

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 2:04-cv-47-FtM-34SPC

WHITNEY INFORMATION
NETWORK, INC., a Colorado corporation,

Plaintiff,

v.

XCENTRIC VENTURES, LLC., an
Arizona limited liability company;
BADBUSINESSBUREAU.ORG, an
Arizona limited liability company; and
ED MAGEDSON, an individual,Defendants.

**PLAINTIFF'S MOTION FOR LEAVE OF COURT TO CONDUCT ADDITIONAL
DISCOVERY AND TO THEREAFTER SUPPLEMENT ITS RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Whitney Information Network, Inc. ("WIN"), hereby moves this Court for leave to conduct additional discovery and to thereafter supplement its Response to Defendants' Motion for Summary Judgment, etc. as follows:

On September 10, 2007, WIN filed its Response to Defendants' Motion for Summary Judgment, etc. [Doc. No. 141] On October 24, 2007, defendants filed an Eratta [sic] Sheet with regard to defendant, Ed Magedson's, deposition [Doc. No. 157] in which Mr. Magedson altered his deposition testimony on a material issue. During his deposition Mr. Magedson testified that he did not author emails which he now acknowledges he did. *Id.*; Transcript of August 1, 2007, deposition of Ed Magedson ("Magedson Transcript") at pp. 189-193 (a copy of which is attached hereto as Exhibit 1). In these emails Mr. Magedson solicits a posting on the Ripoff Report website at issue ("This is great... Can you post something or part of this e-mail below. This would be great and

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would definitely piss them off!” and “Can you file your own detailed Rip-off Report? Your info WIL[L] NOT BE REVEALED! You are a source of info for you.”). Magedson Transcript at pp. 189-193 & Exhibit 12 (a copy of which is attached hereto as Exhibit 1). Such solicitation precludes defendants from utilizing immunity pursuant to the Communications Decency Act, 47 U.S.C. § 230(c)(1). Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 489 F.3d 921 (9th Cir. 2007); MCW, Inc. v. Badbusinessbureau.com, L.L.C., 2004 WL 833595 at *9 (N.D. Tex. 2004); 47 U.S.C. § 230. This is a substantial issue raised in defendants’ summary judgment motion. WIN took all reasonable action to ask Mr. Magedson about this but was precluded from doing so because of Mr. Magedson’s false testimony. WIN should be afforded an opportunity to once again ask Mr. Magedson about this and, hopefully this time, obtain his true testimony. Liberty/Sanibel II Limited Partnership v Gettys Group, Inc., 2007 WL 1109274 (M.D. Fla. 2007). Since Mr. Magedson is the sole cause of this situation, he should pay the fees and costs incurred by WIN to conduct this inquiry (WIN specifically desires to conduct this deposition in person and videotaped (as it previously conducted Mr. Magedson’s deposition) as it anticipates that Mr. Magedson’s deposition testimony will be used as his trial testimony and WIN is entitled to present such testimony in the format of its choice). Once this is completed, WIN should then be afforded an opportunity to supplement its response to defendants’ motion for summary judgment.

WIN’s counsel has conferred with defendants’ counsel, who have indicated that they oppose the relief requested herein.

WHEREFORE, Whitney Information Network, Inc. respectfully requests that this Court enter an order (i) granting it leave to conduct and directing defendant, Ed Magedson, to reappear for deposition, (ii) requiring Ed Magedson to pay the fees and costs incurred by Whitney

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Information Network, Inc. to have its counsel to return to Phoenix, Arizona to conduct such deposition, (iii) permitting Whitney Information Network, Inc. to supplement its response to defendants' motion for summary judgment after its conducts Ed Magedson's reopened deposition, and (iv) granting all other relief this Court deems just and appropriate.

October 31, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2007, I electronically filed the forgoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day upon all counsel of record identified on the Court delineated Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Shawn L. Birken
Shawn L. Birken

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