Xcentric Ventures, LLC, et al., v. Richeson Doc. 72

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

XCENTRIC VENTURES, LLC, an Arizona limited liability corporation, and JABURG & WILK, P.C., a professional corporation, Plaintiffs, v. SHAWN RICHESON, Defendant.	Case No.: 2:10-cv-1931-PHX-NVW **RESPONSE TO MOTION FOR LEAVE OF COURT TO PURSUE NEW COUNTERCLAIM**

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Plaintiff Xcentric Ventures, LLC, opposes Richeson's Motion for Leave of Court to Pursue New Counterclaim - Witness Tampering because the Motion is, (1) interposed to further defame Xcentric and its counsel and not for any proper purpose; (2) entirely without merit; and (3) procedurally improper.

Since the beginning of this litigation, Defendant Richeson has exploited this Court as a forum for disseminating his defamatory messages. Richeson is very familiar with the PACER system and immediately understood that this lawsuit gave him a pulpit to publicize false accusations. Now that Xcentric has moved to dismiss claims, Richeson

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realizes that his game is almost at an end. Thus, his final move was to cast false and vile dispersions on Xcentric and its counsel, in the most public way possible.

Let it be absolutely clear, Richeson is lying. His accusations are false and he knows it. He is intentionally manipulating the judicial system to defame his adversary.

Neither Maria Speth, nor Adam Kunz would ever suborn perjury from a witness, nor pay a witness for false testimony. They never have, and never would. Neither has ever been involved in witness tampering. Nor has Xcentric tampered with witnesses.

To be perfectly clear, Adam Kunz did not tell Richeson that he had intimidated Mike Podolsky. Mr. Kunz has never spoken to Mike Podolsky, and never has intimidated that person in any way. Mike Podolsky is not a witness in this case, and there is no basis to think that he is. Everything that Mr. Richeson states in that regard is a deliberate lie.

Neither is James Rogers a witness in this case, and there is no basis to believe that he is. Rogers struggles with drug addiction, and during a period of relapse he claimed he had performed work for Xcentric and had not been paid in full. Adam Kunz negotiated a resolution of that claim with Rogers. Adam Kunz did not intimidate James Rogers in any way.

However, Richeson, with full knowledge that Rogers was under the influence of drugs, offered Rogers bribes for information damaging to Xcentric and Ed Magedson. And, Richeson taped himself doing that. In the course of investigating those circumstances, Adam Kunz requested Rogers to give a statement under oath in front of a court reporter, which Rogers agreed to do. Rogers was not paid for answering Adam Kunz's questions. Apparently, Rogers' sworn statement did not agree with what Richeson attempted to solicit with bribes and Richeson decided to retaliate against Xcentric and its attorneys.

Richeson knows that false allegations that attorneys paid a witness to lie or even told a witness to lie could be very damaging to the attorneys. Richeson has been convicted of dishonest crimes in the past, has served time, has demonstrated his propensity to lie and twist the truth to this Court, has offered bribes to drug addicts, and

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has committed extortion. Thus, he knows he has no personal credibility and he tried to bolster his false accusation by claiming that he has counsel's own admission on a tape recording. Richeson's allegations, the claim of an admission by counsel, and the claim of audio- taped proof are all pure fiction.

Richeson has repeatedly demonstrated his propensity for dishonesty. For example, his description of events which occurred in open court, on the record, were grossly exaggerated. (See Document 66). The Court recognized that Richeson completely mischaracterized the Courts own statements. Richeson's accusations and description of the events related to Mike Podolsky, James Rogers, and Adam Kunz is even further from reality.

In addition to being entirely without merit and interposed for an improper purpose, the Motion is procedurally improper. Rule 15 of the Local Rules of Practice for the District of Arizona provides that a motion to amend a pleading must have attached to it the proposed pleading, redlined to show the changes. Absent submission of the proposed pleading, it is impossible for Plaintiff to determine whether the proposed amendment would be futile because the pleading fails to state a claim. Richeson's motion should be denied.

Finally, it should be noted that the Court has specifically cautioned Richeson that it is inappropriate to mail pleadings to counsel's home address. (Document 69). Yet, Richeson' pleading reflects that it was mailed to Attorney Speth's home address. (As of the date of this response, the pleading has not been received by mail.)

For all of the foregoing reasons, Xcentric requests that the Court deny Richeson's leave to file counterclaim.

DATED this 22nd day of December, 2010.

JABURG & WILK, P.C.

s/Maria Crimi Speth
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Certificate of Service

I hereby certify that on the 22nd day of December, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

I have also caused to be delivered to Defendant, who is not registered with the CM/ECF System, a copy of the attached document by First Class Mail and E-Mail:

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s/Debra Gower

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