

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Docket No.: 06 CA 1137 MLW

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U.S. DISTRICT COURT
DISTRICT OF MASS

Christine Varad,
Plaintiff,

v.

Reed Elsevier Incorporated,
d.b.a. *Lexis Nexis Corporation*,
Lexis Nexis Accurint,
Defendant.

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUBSTITUTION OF SEISINT, INC. FOR DEFENDANT REED ELSEVIER, INC. AND RELATED REQUEST FOR DISMISSAL OF COMPLAINT AGAINST REED ELSEVIER, INC.

Plaintiff opposes Defendant's motion to substitute Seisint, Inc. for the named party, Reed Elsevier, Inc. and responds by stating the following:

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- (1) Plaintiff did not incorrectly name the defendant in the instant action:
- (2) Assertions made by John Byrne June 20, 2006, response to the Plaintiff's 93A demand letter constitute admissions by a party opponent sufficient to establish Reed Elsevier, Incorporated, d.b.a. Lexis Nexis Corporation, Lexis Nexis Accurint as the properly defendant;
- (3) Even if Seisint, Inc. has rights or interests in the Accurint database and/or related information concerned in the instant action, pursuant to Fed. R. Civ. P. 17, Reed Elsevier, Inc. (Reed") is the real party in interest, and as such, the complaint against "Reed" should not be dismissed; and
- (4) John Byrne should be estopped from improperly applying multiple conflicting fiduciary and agency roles and duties as Director and Senior Corporate Counsel of

Lexis Nexis, Lexis Nexis Accurint and as Director and Senior Corporate Counsel of Seisint, Inc. to intentionally obscure and make ambiguous his corporate responsibilities and identities to enable him to submit conflicting affidavits relative to Plaintiff's 93A claims.

In support for this motion Plaintiff relies on the June 20, 2006, written response of John M. Byrne, functioning as Director and Senior Corporate Council for Lexis Nexis Accurint to the plaintiff's M.G.L. c. 93A demand letter. See: Exhibit A.

Mr. Byrne's letter is (1) addressed to the Plaintiff, (2) written on stationary clearly displaying the Lexis Nexis trade mark, a federal trademark exclusively registered to Reed Elsevier, Inc., See: Exhibit B, (3) contains an email address where Byrne can be reached at Lexis Nexis Corporation, See: Exhibit C, State of Ohio, Lexis Nexis Trade Name filing; "john.byrne@lexisnexis.com", (4) contains the following land contact address information: "6601 Park of Commerce Boulevard, Boca Raton, Florida 33487" (5) includes a web site address contact: "www.lexisnexis.com," and finally (8) included a telephone number, 561 999 4436, where Plaintiff sought to contact Byrne, and spoke with an employee who identified herself to the Plaintiff on as John Byrne's secretary and identified the company contacted as "Lexis Nexis" and "Lexis Nexis Accurint." The entity "Seisint, Inc." was never, at any time, even mentioned to the Plaintiff. See: Exhibit D, Varad Affidavit ¶ 1.

Byrne's June 20, 2006 letter to Varad was intended to function as the response of Lexis Nexis Accurint to Plaintiff's M.G.L. c. 93A demand letter. The letter contains multiple evidentiary party-opponent admissions and serves as a confirmation by the director and corporate counsel of Lexis Nexis regarding the role, interests and responsibilities of Lexis Nexis, Lexis Nexis Accurint concerning the allegations of Plaintiff's 93A demand letter. As corporate director and legal council, Byrne was fully aware that his letter to the Plaintiff would define the responsibilities of his corporation and client, Lexis Nexis Corporation, including specific

assertions as to the location of his office, his contact information, and the role of his corporation Lexis Nexis and Lexis Nexis Accurint in relation to the allegations contained in Plaintiff's demand letter. Byrne also knew or should have known that Plaintiff would rely on the legal assertions contained in that response letter especially where they were made by the functioning Director and Senior Corporate Counsel of Lexis Nexis Corporation, Lexis Nexis Accurint in determining the correct party to name as a defendant in a resultant lawsuit should legal action pursuant to the letter become unavoidable to protect her rights and interests.

As Director and Senior Corporate Counsel, John Byrne was aware that his written assertions in his response to Plaintiff's 93A demand letter would subsequently be considered evidentiary "party opponent admissions" concerning his corporation and that such would serve to ratify and confirm the role of Lexis Nexis concerning the allegations contained in Plaintiff 93A demand letter as to Lexis Nexis and Lexis Nexis Accurint.

"Massachusetts practice permits a party's own statement to be offered as evidence against him or her as an exception to the hearsay rule. *McNaught, Massachusetts Evidence: A Courtroom Reference*, (1977 Rev. Ed.) p 6-11; see *Gen. Elec. Co. v. Bd. Of Assessors of Lynn*, 393 Mass. 591, 603 (1984); *Lanagan v. Pianowski*, 307 Mass. 149, 152 (1940); *Commonwealth v. Clemons*, 12 Mass. App. Ct. 580, 589 (1981).

An evidentiary admission is conduct of a party while not on the stand used as evidence against him at trial. The conduct may be in the form of an act, a statement, or a failure to act or to make a statement. It may be conduct of the party himself or of someone for whose conduct the party is vicariously responsible. *Liacos, Handbook of Massachusetts Evidence*, (6th Ed. and Supp.) (1998) at p. 463. The admission may be used for substantive purposes, and not just on the issue of credibility. *Gen. Elec.*, 393 Mass. at 603." See: *Evidence Primer for Family Lawyers*, (1999-10.06-CM) at p. 4.

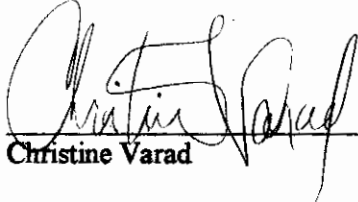
Byrne's absolute failure to make any statements within his letter to Plaintiff claiming that Lexis Nexis was not the real party in interest and his failure to direct Plaintiff to contact any other entities such as Seisint, Inc. relative to her 93A assertions serves as his admission as a party opponent that Lexis Nexis, Lexis Nexis Accurint is and was correctly named as defendant and real party in interest in the instant action. Byrne had a clear responsibility pursuant to M.G.L. c.93A, to address the role of other entities, such as Seisint, Inc. known to him, when responding to the allegations contained in Plaintiff's 93A demand letter.

LIST OF EXHIBITS

1. Exhibit A John M. Byrne, Director and Senior Corporate Council for Lexis Nexis Accurint response to the plaintiff's M.G.L. c. 93A demand letter;
2. Exhibit B Lexis Nexis trademark, a federal trademark as registered and owned by Reed Elsevier, Inc.;
3. Exhibit C State of Ohio, Lexis Nexis Trade Name filing, Reed Elsevier, Inc. of Newton, Massachusetts, owner;
4. Exhibit D Varad Affidavit;
5. Exhibit E Plaintiff's M.G.L.c. 93A Demand Letter to Lexis Nexis Accurint;
6. Exhibit F Green Card.

I certify that on this 16th day of October 2006, I caused a copy of PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUBSTITUTION OF SEISINT, INC. FOR DEFENDANT REED ELSEVIER, INC. AND RELATED REQUEST FOR DISMISSAL OF COMPLAINT AGAINST REED ELSEVIER, INC. to be served on the attorney of record for defendant Reed Elsevier, Incorporated at the following address of record:

T. Christopher Donnelly
Donnelly, Conroy and Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, Massachusetts 02108
617 720 2880


Christine Varad