

CONFIRMED FILE DATE: 6/3/2011

2011 33403
CAUSE NO. _____

SP

NEIL C. McCABE,

PLAINTIFF,

v.

JOHN DOE, aka "SWIMS,"

DEFENDANT.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157 JUDICIAL DISTRICT

ORIGINAL PETITION

TO THE HONORABLE COURT:

NEIL C. McCABE, Plaintiff, complains of JOHN DOE, also known on the internet by the names "ONLY SWIM IN THE OCEAN," and "SWIMS" (hereinafter "SWIMS"), defendant, and for cause of action would show:

I.

PARTIES

Plaintiff McCABE is an individual residing in Harris County, Texas. McCABE resided in Harris County at the time of the defamation set out in this petition.

The residence of Defendant SWIMS is not known to Plaintiff.

II.

DISCOVERY PLAN

Discovery in this cause is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

III.

JURISDICTION AND VENUE

The amount in controversy in this cause exceeds the jurisdictional minimum of this Court. Jurisdiction is proper against SWIMS, because he committed, in whole or in part, a tort in the state of Texas.

FILED
Chris Daniel
District Clerk

JUN 03 2011

Time: 2:18 p
Harris County, Texas
By: we
Deputy

Unofficial Copy
Office of Chris Daniel District Clerk

Venue is proper in this county because Plaintiff resided in Harris County, Texas when the cause of action accrued.

IV.

FACTUAL BACKGROUND

This is a cause of action for defamation. Defendant SWIMS posted various false and defamatory comments on the TMZ.com website, accusing Plaintiff McCABE of criminal activity, specifically, of orchestrating a burglary of a private home (“Horizons”) in the Bahamas, formerly occupied by the late Anna Nicole Smith (“ANS”), and theft of electronic media (“EM”). The false and defamatory statements by SWIMS also accused McCABE of offenses such as subornation of perjury and bribery. The defamatory statements appeared on the TMZ thread entitled, “Anna Nicole Smith's Doc Breaks Silence,” and relevant excerpts from the statements read as follows:

1583.

McCabe/Clark had SB direct the baby Thompsons to steal ANS's EM. McCabe/Clark copied the hard drives immediately and then handed them back to FS who later turned them over to the Horry County Sheriff's Office. The edited 'Clown' video was produced by VA's people and distributed by them to all media that ever showed it. The depositions and docs of the SC are clear on this sequence of events.

The originals of ANS's EM were stolen and altered before the right people got them back. The 'Clown' video was shown during the preliminary hearing and clips were very briefly online at TMZ. All involved including the Judge saw that ANS moved in and out of character during the video and was not impaired as the highly edited versions shown via the TX cabal implied. The CA prosecutors would likely classify everyone with a TX accent as 'impaired' and prosecute them all if they were famous.

Posted at 8:27 PM on Oct 29, 2010 by Only swim in the Ocean

1621.

- Confirmed: SB and McCabe organized the looting of 'Horizons' to defame and damage HKS

SB's luck ran out when the additional discovery from her deposition that she was ordered to undergo revealed that she and McCabe/Clark were the real civil conspirators who deliberately used (and abused) their clients in order to defame and damage HKS while enriching themselves.

Posted at 3:29 PM on Nov 13, 2010 by Only swim in the Ocean

1631.

It is clear that SB/O'Q/McCabe/Clark were all working together since late 2006 when VA was mediawhoring and charging HKS and ANS with Daniel's death. The lightning fast looting of 'Horizons' with EM immediately turned over to O'Q/McCabe/BKD is the proof. Recall VA delayed annoying FL officials with a request for her daughter's body – her team was busy copying and altering stolen EM from 'Horizons' as part of their 'legal' tactic.

Posted at 6:21 PM on Nov 16, 2010 by Only swim in the Ocean

1823.

Regarding my SC case Update of 2-16-11

- Imagine the 'licensing fees for the 'Clown' video
- The numbers of crimes committed by VA's people to get, alter and distribute EM from ANS is large

Posted at 4:58 PM on Feb 16, 2011 by Only swim in the Ocean

1841.

On the other hand, the CA prosecutors and JB are likely as stupid as they look as they all bought into the perjured testimony McCabe/Clark had arranged and delivered to them. Renee Rose did suborn perjury repeatedly during HKS's criminal trial with the look of someone who thought she had the case locked up.

Posted at 6:22 PM on Mar 4, 2011 by Only swim in the Ocean

1873.

Well said, jm. LB has been used and abused by the TX cabal to an extent that defies comprehension. VA and her equally sick and twisted lawyers tried to buy DL! These creeps and lowlifes traded on crap lawyer con tactics that pervade America. Lies, suborned perjury, bribery, malicious rumors – nothing was beneath these disgusting people.

Everything in TX with O'Q's name on it should be torn down and buried with a stake through it in massive landfills full of cow sh_t. VA/McCabe/Clark should be sued for malicious defamation and every cent they now have or ever will have taken from them.

Posted at 11:11 PM on Apr 3, 2011 by Only swim in the Ocean

1882.

...

'Recently Mr. McC has handled extensive litigation stemming from the deaths of ANS and her son. He is quoted at length in THE KILLING OF ANS, a book by L. Seidlin.

Mr. McC is working on a book of his own, The Trials of ANS, in which he chronicles and legally analyzes, the many cases arising from her life and death, including several in which Mr. McC served as legal counsel.'

Posted at 12:35 PM on Apr 11, 2011 by jm

Thanks for the comic relief, jm. ☺

Amazing how a résumé can be fluffed up when you leave out such things as ***** indulging in bribery, theft, subornation of perjury and malicious defamation. His book should be a real page turner.

Posted at 2:52 PM on Apr 11, 2011 by Only swim in the Ocean

Swims,

Are the new scheduling dates in SC up for view yet?

I will be shocked if SB decides to not retain new counsel and ends up trying to defend herself.

The pending sanctions on her repetitious filings should have taught her a lesson. I was curious of what type of discovery would even be applicable in this type of case, and wouldn't discovery of any facts bring in her 'shared' parties collectively to be partially responsible for the wrongdoings?

One can always hope it will play out that way!

Thanks.

jm,

The new Jury Selection Deadline is 5-23-11.

SB appears to have no shame. ***** – her transfer of stolen EM to McCabe/Clark, her possible direct role in marketing the stolen EM, her role in providing 'enhanced evidence' to CA DOJ investigators and her role in arranging the looting of 'Horizons' in the first place is why she is a defendant.

Posted May 4, 2011 by Only swim in the Ocean.

[END OF QUOTED DEFAMATION]

KEY:

“SB” refers to Susan Brown, an Atlanta-area lawyer.

“FS” refers to Ford Shelley, a South Carolina developer, related to the “Thompsons.”

“HKS” refers to Howard K. Stern, executor of the estate of ANS (Vickie Lynn Marshall).

“O’Q” refers to the late John M. O’Quinn.

“Clark” refers to Don Clark, formerly an investigative strategist with the O’Quinn Law Firm.

“VA” refers to Virgie Arthur, mother of ANS and McCABE’s former client.

“SC” refers to South Carolina, the site of litigation regarding the Horizons house, in which SB, FS, and the Thompsons were defendants. That matter has settled.

“BKD” refers to a computer forensics company that was employed by the O’Quinn Law Firm and that was the target of a subpoena related to the “Horizons” litigation referred to above. That subpoena was quashed on a motion filed by McCABE in the following case in the Southern District of Texas: 4:09-mc-00086, Stern v. Shelley et al; Kenneth M. Hoyt, presiding; Date terminated: 03/25/2009.

V.
CAUSE OF ACTION: DEFAMATION

Plaintiff McCABE incorporates the factual allegations from Parts I through IV above.

Defendant SWIMS published false statements, presented as factual, that concerned McCABE and that were defamatory *per se*. While publishing these statements, Defendant SWIMS acted negligently. Alternatively, if it is shown that McCABE is a public figure, which he does not admit but specifically denies, Defendant published the defamatory statements with malice, as defined in constitutional law, *i.e.* with knowledge that they were false or with reckless disregard as to falsity.

Defendant directed the defamation into Texas, where he knew McCABE lived. As a direct and proximate result of Defendant's publication of the defamatory statements, McCABE's reputation has been damaged. McCABE brings this cause to recover a sum of money, as found by the trier of fact, which will compensate him for the damage caused by Defendant.

In the unlikely event this Court finds that the statements and publications made by the Defendant are not defamatory as a matter of law, then the audience to which they were directed to be defamatory reasonably could understand the statements as being an attempt to defame McCABE. As such, the statements are defamatory by implication.

VI.
EXEMPLARY DAMAGES

Defendant was grossly negligent in undertaking the actions ascribed to him in this petition. Alternatively, Defendant undertook those actions with malice as defined under Texas law and with malice as defined under constitutional law, *i.e.* with knowledge of the

falsity of the defamatory statements or with reckless disregard as to the falsity of the statements. Plaintiff brings this cause to recover a sum of money, as found by the trier of fact, which will serve as an example to other persons who may, in the future, be tempted to engage in similar unlawful conduct.

VII.

JURY DEMAND

Plaintiff demands a jury trial.

VIII.

REQUESTS FOR DISCLOSURE

Plaintiff requests that, within 50 days of service of citation, Defendant disclose the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

IX.

PRAYER

Plaintiff requests that, on final trial, he shall have the following:

- Judgment against Defendant for actual damages as found by the trier of fact;
- Judgment against Defendant for exemplary damages as found by the trier of fact;
- Prejudgment and postjudgment interest as provided by law;
- Costs of suit; and
- Such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

THE MCCABE LAW FIRM

By:  _____

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ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of Chris Daniel District Clerk