	Distri	CT OF MAINE	
SHANA SANDLER, v.	Plaintiff)))))	Case No. 1:07-cv-00029
MIA CALCAGNI et al,	Defendants)))	
		,	

United States District Court

PLAINTIFF'S STATEMENT OF MATERIAL FACTS

Plaintiff Shana Sandler submits the following Statement of Material Facts in support of her Motion for Partial Summary Judgment asking this Court for a determination that Defendant Booksurge, LLC is the publisher of the book "Help Us Get Mia" and, as the publisher, is liable for any defamatory statements contained in the book.

- 1. Shana Sandler is a resident of High Point, North Carolina. Affidavit of Bernard J. Kubetz ("Kubetz Aff."), Ex. 5, Affidavit of Shana Sandler ("Sandler Aff.") at ¶ 1.
- 2. Shana Sandler attended Maranacook Community High School in Readfield, Maine and graduated from Winthrop High School in Winthrop, Maine. Kubetz Aff., Ex. 6, Deposition of Shana Sandler (Nov. 2, 2007) ("Sandler Dep.") at 10:16-23.
- 3. Booksurge is a book manufacturer, publisher and distributor located in Charleston, South Carolina. Kubetz Aff., Ex. 1, Deposition of David I. Symonds (Feb. 14, 2008) ("Symonds Dep.") at 10:23-25; 11:20-22; 15:14-20; 26:1-13; 28:1-15; 28:24-25; 30:24-25; 31:1-

¹ Citations to deposition transcripts are to page:line

- 20; Kubetz Aff., Ex. 7, "Help Us Get Mia" at BS000046; Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003;
- 4. "Help Us Get Mia" is a book that purports to depict Shana Sandler and to chronicle several events in her life during her time as a student at Maranacook High School and Winthrop High School, including her interactions with Mia Calcagni. Kubetz Aff., Ex. 5, Sandler Aff. at ¶¶ 7-8; Kubetz Aff., Ex. 7, "Help Us Get Mia", passim.
- 5. The book "Help Us Get Mia" contains a number of false and defamatory statements about Shana Sandler. Kubetz Aff., Ex. 5, Sandler Aff. at ¶¶ 10-11.
- 6. The book "Help Us Get Mia" identifies "Emet Gabar" as the author of the book but the agreement to produce the book was made between Booksurge, LLC and Ralph Calcagni in the form of an "Author Publishing Agreement." Kubetz Aff., Ex. 7, "Help Us Get Mia" at BS00045; Kubetz Aff., Ex. 1, Symonds Dep. at 47:6-9, 48:6-14; Kubetz Aff., Ex. 4, Symonds Dep. Ex. 4 at BS000001 BS000007.
- 7. In the "Author Publishing Agreement," Ralph Calcagni granted Booksurge a non-exclusive license to publish "*Help Us Get Mia*" in print. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000002.
- 8. The "Author Publishing Agreement" between Ralph Calcagni and Booksurge provides that Booksurge reserves the right, in its sole discretion, not to accept a submission upon receipt. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003.
- 9. The "Author Publishing Agreement" between Ralph Calcagni and Booksurge provides that Booksurge intends to market "*Help Us Get Mia*" on its website and make the book available for distribution in various channels. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003.

- 10. The copyright page of the book "Help Us Get Mia" identifies that the book was "published by Booksurge, LLC" in 2006. Kubetz Aff., Ex. 7, "Help Us Get Mia" at BS00046; Kubetz Aff., Ex. 1, Symonds Dep. at 25:19-25.
- 11. Part of Booksurge's role in "Help Us Get Mia" included making the book available to the public by listing it for sale on Amazon.com and by listing it for sale through the book distributor Baker & Taylor and the retailer Abe & Aliris. Kubetz Aff., Ex. 1, Symonds Dep. at 26:1-13; 28:1-15; 28:24-25; 30:24-25; 31:1-20.
- 12. REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED. Kubetz Aff., Ex. 2, Symonds Dep. Ex. 2 at BS000494 BS000502.
- 13. Booksurge actively solicits new titles through its sales department and personnel. Kubetz Aff., Ex. 1, Symonds Dep. at 16:25, 17:1-4; 20:17-23; 34:21-25, 35:1-21.
- 14. In 2007 Booksurge increased the titles it produced by 360,000 titles for a total of 480,000 titles in its inventory and which it could list for sale through Amazon.com. Kubetz Aff., Ex. 1, Symonds Dep. at 36:1-7; 36:13-25.
- 15. Booksurge produces books without regard for their content and does not review or screen manuscripts before producing a book. Kubetz Aff., Ex. 1, Symonds Dep. at 37:15-22; 38:1-22.
- 16. Booksurge made no efforts to review or screen the content of "Help Us Get Mia." Kubetz Aff., Ex. 1, Symonds Dep. at 39:22-25; 40:1.
- 17. Booksurge did not check any of the facts or attempt to verify any of the information contained in "*Help Us Get Mia*." Kubetz Aff., Ex. 1, Symonds Dep. at 40:2-13.

18. Unless a manuscript is not in a physical format that enables Booksurge to print it, Booksurge is willing to print, publish and distribute any books submitted to it for publication. Kubetz Aff., Ex. 1, Symonds Dep. at 38:2-19.

19. Booksurge employee Roy Francia sold the publishing process for "Help Us Get Mia" to Defendants Ralph and Maureen Calcagni and spoke with them a number of times on the telephone concerning the production of the book. Kubetz Aff., Ex. 1, Symonds Dep. at 20:3-5; 20:22-23; 21:7-24.

Dated at Bangor, Maine, this 5th day of March, 2008.

PLAINTIFF, Shana Sandler,

By____/s/ Bernard J. Kubetz

Bernard J. Kubetz, Esq.
Michael R. Clisham, Esq.
EATON PEABODY
P. O. Box 1210
80 Exchange Street
Bangor, Maine 04402-1210
(207) 947-0111
bkubetz@eatonpeabody.com
mclisham@eatonpeabody.com

CERTIFICATE OF SERVICE

I, Bernard J. Kubetz, hereby certify that on March 5, 2008 I electronically filed the foregoing Plaintiff's Statement of Material Facts with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

Bruce Mallonee, Esq.
Rudman & Winchell, LLC
84 Harlow Street
P. O. Box 1401
Bangor, Maine 04402-1401
bmallonee@rudman-winchell.com

Steven P. Wright, Esq.
Kirkpatrick & Lockhart Preston Gates Ellis LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2950
steven.wright@klgates.com

Matthew J. Segal, Esq. Stephen A. Smith, Esq. Kirkpatrick & Lockhart Preston Gates Ellis LLP 925 Fourth Avenue, Suite 2900 Seattle, Washington 98104-1158 matthew.segal@klgates.com

J. William Druary, Jr., Esq. Marden, Dubord, Bernier & Stevens 44 Elm Street P. O. Box 708 Waterville, Maine 04903-0708 bdruary@mardendubord.com

Harold J. Friedman, Esq. Friedman, Gaythwaite Wolf & Leavitt Six City Center P. O. Box 4726 Portland, Maine 04112-4726 hfriedman@FGWL-law.com

/s/ Bernard J. Kubetz_____

Bernard J. Kubetz