

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

SUPERIOR COURT DEPARTMENT
DOCKET NO. **11 618**

NANCY CURVING)
Plaintiff)
Vs.)
PETER FREI)
Defendant)

PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

A. STATEMENT OF THE CASE:

This is an action brought by the Plaintiff for damages for defamation and libel and a preliminary and permanent injunction against the Defendant for the publication of certain libelous comments on the Defendant's website, The Holland Blog. Said comments state that the Plaintiff has attempted to sell narcotics in the Town of Holland, MA.

B. STATEMENT OF FACTS:

1. Upon information and belief the Defendant is the owner/operator of a website known as the "The Holland Blog 01521.com". Said site contains a section called "Speak out Holland" which solicits comments from members of the community.

2. On or about June 21, 2011 a comment was posted on the "Speak out Holland" portion of said site that alleges that the Plaintiff attempted to sell illegal drugs, to wit: crack cocaine, to the party posting the comment. The comment listed the Plaintiff's name and address. The post further states that the Plaintiff walks up and down her street at night speaking to an imaginary friend and pet. Annexed to Plaintiff's complaint as "A" is a true and accurate copy of the "Speak out Holland" blog containing said comment.

3. On or about June 25, 2011 a further comment by a person identified as "Betsy" was posted in response to the June 21, 2011 comment suggesting that the authorities should be informed about the Plaintiff, including town officials and the Town of Holland police. See Exhibit "A" annexed to Plaintiff's complaint.

4. On or about June 26, 2011 the Plaintiff contacted the defendant, Peter Frei, by telephone asking that he remove this libelous comment from his website. The Defendant refused.

5. On or about June 26, 2011 a comment was posted by "someone who lives here" referencing the libelous post the town official referred to by the previous post by "Betsy". See Exhibit "A" annexed to the Plaintiff's complaint.

6. On or about June 27, 2011 the person identified as "The pushed upon" posted the comments shown on Exhibit "A" annexed to the Plaintiff's complaint. In this comment titled "Hope this got a point across" the party references the fact that the Plaintiff spoke with the Defendant Peter Frei and asked him to remove the libelous posts.

7. On or about June 28, 2011 Plaintiff counsel sent correspondence to the Defendant, Peter Frei demanding that the libelous comments be removed. A true and accurate copy of said correspondence is annexed to the Plaintiff's complaint marked as "B".

8. On or about June 30, 2011 Defendant contacted Plaintiff's counsel by telephone indicating that he would not remove the comments from his website without a court order.

9. As a result of these posts the Plaintiff has suffered severe emotional distress. The posts have had a severe deleterious effect on her and her family. The Plaintiff has been contacted by several parties concerning this allegation and several parties have refused to communicate with the Plaintiff or her daughter due to the allegations.

C. ARGUMENT:

The granting of a preliminary injunction under Rule 65 of the Mass. R. Civ. P. clearly is within the sound discretion of this Court. Foreign Auto Import, Inc. vs. Renault Northeast, 367 Mass. 464, 472 (1975).

In evaluating the parties' rights at a hearing for preliminary injunction, "...the Judge should seek to minimize the harm that final relief cannot redress..." "...by creating or preserving, insofar as possible, a state of affairs such that after the full trial, a meaningful decision may be rendered for either party." Packaging Industries Group, Inc. vs Cheney, 380 Mass. 609, 616 (1980). See also Ashford vs. Mass. Bay Transportation Authority, 421 Mass. 563 (1995) fn. 3, citing Cheney.

A preliminary injunction ordinarily should not be granted where it gives the applicant through preliminary injunction all or substantially every aspect of the ultimate relief the applicant seeks. The purpose of a preliminary injunction is "only to preserve the status quo while the case is under consideration". Petricca Construction Co. vs. Commonwealth, 37 Mass. App. Ct. 392, 399 (1994), citing Jet-Line Servs., Inc. vs. Selectmen of Stoughton, 25 Mass. App. Ct. at 645-654.

The requirements for issuance of a preliminary injunction are as follows:

1. A substantial likelihood that plaintiff will succeed on the merits;
2. A substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;

3. The threat of injury to plaintiff outweighing the potential harm to defendant; and
4. The public interest must not be adversely affected by the granting of the injunction. Teradyne, Inc. vs. Mostek, Corp., 797 F.2nd 43 (1st Cir. 1986), Town of Brookline vs. Goldstein, 388 Mass. 443 (1983), Packaging Industries Group, Inc. vs Cheney, 380 Mass. 609 (1980) and 8A Massachusetts Practice, Smith and Zobel, Mass.Rules of Practice (1981), Section 65.4 p.81.

To establish "irreparable harm" supporting a preliminary injunction, there must be an actual, viable and presently existing threat of serious harm, and the injury must be actual and imminent, rather than remote or speculative. Sierra Club vs. Larson, 769 F. Supp. 420 (D. Mass. 1991). The criterion of irreparable injury is satisfied if the applicant establishes that it is likely to suffer such irreparable injury before a decision is rendered on the merits. Id.

I. Likelihood of Success on the Merits:

The Plaintiff submits that she is likely to prevail on the merits of her case. In order to prevail on her claim for defamation and libel she must demonstrate that there were false statements that are defamatory to the Plaintiff that were disseminated to the public by the Defendant. The statements must be materially false statements of fact concerning the Plaintiff that are defamatory. Further the Plaintiff must show that she has suffered damages as a result of the publication.

Clearly the comments listed and published by the Defendant are defamatory and false as they allege that the Plaintiff is selling illegal narcotics in the Town of Holland. The Plaintiff has stated in her verified complaint that said statements are false. The Defendant was notified promptly by the Plaintiff and her attorney that the statements were false and requested that they be removed. Notwithstanding this the Defendant refused both requests. The Plaintiff asserts that she has suffered significant emotional distress as a result of these allegations.

In the absence of any countervailing statement establishing the truth of the statement published by the Defendant it is likely that the Plaintiff will be successful on the merits of her claim.

II. Irreparable Injury:

The Plaintiff submits that she is suffering irreparable harm to her reputation by the continued publication of the comments. She has been contacted by parties within the Town concerning the allegations and others have refused to interact with her as a result of the allegations. The continuing publication of the comments are causing irreparable harm to the Plaintiff's reputation within the community.

III. Balance of Harm:

Currently the balance of harm caused by the denial of the preliminary injunction would be against the Plaintiff since her reputation will continue to be injured with the continuing

publication of the comments. There is no conceivable harm that could occur to the Defendant by the removal of the defamatory comments.

IV. Public Interest:

There is no conceivable public interest to be served by allowing the continued publication of the comments on the website. To the contrary the false accusations have injured the Plaintiff's reputation and no doubt have provided concern to members of the community who may feel that an individual is selling illicit drugs in the Town of Holland.

D. CONCLUSION:

For the above reasons Plaintiff respectfully requests that this Court enter a preliminary injunction ordering the Defendant to forthwith remove the comments on "The Holland Blog" dated June 21, 2011 at 17:28 by "the pushed upon", the comments posted on June 25, 2011 at 20:54 by "Betsy" the comment posted on June 26, 2011 at 10:52 by "someone who lives here" and the comment posted on June 27, 2011 at 8:26 by "The pushed upon" and such other relief as this Court deems just and appropriate.

Dated: July 22, 2011

NANCY CURVING

PLAINTIFF

By her attorney,

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