

The Order of Court is stated below:

Dated: September 02, 2014
12:46:34 PM

/s/ Andrew H. Stone
District Court Judge



Donald H. Flanary, Jr. (*pro hac vice*)
DONALD H. FLANARY, JR., PLLC
1595 North Central Expressway
Richardson, Texas, 75080
Telephone: (214) 762-0767
Facsimile: (469) 546-3700
dflanary@flanarylawoffice.com

John P. Mertens (14522)
Adam L. Hoyt (13463)
PIA ANDERSON DORIUS REYNARD & MOSS
222 S. Main Street, Suite 1830
Salt Lake City, UT 84101
Telephone: (801) 350-9000
Facsimile: (801) 350-9010
ahoyt@padrm.com; jmertens@padrm.com

Attorneys for Plaintiffs

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

THE ARMER TEXAS TRUST (AKA
TEXAS ARMER TRUST), et al.,

Plaintiffs,
vs.

ROBERT V. BRAZELL et al.

Defendants.

**ORDER ON JULY 16, 2014 HEARING
RE: DISCOVERY AND RULE 11
SANCTIONS**

Case No. 130900740

Judge Andrew H. Stone

AND COUNTERCLAIM/THIRD PARTY
COMPLAINT

This matter came before the above-captioned Court on July 16, 2014 at 10:30 a.m.

for a hearing on: i) Plaintiffs' Motion for Rule 11 Sanctions ("*Rule 11 Motion*") as against Robert Brazell, Talos Partners, LLC, In-Store Broadcasting Network, LLC, In-Store Broadcasting Holdings, LLC, and Robert W. Kasten, Jr. ("*Counterclaimants*"), IBN Media, LLC, and In-Touch Media, LLC (together with the Counterclaimants, the "*DQ Defendants*") and their counsel, Mr. Craig T. Jacobsen ("*Mr. Jacobsen*") relating to their First Amended Counterclaim as filed against all Plaintiffs except Mr. Steve Brazell ("*Counterclaim*"); ii) Plaintiffs' Statement of Discovery Issues. At the hearing, the Court also considered discovery issues more broadly.

Plaintiffs and Mr. Daniel Kondos were represented by Donald H. Flanary, Jr. and John P. Mertens, the Counterclaimants and DQ Defendants were represented by Mr. Jacobsen, and Mr. Von Whitby was represented by S. Ian Hiatt.

At the hearing, the Court made the following ORDERS and FINDINGS:

1. The Court grants the Rule 11 Motion in part and denies it in part. The Court grants the Motion as to the Counterclaims against all plaintiffs, except Steve Brazell. The Court denies the Motion as it pertains to the motion to disqualify plaintiffs' counsel.
2. The Court FOUND that the Counterclaim, as to all Plaintiffs except Mr. Steve Brazell, was filed in violation Rule 11(b)(1), because it was filed for its *in terrorem* effect in obtaining leverage against Plaintiffs;¹
3. On the evidence before it, the Court FOUND that the Counterclaim, as to all Plaintiffs except Mr. Steve Brazell, violated Rule 11(b)(3) because it was filed without either evidentiary support, or a likelihood of obtaining evidentiary support, for the allegations that any of the Plaintiffs (except

¹ See Hearing Audio at 56:40 – 57:30.

Mr. Steve Brazell) engaged in any affirmative act, or had any illegal purpose, in furtherance of the conspiracy alleged in the Counterclaim. The Court made no rulings or findings concerning the merits of the Counterclaim as against Mr. Steve Brazell.

4. As a sanction for violation of Rule 11, the Court dismisses the Counterclaim as to all Plaintiffs, except Steve Brazell, without prejudice.
5. The Court RESERVED the issue of monetary sanctions under Rule 11(c)(2);
6. The Court made the following ORDERS concerning written discovery:
 - a. On or before August 6, 2014, the Plaintiffs are to provide the information required by Rule 26(a)(1)(A)(ii) to the extent it has not already been provided.
 - b. On or before August 27, 2014, the Plaintiffs are to: i) identify all requests for production of documents to which a satisfactory response has not been made; and ii) identify all documents or categories of documents which Plaintiffs believe have been improperly withheld from Defendants' document productions.
 - c. On or before September 17, 2014, the DQ Defendants and Counterclaimants are to identify to Plaintiffs all items of discovery which DQ Defendants/Counterclaimants believe have not been fully and completely responded to.
 - d. After the aforementioned exchange of information, the Parties are ordered to meet and confer in an attempt to resolve as many discovery issues as possible, and after such meet and confer, the

Parties may directly file motions to compel under Utah Rule of Civil Procedure 32, without the necessity of complying with Utah Rule of Judicial Administration 4-502;

e. The Court reserved the issue of whether, by failing to respond to discovery requests in the time allotted under applicable Utah Rules of Civil Procedure, the DQ Defendants/Counterclaimants waived the attorney-client privilege or other objections.

7. The Court DENIED Plaintiffs' request for sanctions arising from the cancellation of the May 5, 2014 deposition of Mr. Robert Brazell on the basis of an un-heard (and un-granted) motion to stay. However the Court expressed disapproval of such a unilateral cancellation and denied the motion without prejudice to refile.

DATED: _____

Hon. Andrew H. Stone
Judge of the Third District Court

Approved as to form:

Sean A. Monson
BENNETT TUELLER JOHNSON & DEERE
Counsel for Rob Wolf

Craig T. Jacobson
FROERER & MILES
Counsel for DQ Defendants/Counterclaimants

Richard D. Burbidge
Carolyn J. LeDuc
BURBIDGE MITCHELL & GROSS
Counsel for Von Whitby

Mark D. Stubbs
FILLMORE SPENCER
Counsel for Mark Oleksik

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of August, 2014, a true and correct copy of the foregoing *unsigned* **ORDER ON JULY 16, 2014 HEARING RE: DISCOVERY AND RULE 11 SANCTIONS** was served via email and First Class Mail, postage prepaid, upon the following:

Sean A. Monson
BENNETT TUELLER JOHNSON & DEERE
3165 E. Milrock Drive, Suite 500
Salt Lake City, UT 84121

Craig T. Jacobson
FROERER & MILES
2661 Washington Blvd., Suite 290B
Ogden, UT 84401

Richard D. Burbidge
Carolyn J. LeDuc
BURBIDGE MITCHELL & GROSS
215 S. State Street, Suite 920
Salt Lake City, UT 84111

Mark D. Stubbs
Fillmore Spencer
3301 North University Avenue
Provo, UT 84604

/s/ Julie Sorensen _____