

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant.</p>	<p>ORDER DENYING DEFENDANT'S MOTIONS IN LIMINE NO. 2 AND 3</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court on two related Motions filed by Defendant. In its first Motion, Defendant seeks a ruling that the First Amendment applies to Plaintiff's slander of title claim. In its second Motion, Defendant seeks a ruling that Defendant is a limited-purpose public figure for purposes of the First Amendment. If Defendant were to prevail in both Motions, Plaintiff would be required to prove, by clear and convincing evidence, that Defendant acted with actual malice. Plaintiff argues that Defendant's Motions are essentially requests for jury instructions, not a request for a pretrial evidentiary ruling, and should be denied on that ground. Plaintiff additionally opposes Defendant's Motions on their merits, arguing that First Amendment standards do not apply to slander of title claims and that Defendant's speech is commercial speech, which would not require a showing of actual malice. Plaintiff also suggests

that the Court could propound a question to the jury to ask whether Defendant acted with actual malice.

The Court agrees with Plaintiff that Defendant's Motions are really requests for jury instructions. Therefore, the Court will deny the Motions and will determine the issues contained therein when addressing the jury instructions.


It is therefore

ORDERED that Defendant's Motion in Limine No. 2 to Determine that First Amendment Defenses Apply to Slander of Title (Docket No. 629) is DENIED. It is further

ORDERED that Defendant's Motion in Limine No. 3 to Determine that SCO is a Limited Purpose Public Figure (Docket No. 630) is DENIED.

DATED February 25, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge