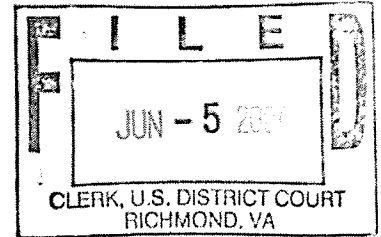


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



PATRICIA D. CORNWELL,

Plaintiff,

v.

LESLIE RAYMOND SACHS,

Defendant

CIVIL No. 3:07cv00236

MEMORANDUM OPINION and ORDER

JUDGE NORMAN K. MOON¹

This matter is before the Court on Plaintiff's Motion for Preliminary Injunction, filed on April 23, 2007 (docket entry no. 2), Plaintiff's Motion To Consolidate the Trial with the Preliminary Injunction Hearing, filed on May 15, 2007 (docket entry no. 15), and Plaintiff's Motion in the Alternative To Take Evidence at the Preliminary Injunction Hearing, filed on May 16, 2007 (docket entry no. 16). For the following reasons, the motion for preliminary injunction will be GRANTED, the motion to consolidate will be DENIED, and the motion to take evidence and issue a preliminary injunction will be GRANTED.

I. BACKGROUND

Plaintiff is a best-selling author who previously lived in Virginia but who now lives in Massachusetts. Defendant also previously lived in Virginia but has claimed in postings on the Internet that he is in political asylum in Belgium.

This case arises out of a dispute between Plaintiff and Defendant regarding books each had written in the late 1990s. Defendant published his book, *The Virginia Ghost Murders*, in 1998. (Compl. ¶ 8) In late 1999, Plaintiff's publisher began promoting her book *The Last*

¹ Judge Moon is presiding by designation.

Precinct. (Compl. ¶ 9) Plaintiff claims that because Defendant believed that Plaintiff's *The Last Precinct* copied ideas from *The Virginia Ghost Murders*, he designed a book cover for *The Virginia Ghost Murders* stating that his book was "The MUST-READ gothic mystery that preceded PATRICIA CORNWELL'S newest bestseller!" (Compl. ¶ 10) He also allegedly published a press release on two websites (www.vaghost.com and rec.arts.mystery) stating that *The Last Precinct* had "the same plot line as" *The Virginia Ghost Murders*. (Compl. ¶ 12) Defendant also allegedly affixed a sticker reading "The book that famous PATRICIA CORNWELL threatened to destroy" to 350 copies of *The Virginia Ghost Murders*. (Compl. ¶ 12)

Plaintiff sued Defendant in 2000,² and in August 2000, the court dismissed the action after the parties signed a document entitled "Consent Decree for Permanent Injunction." (Compl. ¶ 13; Ex. A, Consent Decree for Permanent Inj.) ("2000 Injunction") The 2000 Injunction provided that the court would retain jurisdiction to enforce its terms, which provided that:

- (1) Defendant was enjoined from placing stickers referring to Plaintiff on copies of *The Virginia Ghost Murders*;
- (2) Defendant was enjoined from using Plaintiff's name to advertise *The Virginia Ghost Murders*;
- (3) Defendant was ordered to remove already-existing stickers from *The Virginia Ghost Murders*;
- (4) Defendant was ordered to "purge his website at www.vaghost.com of [Plaintiff's] name or any description designed to identify [Plaintiff]"; and
- (5) Defendant was ordered to "refrain from using[] the name of [Plaintiff] in any way for advertising, marketing, or promoting his book *The Virginia Ghost Murders*."

(Ex. A, Consent Decree for Permanent Inj.)

Plaintiff has again sued Defendant. Plaintiff seeks relief in Count I of her complaint for libel per se because, since 2000, Defendant has used the Internet to post allegations that Plaintiff

² See *Patricia D. Cornwell v. Leslie Raymond Sachs*, Civil Action No. 3:00cv00229-REP (E.D. Va. 2000).

is facing criminal charges, allegations Plaintiff says are false. (Compl. ¶¶ 4(e), 14–15, 18)

Specifically, Plaintiff claims Defendant published messages in March 2007 stating that Plaintiff is facing “federal indictment for racketeering, court fraud, perjury, extortion, [and] obstruction of justice,” that this indictment is based on “evidence requested by White House Special Prosecutor Patrick Fitzgerald,” and that Plaintiff committed “felony perjury” and “court fraud.” (Compl. ¶ 16)

In Count II of her complaint, Plaintiff seeks relief for libel. To support that claim, Plaintiff alleges that Defendant published allegations of “plagiarism, of improperly influencing federal judges and members of law enforcement, of lavish gifts at unlawful levels to political figures, and of other forms of improper conduct.” (Compl. ¶ 20)

Finally, Plaintiff seeks in her complaint relief based on other messages Defendant has allegedly posted on the Internet. These messages state that Plaintiff’s “lawyers fabricated a series of illegal and fraudulent court orders banning [Defendant’s] freedom of speech,” that “the fake court orders [from the 2000 litigation] ... are now totally worthless,” that *The Last Precinct* “sounded a lot like the plot of [Defendant’s] book,” that publication of *The Last Precinct* was a “theft-in-progress,” that Plaintiff revised her book “to try to eliminate the more overt copying of the plot of [Defendant’s] novel,” and that the 2000 Injunction and another opinion from 2000 “specifically say NOT to mention the name of Patricia Cornwell. That’s Patricia Cornwell. They say DON’T MENTION PATRICIA CORNWELL.” (Compl. ¶¶ 22, 24) Plaintiff seeks: a court order holding Defendant in contempt of the 2000 Injunction and requiring Defendant to comply with the 2000 Injunction (or face a \$1,000 fine per day); a new, broader injunction that would (1) prohibit Defendant from making any statements that refer to Plaintiff or otherwise identify Plaintiff and (2) require Defendant to remove or cause to be removed any statements he has

posted on the Internet that refer to Plaintiff or otherwise identify Plaintiff; money damages; attorneys' fees; and costs. (Compl. 8–9)

Plaintiff also filed a motion for preliminary injunction, in which she seeks to (1) bar Defendant from making statements that violate the 2000 Injunction (that is, statements connecting Plaintiff to the advertising, marketing, or promoting of *The Virginia Ghost Murders*) (“advertising, marketing, and promoting statements”) and to (2) bar Defendant from making statements that, although they may not violate the 2000 Injunction, are allegedly otherwise defamatory (“alleged defamatory statements”).

I granted Plaintiff’s motion for a temporary restraining order on May 11, 2007 following an ex parte hearing.³ Defendant was ordered to remove or have removed all Internet postings that reference Defendant’s book in conjunction with referencing Plaintiff and to remove all postings on websites that referenced Plaintiff and that would also allow readers to purchase Defendant’s book.

II. APPLICABLE LAW

Courts in the Fourth Circuit use the hardship-balancing test as set forth in *Blackwelder Furniture Co. of Statesville v. Seilig Manufacturing Co.*, 550 F.2d 189, 196 (4th Cir. 1977), to determine whether to grant injunctive relief. *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 271 (4th Cir. 2002) (citing *Blackwelder*); *Manning v. Hunt*, 119 F.3d 254, 263 (4th Cir. 1997); *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811–12 (4th Cir. 1991).

The *Blackwelder* test requires a court to consider the following four factors:

- (1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied,
- (2) the likelihood of harm to the defendant if the requested relief is granted,
- (3) the likelihood that the plaintiff will succeed on the merits, and
- (4) the public interest.

³ As described in that order, entry of a temporary restraining order without notice to Defendant was permissible.

Direx, 952 F.2d 812; *White-Battle v. Democratic Party of Va.*, 323 F. Supp. 2d 696, 700–01 (E.D. Va. 2004). Under this test, the plaintiff must establish grounds supporting each of these factors. *Id.*; see also *Hughes Network Sys., Inc. v. Interdigital Commc 'ns Corp.*, 17 F.3d 691, 693 (4th Cir. 1994); *Faulkner v. Jones*, 10 F.3d 226, 233–34 (4th Cir. 1993); *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991).

In the Fourth Circuit, the first factor controls the initial inquiry: “the court must first determine whether the plaintiff has made a strong showing of irreparable harm if the injunction is denied.” *Scotts*, 315 F.3d at 271; see also *Direx*, 952 F.2d at 812 (“We naturally begin our analysis with that issue because [t]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.” (alteration in original) (quotation marks omitted)). This “irreparable harm” must be both actual and imminent and can be neither remote nor speculative. *Direx*, 952 F.2d at 812.

If the plaintiff has made a showing that she will suffer irreparable harm if the injunction is denied, “the court must then balance the likelihood of harm to the plaintiff [if the injunction does not issue] against the likelihood of harm to the defendant [if it does].” *Scotts*, 315 F.3d at 271. “If the balance of the hardships ‘tips decidedly in favor of the plaintiff,’ then typically it will ‘be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation.’” *Id.* (citations omitted). “But if the balance of hardships is substantially equal as between the plaintiff and defendant, then ‘the probability of success begins to assume real significance, and interim relief is more likely to require a clear showing of a likelihood of success.’” *Id.*

Although the general rule is that equity will not enjoin a libel, see, e.g., *Alberti v. Cruise*,

383 F.2d 268, 272 (4th Cir. 1967) (“Generally an injunction will not issue to restrain torts, such as defamation or harassment, against the person” because “[t]here is usually an adequate remedy at law which may be pursued in seeking redress from harassment and defamation.”), such is not the case for statements that are found—after judicial proceedings—to be libelous, *see, e.g., Balboa Island Vill. Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1149–50 (Cal. 2007) (“[P]reventing a person from speaking or publishing something that, allegedly, would constitute a libel if spoken or published is far different from issuing a post-trial injunction *after* a statement that already has been uttered has been found to constitute defamation.”); *Advanced Training Sys., Inc. v. Casewell Equip. Co.*, 352 N.W.2d 11 (Minn. 1984); *see also Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376, 390 (1973) (“The special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment.”). Here, Defendant was provided adequate notice of the preliminary injunction hearing and had an opportunity to present evidence or cross-examine Plaintiff’s witnesses to refute Plaintiff’s contentions that these statements are defamatory. He chose to not appear.

In Virginia, a public-figure plaintiff seeking relief for damages arising from libelous statements must prove that the defendant published a statement that is both false and defamatory and that the defendant did so with actual malice. *See Jordan v. Kollman*, 612 S.E.2d 203, 206, 207 (Va. 2005). “The burden of proving ‘actual malice’ is upon the plaintiff, who must demonstrate by clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.” *Id.* at 207.

III. FINDINGS OF FACT

Defendant has posted on the Internet the following statements regarding Plaintiff, all of which I find to be false:

A. Statements Alleging Investigation or Indictment by Patrick Fitzgerald:

1. Plaintiff is or was the subject of a criminal investigation conducted by Patrick Fitzgerald.
2. Plaintiff is facing federal felony indictment for racketeering, "court fraud," perjury, extortion, or obstruction of justice.
3. Plaintiff is facing federal felony indictment based on evidence requested by White House Special Prosecutor Patrick Fitzgerald.
4. According to evidence from Patrick Fitzgerald, Plaintiff is involved with threats to murder Defendant and there are documents supporting the assertion that Plaintiff committed felony perjury and "court fraud" with a fraudulent civil rights charity foundation implicating Fourth Circuit judges.
5. Special Prosecutor Patrick Fitzgerald, working for the Central Intelligence Agency and investigating crimes connected to the Bush White House, requested material on Plaintiff's alleged crimes as a prelude to indicting Plaintiff.

B. Statements Alleging Plaintiff Committed Various Crimes:

6. Plaintiff has committed and is under investigation for racketeering, "court fraud," perjury, extortion, obstruction of justice, and bribery.
7. Plaintiff has stolen the private autopsy reports of murdered children.
8. Plaintiff has "endless[ly]" copied, stolen, and imitated things for her books, including receiving stolen FBI material.

9. Plaintiff has had a whole life of criminal scandals, including stealing, copying, and imitating outside material for her books and stealing the private autopsy reports of murdered children.
10. Plaintiff has committed felony perjury.
11. Plaintiff has committed felony crimes.
12. Plaintiff paid half-a-million dollars to finance a program to ban, jail, and murder Defendant, and this scheme was backed by the Penguin Pearson publishing corporation that sells Plaintiff's books.
13. Plaintiff bribed politicians.
14. Plaintiff had working for her and had on her payroll a bribed judge and lawyers who are friends of the judge.
15. Plaintiff has committed "court fraud" implicating Fourth Circuit federal judges.

C. Statements Advocating Book Burning:

16. Plaintiff advocates and participates in book burning.
17. Plaintiff faxed Defendant a "Jew-baiting extortion letter" demanding the book burning and destruction of Defendant's books and writings

D. Statements Alleging Threats of Murder and Attempted Murder:

18. Plaintiff has threatened to murder or has attempted to murder Defendant.
19. Plaintiff is part of a conspiracy to threaten to murder or to attempt to murder Defendant.
20. Plaintiff is involved in threats to murder an author of Jewish heritage.
21. Plaintiff has vowed to silence, jail, and murder Defendant in revenge for his journalism about her.

22. Plaintiff “dropped a fresh ... \$1 million bribe off with the Bush family” after threatening to murder Defendant.
23. Plaintiff, along with United States District Judge Robert Payne, “hired thugs, including a neo-Nazi from Germany, to fraudulently pose as lawyers for Defendant” and “[t]hese thugs used threats of illegal jailing, torture ... , and murder” to silence Defendant and to prevent Defendant from appealing “the judge’s illegal orders.”
24. Plaintiff’s “thugs” openly talked in court records about murdering Defendant.
25. Plaintiff’s threats to have Defendant murdered led to FBI agents committing crimes against Defendant in the Netherlands.

E. Statements Alleging Hatred of and Desire to Murder Jews:

26. Plaintiff hates Jews.
27. Plaintiff “and her gang have taken their Jew-hating roadshow once again to Europe, with new criminal acts of deception and stalking in Belgium.”
28. Plaintiff is “very serious” about following Adolf Hitler because she supports the murder of Jews, the burning of books, the banning of free speech, and the holding of fake trials.
29. Plaintiff follows Adolf Hitler’s political advice that “A Big Lie is better than a small one!”
30. Plaintiff takes particular pleasure in financing neo-Nazis, threatening to burn books, and threatening to kill people of Jewish heritage.
31. Plaintiff, backed by President Bush and federal judges, “brings threats to murder Jews to the streets of Brussels, Belgium.”

32. Plaintiff, in conjunction with the Bush regime, is “committing new crimes in the streets of Brussels, seeking to carry out racist Jew-hating offences, and to accomplish the murder of an author and critic of Bush’s friend” Plaintiff and that in “this latest episode of her threats to murder Jews, [Plaintiff] is being aided by two new gangster law firms.”
33. Plaintiff’s “gangsters” are stalking Defendant in Europe so they can carry out their Jew-hating crimes against him.
34. Plaintiff’s “gang” has committed new crimes on European soil and are trying “once again” to silence and murder “the ‘stupid Jew,’” Defendant.
35. Plaintiff denounces “filthy Jews.”
36. Plaintiff “takes a particular pleasure in financing neo-Nazis, threatening to burn books, and threatening to kill people of Jewish heritage.
37. Plaintiff boasts that she can get away with murdering people.
38. Plaintiff “takes a particular pleasure” in financing neo-Nazis.
39. Plaintiff “and her neo-Nazi gang” targeted Defendant with “neo-Nazi threats of murder.”
40. “The real hot button for [Plaintiff] is her hatred of Jews, her support for Adolf Hitler’s ideas of book-burning, her lust for threatening to murder Jews, or actually killing them.”
41. “[I]t’s the thought of murdering Jews that really gets [Plaintiff] excited.... In private circumstances, [Plaintiff] quickly denounces the ‘dirty Jews,’ the ‘filthy Jews.’ Indeed, attacking Jews is a real passion for the neo-Nazi [Plaintiff], while at the same time engaging in the ‘Pleasures of Adolf Eichmann,’ [Plaintiff’s] hiring of dishonest Jews to do dirty jobs for her, a ‘pet Jew’ whom [Plaintiff] can dominate.”

F. Statements Alleging Plagiarism:

42. Plaintiff plagiarized Defendant's work.
43. Plaintiff plagiarized Defendant's book *The Virginia Ghost Murders*.
44. Plaintiff had, in her hands, a copy of *The Virginia Ghost Murders* before Plaintiff announced her novel *The Last Precinct*.
45. Plaintiff delayed publication of her novel and re-wrote it to try to eliminate "the more overt copying of elements" of *The Virginia Ghost Murders*.

IV. CONCLUSIONS OF LAW

1. Plaintiff is a public figure.
2. Defendant published the statements above by posting them to the Internet.
3. The statements above are false.
4. The statements above are defamatory in that they are calculated to expose Plaintiff to public contempt or ridicule and thus induce in the public an ill opinion of her and impair her in the opinion and respect of others.
5. Defendant published the statements above with actual malice.
6. Plaintiff will suffer immediate irreparable harm if an injunction does not issue.

Specifically:

- a. Plaintiff will suffer further injury to her reputation as an author if Defendant is not required to remove past libelous statements or if he is not enjoined from making future libelous statements.
- b. Plaintiff will suffer an adverse impact from a decreased amount of book sales due to confusion created by Defendant's posting of libelous statements.

7. Defendant will not suffer harm if an injunction does issue: the only repercussion will be that Defendant will not be able to utter defamatory statements.
8. Based only on the evidence currently before me, Plaintiff could succeed on the merits of the case.
9. The public interest weighs in favor of people not making defamatory statements and, therefore, favors Plaintiff.

V. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Preliminary Injunction (docket entry no. 2) is hereby GRANTED, Plaintiff's Motion To Consolidate the Trial with the Preliminary Injunction Hearing (docket entry no. 15) is hereby DENIED,⁴ and Plaintiff's Motion in the Alternative To Take Evidence at the Preliminary Injunction Hearing (docket entry no. 16) is hereby GRANTED. Additionally, for the reasons stated above, it is hereby ORDERED that, until final resolution of this case:

1. Defendant remove or have removed from all Internet websites all statements described above.
2. Defendant is enjoined from republishing any of the statements described above.
3. Defendant is enjoined from making any statements that reference Plaintiff or statements that would lead a reasonable person to conclude that Defendant is describing Plaintiff if such statements refer to Plaintiff in the following manner:
 - a. as being the subject of a pending criminal indictment,
 - b. as having committed the following crimes: racketeering, "court fraud," perjury, extortion, bribery, conspiracy, obstruction of justice, attempted

⁴ I deny this motion because although Defendant has stated that he will not return to the United States to defend

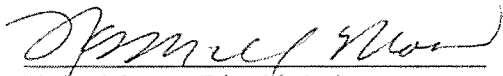
murder, or acts of terrorism, or

- c. as being an anti-Semite, follower of Adolf Hitler, or as a hater of Jews,
- d. as advocating or participating in book burning,
- e. as being a plagiarist.

4. Defendant remove or have removed from all Internet websites any statements in which (a) Defendant references his book *The Virginia Ghost Murders*, whether by specific name or by any description that would lead a reasonable person to conclude Defendant was describing *The Virginia Ghost Murders*; (b) Defendant includes hyperlinks redirecting readers to any website at which readers could purchase copies of *The Virginia Ghost Murders*; and (c) there are hyperlinks redirecting readers to any website that themselves contain hyperlinks that would redirect readers to any website at which readers could purchase *The Virginia Ghost Murders*.
5. Plaintiff post a bond in the amount of \$1,000.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion and Order to all counsel of record.

ENTERED: 
United States District Judge
JUN - 5 2007
Date

this action, the time for him to file an answer has not yet expired.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PATRICIA D. CORNWELL,

Plaintiff,

v.

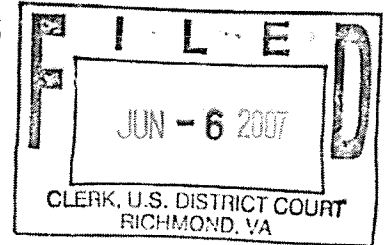
LESLIE RAYMOND SACHS,

Defendant

CIVIL No. 3:07cv00236

ORDER

JUDGE NORMAN K. MOON¹



I granted Plaintiff's motion for a preliminary injunction by an opinion and order ("Opinion and Order") that entered on June 5, 2007 (docket entry no. 25). A portion of Section V ("Conclusion"), Paragraph 4 was accidentally omitted. That paragraph should read as follows:

4. Defendant remove or have removed from all Internet websites any statements in which Defendant references Plaintiff or in which Defendant's description would lead a reasonable person to conclude that Defendant were referencing Plaintiff AND, on the same website:
 - a. Defendant references his book *The Virginia Ghost Murders*, whether by specific name or by any description that would lead a reasonable person to conclude Defendant was describing *The Virginia Ghost Murders*; or
 - b. Defendant includes hyperlinks redirecting readers to any website at which readers could purchase copies of *The Virginia Ghost Murders*; or
 - c. there are hyperlinks redirecting readers to any website that themselves contain hyperlinks that would redirect readers to any website at which readers could purchase *The Virginia Ghost Murders*.

¹ Judge Moon is presiding by designation.

This order shall not be construed to alter any other portion of the Opinion and Order.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED: Harmon O. Mason
United States District Judge
June 6, 2007
Date