

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VIRGIE ARTHUR
PLAINTIFF

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v.

Civil Action No. 4:07-CV-03742

HOWARD K. STERN,
CBS STUDIOS, INC. and
KPRC HOUSTON,
DEFENDANTS

**RESPONSE TO MOTION TO QUASH AND/OR
FOR PROTECTION REGARDING MARCH 14 SUBPOENAS**

1. Plaintiff, Virgie Arthur, files this Response to Motion to Quash and/or for Protection Regarding March 14 Subpoenas (“Motion”), which Motion was filed by non-parties Nelda (“Rose”) and Kenneth Turner.
2. Ms. Arthur already has presented to this Court evidence of the Turners’ participation in a conspiracy to defame Ms. Arthur and their actions in that regard in Texas for the most part, online.¹ That the Turners played a key part of Howard K. Stern’s efforts against Virgie Arthur is further demonstrated by a “thank you” note from Bonnie Stern on Howard K. Stern’s behalf, addressed to “Rose and her husband.”²
3. The Motion characterizes one website, www.rosespeaks.com, and one weblog www.rosespeaks.com/rose-blog, as containing discussion of high-profile and celebrity court cases. That characterization is highly misleading. In reality, those sites were created and maintained for the purposes of supporting Defendant Howard K. Stern and of “destroying” Plaintiff Virgie Arthur and any person perceived by Ms. Turner as being

¹ See Amended Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts, incorporated by reference.

² See note attached as Exhibit A.

opposed to Stern's interests. Ms. Turner began discussing other celebrity cases on Mar. 5, 2008, only after she had been served with the initial subpoena in the present case.

4. The Motion avoids any mention of the other websites and e-mail addresses that are the subjects of the subpoenas, such as <http://www.atruerose.com>, which the Turners describe as an "adult site," and on which they display the motto "We're a porn-free kink site and proud of it." At least one of the e-mail addresses for which the subpoenas seek discovery, stormdnc@gmail.com, was associated with <http://www.atruerose.com>.³ At one point in the conspiracy to defame Virgie Arthur, Bonnie Stern, the sister of Defendant Howard K. Stern, directed the conspirators to send to the stormdncr e-mail address all of their research on Ms. Arthur and any other person perceived as being opposed to Defendant Stern.⁴ Bonnie Stern explained, "i can't have it all go to my personal email."⁵ That directive from Bonnie Stern caused concern among some of the conspirators, who did not wish to be associated with such a website, and some left the group as a result.⁶

³ See also <http://www.atruerose.com/people/stormdncr/stormdncr.htm> for a more clear explanation of the relationship of "stormdncr" to "atruerose."

⁴ See <http://annanicoleandhowardkstern.com/the-full-chat/>, attached as Exhibit B (edited by site owner):
 bonnie stern (5/18/2007 9:48:02 PM): i have an acct for you
 Mod #1 (5/18/2007 9:48:07 PM): cool
 Mod #2 (5/18/2007 9:48:11 PM): awesome
 Mod #2 (5/18/2007 9:48:24 PM): your fast,Bonnie
 bonnie stern (5/18/2007 9:49:02 PM): stxxxxncr@xxxxx.com
 Mod #2 (5/18/2007 9:49:15 PM): k
 bonnie stern (5/18/2007 9:49:21 PM): that is a good email and if further research needs to be done it will
 bonnie stern (5/18/2007 9:49:23 PM): for sure
 Mod #1 (5/18/2007 9:49:44 PM): ok...that is the one i have been sending my information to
 Mod #1(5/18/2007 9:49:47 PM): good
 bonnie stern (5/18/2007 9:50:24 PM): everything you send there is good

⁵ See Exhibit B <http://annanicoleandhowardkstern.com/the-full-chat/> [bonnie stern (5/18/2007 9:43:01 PM)].

⁶ See <http://annanicoleandhowardkstern.com/2008/02/a-not-so-quiet-departure/>, attached as Exhibit C. ("R" is Rose, a nickname for Nelda Turner.)

5. The Motion claims a first amendment privilege against a subpoena. Presumably, the motion is relying on the speech and/or press clauses of that amendment. Such reliance is misplaced. A civil litigant such as Ms. Arthur in the present case, has a right to obtain evidence through a subpoena, and the Motion does not attempt to explain what makes the Turners special, so that they do not fall under the usual exercise of the subpoena power for electronic discovery under Rule 45, FED. R. CIV. P.

6. The Motion claims a privilege under the Texas Constitution, but that document obviously has no force against a federal subpoena. The claim is specious.

7. The Motion also claims a common law privilege but does not tell the Court what privilege that might be.

8. The Motion further complains of the lack of a witness fee, but no fee is required for a documents-only subpoena or for persons, such as the Turners, whose attendance is not required at court. 28 U.S.C. § 1821.

9. The Motion incorrectly states that the subpoenas were not signed by an officer of the court. The Motion also states that the subpoenas were not delivered to counsel for the Turners, as counsel requested. The subpoenas have been delivered to counsel for the Turners.

Prayer

Plaintiff prays that the Motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 10th day of April 2008, a true and correct copy of the foregoing Response to Motion to Quash and/or for Protection Regarding March 14 Subpoenas served upon the following counsel electronically via the CM/ECF system:

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