

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **10-cv-02083-JLK**

PEIKER ACUSTIC, INC. and
PEIKER ACUSTIC GMBH & CO. KG,

Plaintiffs/Counterclaim Defendants,

v.

PATRICK KENNEDY,

Defendant/Counterclaimant.

NUNC PRO TUNC ORDER

Kane, J.

This matter is currently before me on Plaintiffs' Motion for Voluntary Dismissal with Prejudice (doc. 112). Plaintiffs seek dismissal of their claim for defamation against Defendant Patrick Kennedy.

Because Defendant objects to the voluntary dismissal of Plaintiffs' claims, Plaintiffs' complaint may be dismissed only by a court order. Fed. R. Civ. P. 41(a)(2). Furthermore, because Defendant has pleaded a counterclaim before being served with Plaintiffs' motion, Plaintiffs' claim may be dismissed only if the counterclaim can remain pending for independent adjudication. *Id.*

Upon consideration of Plaintiffs' motion and the grounds state therein, their motion is GRANTED. Their defamation claim against Patrick Kennedy is DISMISSED WITH PREJUDICE.

In light of Defendant's objection, however, I condition this dismissal upon the following terms:

1. Plaintiffs relinquish any past, present, or future right to sue ("covenant not to sue") Defendant for any statement either in or arising out Defendant's book, *IdeaJacked*, his publication of the book, or this litigation.
2. Plaintiffs' covenant not to sue extends to all jurisdictions, both foreign and domestic.
3. Plaintiffs' covenant not to sue extends to criminal, civil, and administrative proceedings.
4. Plaintiffs' covenant not to sue extends to both oral and written statements by Defendant.

Issues relating to the allocation of attorney fees and costs will be reserved pending resolution of Defendant's counterclaims for abuse of process and exemplary damages.

DATED: April 4, 2012 (Nunc Pro Tunc)

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Court Judge