

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	
VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, ENJOINING PLAINTIFF TO REMOVE PUBLICATIONS TO THE INTERNET	

Pursuant to C.R.C.P. 65, Defendant, Bjorn K. Borgen (“Borgen”), through his undersigned counsel, G.W. MERRICK & ASSOCIATES, LLC, respectfully moves this Court for entry of: (i) a temporary restraining order, and (ii) preliminary and permanent injunctive relief, directing that Plaintiff, Candy A. Campbell (“Campbell”), remove immediately various postings about Borgen and his wife, Katherine Borgen, that she has published to the internet.¹ Borgen further

¹ An earlier version of this Motion was prepared and tendered for filing back in February. The filing was delayed pending the Court’s consideration of Borgen’s Motion to file this motion under seal (due to the highly sensitive matters discussed herein). In the wake of the Court’s ruling denying the motion to file under seal, this motion is being submitted for filing in its present form.

prays for such other and further relief as may be appropriate under the prevailing circumstances. As grounds for this Motion, Borgen advises the Court as follows:

1. Certification Pursuant to C.R.C.P. 121, Section 1-15(8). The undersigned counsel for Borgen certifies that on Monday, February 15, 2010, he contacted Campbell via telephone (with Joseph T. Bernstein, Esq. and Dyanna Spicher also of G.W. MERRICK & ASSOCIATES, LLC, disclosed to Campbell as being on the speakerphone). The undersigned advised Campbell that he had recently learned of the publication by Campbell to the internet of certain materials that are materially false, profoundly defamatory and indescribably offensive. The undersigned inquired whether Campbell would immediately remove from the internet the publications and advised that if she declined to do so an appropriate motion seeking to compel her to do so would be filed with this Court due to the offensive and defamatory nature of the publications and the irreparable injury that they cause (past, present and future).

Campbell declared to Borgen's counsel that the postings had resulted in significant part because Borgen's counsel had not engaged in settlement discussions with her as she had proposed. Campbell further remarked that she would review the blog postings and determine at some unspecified time in the future whether she would remove them. Campbell responded later in the day representing that she has removed "Mr. Borgen's personal identity" from certain internet publications. However, Campbell admonished that she would "evaluate [her] rights to post before returning the site to its original content and before releasing new posts." See Exhibit A attached hereto.

From and after December of 2009, and continuing through the present, Campbell has continued to publish to the internet various "press releases," blog postings and other materials that expressly: (i) identify and target Borgen and his wife, and (ii) publish and republish Campbell's patently false, outrageous, highly offensive and libelous in the extreme allegations of "physical assault" and "sexual misconduct." Indeed, a "Google" search of "Bjorn Borgen" conducted on April 7, 2010 revealed that not less than five (5) separate Google entries for Campbell's shocking, reprehensible and libelous internet postings about Borgen and his wife appear in the first three pages of the Google website listings. See Exhibit B attached here.

I. The Borgen Media Litigation

2. The Borgen Media Lawsuit. The dispute out of which this extraordinary motion arises has a bizarre history. In May of 2007, Borgen Media, LLC filed a "plain vanilla" lawsuit against Siegel Media, LLC, a Colorado limited liability company for which Campbell is the sole member and manager. The suit was a collection suit seeking to enforce promissory notes evidencing \$200,000 in loans that Borgen Media, LLC had advanced to Siegel Media, LLC. *Borgen Media, LLC v. Siegel Media, LLC*, Case No. 07-cv-5335, Denver District Court (the "Borgen Media Lawsuit"). Siegel Media, LLC filed an Answer, Counterclaims and Third-Party Claims (alleging certain claims against Borgen).

3. Campbell Seeks to Extort Through Borgen's Wife. On about January 8, 2008, Campbell attempted to extort money from Borgen and his wife in the Borgen Media Litigation by sending personal correspondence to Ms. Borgen. In that correspondence, Campbell falsely alleged that Borgen had extended improper and unwelcome invitations for a personal relationship with Campbell. The thinly-veiled purpose of the letter was to propose that Campbell be "bought off" in respect of her unsubstantiated and scandalous allegations. Borgen and his wife refused to buckle; Campbell's letter to Ms. Borgen was ignored.

4. Campbell Utilizes Internet in an Effort to Extort. During the course of the Borgen Media Litigation, Campbell also attempted to extort money from Borgen by "trying the case in the media." In January of 2008, Campbell posted on the internet (at the "Free Press Release" website) one or more "press releases" misrepresenting the context and content of the Borgen Media Litigation. Campbell also published at that website that she was in the process of releasing details of Siegel Media's lawsuit against Borgen Media, LLC and Borgen seeking to hold both of them accountable for Siegel Media, LLC's closure, and seeking "\$3.7 million in damages." She further threatened to publish "a personal plea to Mrs. Kathy Borgen, the wife of Erik Borgen, as well as summary notes of ... personal accounts of controversial details." See Exhibit C attached hereto.

5. Upon discovery of the internet posting(s), Borgen's undersigned counsel was required to contact those sponsoring the "Free Press Release" website to demand that Campbell's postings be removed. Following exchange of e-mail correspondence, those sponsoring the "Free Press Release" website determined that Campbell's posting(s) should be taken down, and they were shortly thereafter removed.

6. Judgment Against Siegel Media. Eventually, Judge Michael Martinez dismissed the third-party claims asserted against Borgen in the Borgen Media Lawsuit. In May of 2008, Judge Martinez entered summary judgment in favor of Borgen Media, LLC and against Siegel Media, LLC for hundreds of thousands of dollars in monetary damages on all remaining claims alleged in the Borgen Media Lawsuit.

II. The Captioned Litigation

7. Campbell then initiated the captioned litigation against Borgen, on a *pro se* basis, in January of 2009. On July 16, 2009, this Court entered an Order dismissing, with prejudice, four out of the five claims for relief alleged in Campbell's Complaint. The only claim that could not be declared facially meritless at the inception of the suit is Campbell's putative claim for intentional infliction of emotional distress.

8. Campbell Refuses to Submit to a Mental Examination. Notably, Borgen's undersigned counsel has twice requested in e-mails to Campbell that she submit to a mental health examination under the provisions of C.R.C.P. 35(a). Campbell has twice refused, declaring that she does not believe that such an examination is "warranted." See Exhibit D attached hereto.

9. Campbell Returns to the Internet for Extortion. During February of 2010, in the course of communications with third parties that have had troubling dealings with Campbell, Borgen's undersigned counsel was alerted that Campbell had recently published to the internet disreputable, scandalous and libelous blog entries targeting Borgen. Upon investigation, it was also learned that these blog entries were easily accessed when one conducted a "Google search" of "Bjorn Borgen."

10. Even the most cursory review demonstrates that since December of 2009, Campbell has been publishing to numerous internet websites patently false, highly offensive and deeply scandalous allegations about Borgen and his relationship with Campbell (including false allegations of "physical assault" and "sexual misconduct"). These include publications to: (i) the EIN Presswire website, *see Exhibit E* attached, (ii) the Free Press Release website, *see Exhibit F* attached, and, most frequently, (iii) the WordPress website, *see Exhibit G* attached.

11. Campbell's blog postings on the internet are acutely defamatory and immeasurably injurious. They falsely assert -- in relatively graphic and repulsive detail -- that Borgen: (i) physically assaulted Campbell in approximately October of 2006, (ii) made unwanted sexual advances toward Campbell, and (iii) reneged on an agreement to provide hundreds of thousands of dollars in funding for Siegel Media, LLC because Campbell refused his unwelcome invitations for a personal and intimate relationship.² During investigation by Borgen's lawyers, it was learned that Campbell has a history and pattern of asserting inflammatory claims -- including an EEOC sexual harassment charge (arising out of former employment at Quick & Confidential, Inc. in Arizona), and claims relating to her personal and intimate life.

12. Campbell's internet publications are particularly pernicious and injurious to Borgen. He is often engaged in substantial and sophisticated domestic and international business and financial transactions (through Borgen Investment Group, Inc. and otherwise). In connection with these transactions and dealings, it is common for existing and potential business associates and their colleagues to conduct concentrated due diligence, including internet research, in respect of the proposed participants. Campbell knows this, and she understands full well that in such an environment it is perfectly foreseeable that her internet publications will acutely damage Borgen in respect of current and potential business dealings: (i) in ways that will be impossible to trace, and (ii) in amounts that will be impossible to calculate.

13. In conversations with Campbell, she has made it very plain that she intends to continue publishing her false, outrageous, highly offensive and destructive internet postings until she succeeds in extorting money from Borgen and his wife.³ Indeed, in perhaps the most recent of her internet publications at the WordPress website, Campbell: (i) re-publishes her false and scandalous

² Notably, Campbell omits that she failed to report any of her appalling allegations to the police or any prosecutorial body prior to the commencement of the captioned lawsuit.

³ When Borgen's counsel contacted Campbell to inquire as to her position on filing the instant motion under seal, Campbell continued to emphasize that the problem addressed here can be eliminated by payment to her.

allegations about Borgen, (ii) describes her recent deposition of Borgen's wife and attacks Ms. Borgen as disinterested, disaffected and dismissive of victims of alleged sexual misconduct by Borgen. *See Exhibit H* attached. This publication is so far beyond insulting and offensive that the English language is taxed.

14. As a direct consequence of Campbell's internet publications postings in and after December of 2009, Borgen will in the days ahead be filing with this a separate lawsuit against Campbell pursuing claims for defamation, extortion and abuse of process. In the meantime, however, and in this suit, Borgen is entitled to a temporary restraining order, and preliminary and permanent injunctive relief, enjoining Campbell to remove these highly damaging internet publications.

III. The Appropriateness of the Injunctive Relief Sought

16. This Court is empowered by C.R.C.P. 65(b) to enter temporary restraining orders. These orders may enter *ex parte*, but such orders are limited in their duration to ten (10) days. C.R.C.P. 65(b). Entry of a temporary restraining order requires that Borgen show specific immediate and irreparable harm will occur absent the order. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004), *citing McLean v. Farmers' High Line Canal & Res. Co.*, 98 P. 16, 20 (Colo. 1908).

17. Entry of a preliminary injunction requires that Borgen demonstrate: (a) a reasonable probability of success on the merits, (b) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief, (c) lack of a plain, speedy, and adequate remedy at law, (d) no disservice to the public interest, (e) balance of the equities in favor of the injunction, and (f) the injunction will preserve the *status quo* pending trial on the merits. *City of Golden*, 83 P.3d at 96, *citing Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982).

18. Borgen Has a Reasonable Probability of Success on the Merits. The gravamen of Campbell's intentional infliction of emotional distress claim is that Borgen allegedly advanced inappropriate and unwelcome invitations for the two to become engaged in a personal and intimate relationship, and that as a result Campbell suffered severe emotional distress. However, the sworn evidence will establish: (a) Borgen *never* advanced any such invitation or suggestion, (b) two months *after* Campbell alleges that she was "sexually assaulted" by Borgen at Capital Grille,⁴ she sent Borgen an e-mail professing that she was "personally" disappointed that he was not showing her much attention and that she "does not manage personal relationships" very well, and that she has "become accustomed to [Borgen's] attention as well as advice," *see Exhibit I* attached hereto, and (c) a few months later another lender to Siegel Media, LLC (Stephen Scaringe of SAS Capital) was required to refuse to accommodate Campbell's request to discuss "personal issues" and was required to insist that Campbell "not leave any more voice messages and do not come by my house again."

⁴ Recently, Campbell has gone to the extreme of filing a criminal complaint (which she has never attempted before) with the Denver District Attorney's Office alleging that she was "sexually assaulted" by Borgen at Capital Grille in November of 2006. She offers no explanation for her failure to file a criminal complaint in respect of this putative "sexual assault" for some 3½ years.

See Exhibit J attached hereto. And, of course, Campbell refuses to voluntarily submit to a mental health examination to investigate any alleged “emotional distress” damages.

19. Borgen Will Suffer Real, Immediate and Irreparable Injury. Absent entry of the requested injunctive relief, Borgen will suffer real, immediate and irreparable injury that may be prevented by injunctive relief. Irreparable harm “is a pliant term adaptable to the unique circumstances that an individual case might present.” *Gitlitz v. Bellock*, 171 P. 3d 1274, 1278-79 (Colo.App. 2007). Were the injunctive relief sought here to be denied, Borgen and his associates and affiliates are likely to be materially prejudiced in their ability to conduct business both domestically and internationally. Anyone who conducts even the most rudimentary internet search using the term “Bjorn Borgen” will uncover Campbell’s highly defamatory and offensive blog postings. Discovery of these postings is likely to cause Borgen – and his affiliates and colleagues – to lose important and profitable business and financial opportunities (or to have them materially delayed while Borgen attempts to explain the postings at great expense, embarrassment and inconvenience). The loss and injury that will be sustained is likely not susceptible of any reasonably accurate calculation and presentation. *American Television & Communications Corp. v. Manning*, 651 P.2d 440, 445-46 (Colo.App. 1982)(injury to reputation is type of irreparable harm that can be avoided by preliminary injunctive relief).

20. Borgen Has No Plain, Adequate and Speedy Remedy at Law. Borgen lacks any plain, adequate and speedy remedy at law for at least two compelling reasons. First, it would be nearly impossible to: (i) identify all business and opportunities that are lost as a result of prospects eschewing dealings with Borgen and his affiliates in response to Campbell’s blog postings, (ii) calculate with any degree of accuracy the monetary value of the lost profit associated with such business and financial opportunities. The Court of Appeals has opined that an injunction may be appropriate “where monetary damages are difficult to ascertain or where there exists no certain pecuniary standard for the measurement of the damages.” *Gitlitz*, 171 P.3d at 1279. Moreover, Campbell has testified in deposition in the captioned case that she is impecunious, receives public assistance and has begun cohabitating with a male companion (Stephen Oakes) in order to support Campbell and her minor son. See Exhibit K attached hereto. Cf. *American Investors Life Ins. Co. v. Green Shield Plan, Inc.*, 358 P.2d 473, 476 (Colo. 1960) (affirming preliminary injunctive relief that prevented insolvent defendant from dissipating assets). The Colorado Court of Appeals has instructed that “an injunction is available as equitable relief if there is no legal remedy that provides full, complete, and adequate relief.” *Gitlitz*, 171 P.3d at 1279.

21. The Requested Injunctive Relief Will Not Disserve the Public Interest. In this case, the requested injunctive relief will not disserve the public interest. It requests only the removal of a very limited number of materially misleading blog postings that have been carefully crafted by Campbell to extort money from Borgen with inflammatory allegations that severely prejudice his ability to conduct significant business and financial transactions, both domestically and abroad. Indeed, the content of the blog postings is known in many respects to be false.⁵

⁵ For instance, and without any attempt to be exhaustive here, in her string of blog postings, see Exhibit G attached, Campbell states that in the Borgen Media Litigation she there were “thirty five motions filed, approximately

22. The Balance of Equities Favors the Injunction. On any balancing of the equities, it is certain that the equities favor entry of the requested injunctive relief. Any harm to Campbell in requiring her to remove the subject blog postings is truly *de minimus*. There is virtually no restriction on Campbell that affects her life or interests to any appreciable extent. Conversely, entry of the requested injunctive relief will relieve Borgen of the prospect of immediate, palpable, continuing and very substantial prospect of substantial economic loss and injury which is not subject to identification, particularization and measurement. Accordingly, the harm – if indeed any – to Campbell from entry of the injunctive relief is substantially outweighed by the ongoing injury to Borgen from failing to enter the injunctive relief.

23. The Injunction Will Preserve the Status Quo. Finally, entry of the requested injunctive relief will preserve the *status quo*. Entry of the injunction will not impact the merits of the litigation in any respect whatsoever. The only impact that it will have is to eliminate a lever for ongoing efforts by Campbell to extort monetary compensation from Borgen.

WHEREFORE, Borgen respectfully prays that this Court promptly enter: (i) a temporary restraining order, (ii) a preliminary injunction, and (iii) a permanent injunction, enjoining Campbell to remove immediately the blog postings described herein from the internet. Borgen further prays for such other and further relief as may be appropriate under the prevailing circumstances.

Dated: April 7, 2010.

G.W. MERRICK & ASSOCIATES, LLC

By: /s/ Glenn W. Merrick

Glenn W. Merrick, No. 10042

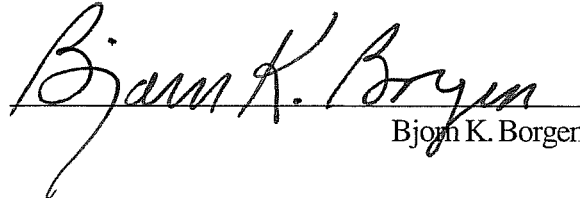
ATTORNEYS FOR DEFENDANT, BJORN K.
BORGEN

twenty-eight were filed pro se the three weeks before trial ...” A review of the Court’s file demonstrates beyond peradventure that these statements are flatly incorrect.

VERIFICATION

Bjorn K. Borgen, the Defendant in the above-captioned litigation, being first duly sworn, deposes and states that he has read the allegations of fact in the above VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, ENJOINING PLAINTIFF TO REMOVE PUBLICATIONS TO THE INTERNET. Pursuant to 28 U.S.C. §1746, Bjorn K. Boren declares under penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2010.


Bjorn K. Borgen

CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2010, the foregoing VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT INJUNCTION, ENJOINING PLAINTIFF TO REMOVE PUBLICATIONS TO THE INTERNET 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.