

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

VIRGIE ARTHUR
PLAINTIFF

V.

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Civil Action No. 4:07-CV-03742

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

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR
LEAVE TO AMEND ORIGINAL PETITION (COMPLAINT) TO
ADD ADDITIONAL PARTY DEFENDANTS AND
JURISDICTIONAL FACTS**

Plaintiff Virgie Arthur moves this Court pursuant to Local Rule 7.2 and Rule 15 of the Federal Rules of Civil Procedure for leave to amend the Original Petition (Complaint), and in support thereof would show:

I.

Plaintiff desires to add to this action the following party defendants: Bonnie Stern, Art Harris, Nelda Turner, TMZ Productions, Inc., and Harvey Levin. Plaintiff Arthur also moves this Court for leave to amend the Complaint to add jurisdictional facts relating to Defendant Howard K. Stern.

Grounds for Amendment

1. Plaintiff has alleged that the original Defendants engaged in a conspiracy to defame her and did defame her.
2. After the filing of this action, Plaintiff discovered that the conspiracy had expanded to include several other individuals and/or entities, including but not limited to the following: Nelda Turner, Bonnie Stern, TMZ Productions, Inc., Harvey Levin, and Art Harris.
3. Nelda Turner, a Texas resident also known as “Rose” or “Cajunrose,” runs a website known as “Rose Speaks.”¹ Turner conspired with others with the express goal, in her own words, of “destroying”² the Plaintiff. In the words of a co-conspirator, they were “desperate for Virgie Arthur dirt. Anything to discredit her”³ As one co-conspirator put it, “when it came to digging up the dirt, no one had anything on us Our goal was to discover information about anyone that was opposed to Howard K. Stern or his interests Of course, it was even better when they had skeletons in their closets.”⁴ In furtherance of the conspiracy to

¹ <http://www.rosespeaks.com/rose-blog/>.

² Exhibit A, E-mail from cajunrose to Sweet Havana, April 11, 2007.

³ Exhibit A, E-mail from QV to vivian york, April 17, 2007.

⁴ <http://annanicoleandhowardkstern.com/2008/01/activists-for-howard-k-stern/>

destroy Plaintiff, Turner sought ways to tarnish the reputation of not only Plaintiff but also anyone whom she saw as being opposed to her brother Howard's interests.⁵ Turner and/or her co-conspirators sent to TMZ Productions/Harvey Levin a defamatory article that alleged Plaintiff had a son by her own step-brother.⁶ Turner corresponded with and took directions from Bonnie Stern, who took directions from her brother, Defendant Howard K. Stern. Turner was well aware that other co-conspirators lived in Texas, and she directed her defamatory efforts at Plaintiff's reputation, which she knew was centered in Texas. Turner recently wrote, "[I]t is my fervent hope that the legacy of this Anna Nicole Smith saga is those of us that sit behind a computer screen take responsibility for our words."⁷ Now is the time for her to take responsibility.

4. Bonnie Stern, the sister of Defendant Howard K. Stern, corresponded with and directed Turner and other conspirators with the goal of destroying Plaintiff's reputation.⁸ Bonnie Stern did so

⁵ Exhibit A, E-mail from Turner to Sweet Havana, Apr. 11, 2007.

⁶ <http://www.tMZ.com/2007/04/19/virgie-has-son-with-her-stepbrother/> (accessed Mar. 13, 2008).

⁷ <http://www.rosespeaks.com/rose-blog/?m=20080107>

⁸ Exhibit A, E-mails from Bonnie Stern to Sweet Havana and Rose, April 28, 2007.

at the direction of her brother, Defendant Howard K. Stern.⁹ In furtherance of the conspiracy to defame Plaintiff, Bonnie Stern republished Vickie Lynn Marshall's allegations of childhood abuse.¹⁰ Bonnie Stern was well aware that Turner and other co-conspirators lived in Texas, and she directed her defamatory efforts at Plaintiff's reputation, which she knew was centered in Texas.

5. TMZ Productions, Inc., a California corporation, and its Executive Producer/Managing Editor, Harvey Levin, received from Turner and/or other conspirators a false story that Plaintiff had married her own step-brother. TMZ/Levin published the story on their website, TMZ.com, under the title, "Virgie Has Son With Step-Brother,"¹¹ with the purpose of holding Plaintiff up to public ridicule. TMZ/Levin directed the defamatory publication at Plaintiff's reputation, which they knew to be centered in Texas. TMZ/Levin elicited thousands of comments to the story, many of them accusing Plaintiff of incest. TMZ/Levin also conducted an opinion poll and published the results as follows:

⁹ Exhibit A, Emales from Bonnie Ster to Sweet Havana and cajunrose dated April 8, 2007 and April 2, 2007

¹⁰ <http://web.archive.org/web/20070510050841/http://janedevin.com/2007/04/15/interview-with-bonnie-stern/>

¹¹ <http://www.tMZ.com/2007/04/19/virgie-has-son-with-her-stepbrother/> (accessed Mar. 13, 2008).

Virgie boinking David is...

Creepy 85%

No problemo 15%

Total Votes: 115,403

TMZ/Harvey Levin were aware that the defamatory story came from Texas, and that Plaintiff resides in Texas. They directed the defamation at Plaintiff's reputation, which they knew was centered in Texas.

6. Art Harris operates a website called "The Bald Truth."¹² He often appears on Entertainment Tonight, a production of Defendant CBS Studios, Inc. as a "special correspondent."¹³ On his website he has republished Vickie Lynn Marshall's defamatory statements in an article entitled, "Is Virgie Arthur A Grandmother With a Past? Volunteer Web Detectives Out to Investigate: Asking if Bahamas Social Services on The Case: Will Dannielynn Be Safe with Family in Texas?"¹⁴ Harris has claimed to be in direct contact with Defendant Stern, who, Harris says, shares with Harris his secret

¹² <http://www.artharris.com/>.

¹³ <http://www.etonline.com/celebrities/spotlight/2007/05/48334/>

¹⁴ <http://www.artharris.com/2007/04/22/is-virgie-arthur-a-grandmother-with-a-past-volunteer-web-detectives-out-to-investigate-asking-if-bahamas-social-services-is-on-the-case-will-dannielynn-be-safe-with-family-in-texas/>

thoughts.¹⁵ Harris's conspiratorial relationship with Stern also is demonstrated by the fact that Harris has received from Stern's representatives and has published certain documents that were under a protective order in a related case, incurring the disapproval of the federal district court in that case.¹⁶ His conspiratorial relationship with Turner and others and the expectation that he would be leaked documents are demonstrated by e-mails.¹⁷ Harris was aware that Turner and other co-conspirators live in Texas. Harris directed his defamatory statements at Plaintiff's reputation, which is centered in Texas.

7. Plaintiff wishes to amend the Original Petition (Complaint) to allege additional jurisdiction facts. Plaintiff has discovered that Defendant Howard K. Stern telephoned both Plaintiff and her niece in Texas, and that he made clear to the niece that he had seen Plaintiff interviewed by Nancy Grace. During that interview Plaintiff was introduced to the television audience as speaking to Ms. Grace from Plaintiff's home in Montgomery, Texas. Defendant Howard K. Stern was more involved in the conspiracy

¹⁵ <http://www.artharris.com/2007/10/11/howard-k-stern-unloads-on-larry-king-live-button-down-lawyer-wears-heart-on-his-sleeve-reveals-what-hes-been-telling-me-for-months/#more-513>

¹⁶Exhibit B.

¹⁷ Exhibit A, Email from cajunrose to Sweet Havana dated May 15, 2007..

to defame Plaintiff than was known previously, in that, through his sister, Bonnie, he directed the efforts of the aforementioned Texas conspirators.¹⁸ In conspiring to defame Plaintiff and in defaming her, Defendant Howard K. Stern was aware that Plaintiff lived in Texas, and he directed his defamation into Texas, where he knew Plaintiff lived. The facts as set out in this paragraph run counter to the testimony of Defendant Howard K. Stern in his jurisdictional deposition taken in this case. Defendant Howard K. Stern denied under oath that, at the time of his defamatory interviews with Vickie Lynn Marshall and Entertainment Tonight, he knew Plaintiff lived in Texas.¹⁹ He denied that his sister, Bonnie, was using the internet on his behalf,²⁰ and he denied that any bloggers were authorized to work on his behalf.²¹ The facts will show otherwise.

Authorities

There is no time limit for amendment under Rule 15 of the Federal Rules of Civil Procedure. The Rules require that “leave shall be freely given when justice so requires.” *Id.* The party seeking leave to amend need only

¹⁸ Exhibit A, Email from Bonnie Stern to Sweet Havana and cajunrose dated April 8, 2007 and April 2, 2007.

¹⁹ Exhibit C

²⁰ Exhibit C

²¹ Exhibit C

establish the reason why amendment is required. The burden then is on the party opposing the motion to convince the court that justice requires denial. *Shipner v. Eastern Airlines, Inc.* 868 F.2d 401, 406-07 (5th Cir. 1989) (“unless substantial reason exists to deny leave to amend, the discretion of the district court is not broad enough to permit denial”).

Justice requires leave to amend in the present case, because, otherwise, co-conspirators will escape liability. Amendment will not prejudice the opposing parties.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that this Court grant her leave to amend the Original Petition (Complaint) to add Nelda Turner, Bonnie Stern, TMZ Productions, Inc., Harvey Levin, and Art Harris. Plaintiff also prays that this Court grant her leave to add jurisdictional allegations regarding Howard K. Stern.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of March 2008, a true and correct copy of the foregoing Memorandum in Support of Plaintiff's Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts served upon the following counsel electronically via the CM/ECF system:

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