at law, if such baseless claims of "corruption" and "fraud" are posted on the internet.

18. Plaintiff is in possession of a number of the documents she requested. Additionally, numerous questions she poses, were answered at trial by witnesses presented and plaintiff is well aware of this. She asks what evidence we had of a "bitter battle" between plaintiff and her sister. Jill

Danger, plaintiff's sister testified at the second trial to their non-relationship, yet she poses this absurd question. Plaintiff also included in her package the trial notes of Adam Greenberg who tried this matter on behalf of the defendants. How she obtained these notes is rather questionable. The balance seeks information she would not be legally entitled to. She then discusses numerous matters neither my office nor Guide One would have any involvement with. It is clear that plaintiff is harassing Guide One, the defendants and my office in an attempt to extract some type of settlement. Therefore, any claims of "corruption" and "fraud" posted on the internet against defendant, Guide One or my office during the pendency of the action are clearly misrepresentations and constitute harassment. Undoubtedly, such misrepresentations will be damaging to our defendants', Guide One's and my offices' reputation as well as to the outcome of the within action.

19. In the case of Rombom and Pallorium Incorporated v. Weberman, Levy, and Jewish Defense Organization, Inc., 2002 NY Slip Op 50245U; 2002 N.Y. Misc. 769, defendants intentionally made and published false statements on their website about plaintiffs with malice. In consideration of an injunction, the Court considered whether the degree of harm plaintiffs would suffer if the statements were permitted to remain on the website outweighed the hardship defendants would suffer by the imposition of the injunction. The Court concluded that false statements would be damaging to plaintiff's personal and business relationships and as such, the hardships plaintiffs would suffer outweighed the hardships defendants would suffer by the imposition of the injunction. Accordingly, the Court issued a Permanent Injunction directing defendants to remove any and all published statements about plaintiffs and plaintiff's family from their web sites, and prohibiting defendants from publishing any statements about

plaintiffs and plaintiff's family.

20. Similarly, in the present case, plaintiff is threatening to publish allegations of corrupt and fraudulent conduct on the part of defendants regarding the action which is currently pending. It is clear that if such statements were published they would be false since the plaintiff is not in possession of any of the documents said claims are based on. Accordingly, the publishing of false statements on plaintiff's web sites would be damaging to defendants personal and business relationships. As such, the harm to defendants outweighs the imposition of an injunction against plaintiff.

21. In Times Square Stores Corp. v. Bernice Realty Co., 107 A.D.2d 677, 682, 484 N.Y.S.2d 591, the Court held that "while the granting of a mandatory injunction compelling a party to affirmatively act (i.e. directing removal of statements from the web sites) has been labeled an extraordinary and drastic remedy, 'in special cases where it is justified, [it] may be issued' particularly 'where the invasion of the plaintiff's [defendant's] rights is deliberate and intentional." In the case at bar, it is obvious that plaintiff is a disgruntled litigant acting with calculation to injure, deliberation and intent to harass and irreparably harm defendants, Guide one and my office. Accordingly, this instance qualifies as one of said special cases where the issuance of an injunction is justified. Moreover, in Times Square, supra, the injunction was an even greater imposition on the defendant than it would be against plaintiff in the present case since the injunction in Times Square required defendant to affirmatively act, i.e. remove the already published statements from the website. On the other hand, in the case at bar, an injunction would simply preclude plaintiff from publishing false statements, rather than require their removal. *A fortiori*, the Court should

issue in Order granting a Temporary Restraining Order and Preliminary Injunction to enjoin plaintiff from publishing an "investigative report" on the internet consisting of obviously false statements.

22. Additionally, any attempt by plaintiff to argue that her "investigative report" would constitute non-actionable opinion fails. Plaintiff is threatening to publish false statements which would undisputedly harm defendant's, their insurance carrier and my offices professional and business reputation. Therefore, an Order granting a Temporary Restraining Order and Preliminary Injunction is not only justified, but is also necessary.

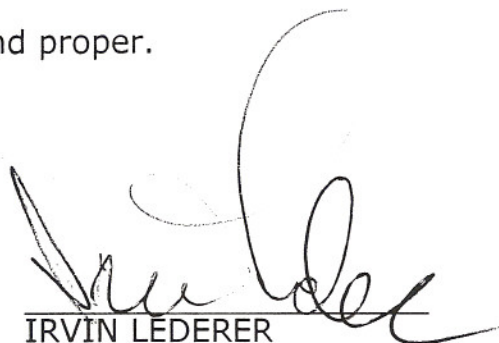
23. Further, any argument by plaintiff that the issuance of a Temporary Restraining Order and Preliminary Injunction would constitute an impermissible prior restraint also fails. In The Board of Education, Union Free School District No. 27, Town of Hempstead v. West Hempstead Chapter Branch II of the New York State Teachers Association, 63 Misc. 2d 335; 311 N.Y.S. 2d 708 (1970), the Court held that "it has...long been recognized that prior restraint, executive, legislative or judicial, is impermissible 'but with the narrowest exceptions' in which immediate and irreparable injury is clearly shown." In the present case, based on the foregoing, defendants have clearly set forth a case of the extraordinary nature necessary for the issuance of a Temporary Restraining Order and Preliminary Injunction.

24. No prior application for the relief requested herein has been made before this or any other court.

WHEREFORE, it is respectfully requested that the Court issue an Order granting a Temporary Restraining Order and Preliminary Injunction pursuant to CPLR Sections 6301, 6201(1) and 6210 enjoining and restraining the plaintiff-appellant, ELIZABETH COMBIER, her agents, servants, and/or employees and all other persons acting under, or on her behalf, during the

pendency of this action from publishing an "investigative report" of alleged corruption and fraud regarding the above-captioned action on the website "parentadvocates.org" and "withoutaprayero relief.com," from the day the Order To Show Cause is signed, together with such other and further relief as to this court may be deemed just and proper.

Dated: New York, New York
 November 7, 2005



IRVIN LEDERER