

| | |
|--|---|
| DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 | Δ COURT USE ONLYΔ |
| CANDY A. CAMPBELL, Plaintiff, v. BJORN K. BORGEN, Defendant. | Case Number 09 CV 0591 Courtroom 3 |
| Attorneys for Defendant: G.W. MERRICK & ASSOCIATES, LLC Glenn W. Merrick, No. 10042 Joseph T. Bernstein, No. 37753 Suite 912, 5445 DTC Parkway Greenwood Village, Colorado 80111 (303) 831-9400 (303) 771-5803 <i>fax</i> gwm@gwmerrick.com jtb@gwmerrick.com | |
| MOTION TO SEAL BORGEN’S “VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, ENJOINING PLAINTIFF TO REMOVE BLOG POSTINGS FROM THE INTERNET” AND RELATED PLEADINGS AND ORDERS | |

Pursuant to C.R.C.P. 121 § 1-5, Defendant/Counterclaim-Plaintiff, Bjorn K. Borgen (“Borgen”), through his undersigned counsel, G.W. MERRICK & ASSOCIATES, LLC, respectfully moves the Court for entry of an Order limiting public access to: (i) the “Verified Motion for Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, Enjoining Plaintiff to Remove Blog Postings from the Internet” (the “Motion for Injunctive Relief”) filed concurrently herewith; (ii) any responsive filings, briefs and memoranda related to the Motion for Injunctive Relief; and, (iii) any Orders of the Court subsequently issued which relate to the Motion for Injunctive for Relief. In support of this request, Borgen advises the Court as follows:

1. The undersigned certifies pursuant to C.R.C.P. 121 § 1-15(8) that he conferred with Plaintiff prior to filing the instant Motion. Plaintiff has stated that she is opposed to the relief requested herein.

2. C.R.C.P. 121 § 1-5 authorizes the Court to limit access to court files upon motion by any party and upon a showing that the harm to the privacy of a person in interest outweighs the public interest.

3. As set forth in more detail in the Motion for Injunctive Relief, filed concurrently herewith, Plaintiff has published on the Internet false, misleading and defamatory material respecting Borgen.

4. Colorado courts have recognized that potentially defamatory material is among that which can and should be restricted from public access, because the harm caused by potentially defamatory material outweighs the public's interest in such material. *Anderson v. Home Ins. Co.*, 924 P.2d 1123, 1127 (Colo. App. 1996) ("Generally, under the common law, a heightened expectation of privacy or confidentiality in court records has been found to exist [where] ... potentially defamatory material ... may be implicated"); *see also Daines v. Harrison*, 838 F.Supp. 1406, 1409 (D. Colo. 1993).

5. Borgen has a substantial interest in ensuring that the defamatory material published by Plaintiff is filed under seal because of the enormous injury that could result to his reputation and privacy if the information remains accessible to the public. Conversely, the public has no interest in access to untrue, misleading and defamatory material about Borgen.

6. Accordingly, the potential harm to Borgen outweighs the public interest and Borgen's Motion for Injunctive Relief and all related filings, including any Response and Reply briefs and memoranda, and any Orders issued by the Court related to the Motion for Injunctive Relief, must be filed under seal.

For the foregoing reasons, Borgen respectfully requests entry of an Order limiting public access to: (i) the Motion for Injunctive Relief and its exhibits; (ii) any responsive filings, briefs and memoranda related to the Motion for Injunctive Relief; and, (iii) any Orders of the Court subsequent issued which relate to the Motion for Injunctive Relief. A proposed Order is filed herewith for the consideration and convenience of the Court.

Dated: February 17, 2010.

G.W. MERRICK & ASSOCIATES, LLC

By: /s/ Glenn W. Merrick
Glenn W. Merrick, No. 10042

Attorneys for Bjorn K. Borgen

CERTIFICATE OF SERVICE

The undersigned certifies that on February 17, 2010, the foregoing MOTION TO SEAL BORGEN'S "VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, ENJOINING PLAINTIFF TO REMOVE BLOG POSTINGS FROM THE INTERNET" AND RELATED FILINGS AND ORDERS was served upon Plaintiff via e-mail transmission and U.S. mail, postage prepaid as follows:

Candy Campbell
1245 Eudora
Denver, Colorado 80220
candy@coloradowomen.org

/s/ Dyanna Spicher

In accordance with C.R.C.P. 121 '1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

| | |
|---|---|
| DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 | Δ COURT USE ONLYΔ |
| CANDY A. CAMPBELL, Plaintiff, v. BJORN K. BORGEN, Defendant. | Case Number 09 CV 0591 Courtroom 3 |
| ORDER | |

THIS MATTER, having come before the Court upon the Motion to Seal Borgen’s “Verified Motion for Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, Enjoining Plaintiff to Remove Blog Postings from the Internet and Related Filings and Orders” (the “Motion to Seal”) filed by Defendant on February 17, 2010; and,

THE COURT, having reviewed the Motion to Seal and the file and having determined that the relief requested in the Motion to Seal should be granted;

NOW, THEREFORE, the following records in this case are hereby ordered SEALED and shall be restricted from public access except upon further Order of this Court:

1. Defendant’s “Verified Motion for Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief, Enjoining Plaintiff to Remove Blog Postings from the Internet” dated February 17, 2010 (the “Verified Motion”) and its supporting exhibits;
2. All responsive filings, briefs and memoranda related to Defendant’s Verified Motion; and,

3. All Orders of the Court subsequently issued which relate to Defendant's Verified Motion.

Dated: _____, 2010.

BY THE COURT:

District Court Judge