

FILED
U.S. DISTRICT COURT
2007 JUL 17 A 9:55
DISTRICT OF UTAH
BY: 8
DEPUTY CLERK

RECEIVED CLERK
JUL 13 2007
U.S. DISTRICT COURT

Christopher M. Nemelka, Pro-Se
8851 South Alta Canyon Dr.
Sandy, Utah 84093
(801) 928-8154

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH—CIVIL DIVISION

CHRISTOPHER M. NEMELKA,

Plaintiff,

vs.

COMPLAINT

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah Non-Profit Corporation,
JEFFREY R. HOLLAND, an individual,
RUSSELL M. BALLARD, an individual,
DENIS P. SMITH, an individual,
HYRUM W. SMITH, an individual, and
JOHN AND JANE DOES, 1-10.

Defendants.

Case: 2:07cv00524
Assigned To : Cassell, Paul G.
Assign. Date : 7/17/2007
Description: Nemelka v. Corp of Pres
Church of Jesus Christ of LatterDay
Saints et al

JURY TRIAL REQUESTED

Plaintiff, CHRISTOPHER M. NEMELKA, pro se, hereby complains of Defendants, THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, JEFFREY R. HOLLAND, RUSSELL M. BALLARD, DENIS P. SMITH, HYRUM W. SMITH, and JOHN AND JANE DOES, 1-10 and for causes of action alleges as follows:

JURISDICTION

1. Jurisdiction is proper for this Court because of diversity of citizenship in that some of the Defendants do not reside in the State of Utah. FURTHER, though the amount in controversy is not stated, but open for a jury to determine, it is believed that this amount will far exceed the interests and costs of the sum specified by 28 USC 1332.

NATURE OF THIS ACTION

2. In a letter dated June 18th, 2007, a good faith attempt was made by the Plaintiff, CHRISTOPHER M. NEMELKA, to avoid this action. The Defendants ignored the attempt.
3. In this action, the Plaintiff seeks damages and relief for acts of civil and criminal defamation according to the following Utah Codes and any Federal Codes that codify and support the following:

45-2-2. Libel and slander defined.

(1) "Libel" means a malicious defamation...to impeach the honesty, integrity, virtue or reputation... of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

(2) "Slander" means any libel communicated by spoken words.

76-9-404. Criminal defamation.

(1) A person is guilty of criminal defamation if he knowingly communicates to any person orally or in writing any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule.

76-9-401. Definitions.

(3) "Public" includes any professional or social group of which the victim of a defamation is a member.

4. The Defendants' actions have exposed and will continue to expose the Plaintiff to public hatred, contempt, or ridicule, owing substantially to the public positions of trust the Defendants hold and the magnitude of their social accomplishments, all of which the public perceives as viable and important sources of truth and integrity.
5. The Defendants' actions have curtailed and will curtail the acceptance and dissemination of the publication, market and value of the Plaintiff's literary works. FURTHER, their actions have and will curtail the progression, value, and outcome of the *Worldwide United Foundation*, a publicly incorporated entity established to end worldwide poverty and inequality which was founded by the Plaintiff.

PARTIES

6. Plaintiff, CHRISTOPHER M. NEMELKA is a current resident of Utah County, with a mailing address of: 8851 South Alta Canyon Drive, Sandy, Utah, 84093.
7. Upon information and belief, the Defendant, THE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, is a Utah Non-Profit Corporation and its headquarters are found at 47 East South Temple, Salt Lake City, Utah, 84150.
8. Upon information and belief, the Defendant, JEFFREY R. HOLLAND is an employee of THE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY

SAINTS. Mr. Holland is also a member of the QUORUM OF THE TWELVE APOSTLES of the LDS Church. According to paralegal investigation, the proper and legal agent for this Defendant is the law offices of KIRTIN & McCONKIE, 1800 Eaglegate Tower, 60 East South Temple, Salt Lake City, Utah, 84111.

9. Upon information and belief, the Defendant, RUSSELL M. BALLARD is an employee of THE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS. Mr. ~~Holland~~^{Ballard} is also a member of the QUORUM OF THE TWELVE APOSTLES of the LDS Church. According to paralegal investigation, the proper and legal agent for this Defendant is the law offices of KIRTIN & McCONKIE, 1800 Eaglegate Tower, 60 East South Temple, Salt Lake City, Utah, 84111.
10. Upon information and belief, the Defendant, DENIS P. SMITH resides at 491 Crawford Street, Golden, Colorado, 80401.
11. Upon information and belief, the Defendant, HYRUM W. SMITH resides in Gunlock, Utah, 84733 (PO Box 40) and is the owner and proprietor of EAGLE MOUNTAIN RANCH in Gunlock.

BACKGROUND FACTS

12. The Plaintiff was employed by the Defendant, THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (hereafter referred to as "The Church"), as a Security Officer from approximately 1984

through 1987. His duties included, but were not limited to, security rounds and checks made in all areas and locations held by the Church situated in and around downtown Salt Lake City, Utah, and other areas of corporate and religious interest. These areas included but were not limited to the Administration Building, Church Office Buildings, Salt Lake Temple, Temple Square, Church Museum, Genealogical Library, all underground pathways, sites, rooms, and accesses, and any other locations of interest and value to the Church.

13. In the same manner and means as the founder of the Mormon (LDS) faith and/or religious sect or church, Joseph Smith Jr., the Plaintiff was called to translate the sealed portion of ancient plates known as *The Book of Mormon*. This calling took place on the upper floor of the Salt Lake Temple on Tuesday, June 16, 1987.
14. Subsequent to this peculiar calling, the Plaintiff informed a member of the Council of the Twelve Apostles, David B. Haight (now deceased) of this calling. After counseling with Mr. Haight and those by whom he received the call to translate, the Plaintiff decided to quit his employment as a Security Officer for the Church. In or about March of 1988, the Plaintiff voluntarily terminated his employment with the Church and moved from the State of Utah.

FIRST CAUSE OF ACTION

15. Since his departure from the Church, the Security Department of the Church has held a confidential file on the Plaintiff in which he is described as an “apostate,” “deceiver,” “manipulator,” “liar,” “con artist,” “polygamist,” and other derogatory appellations which defame his character and impeach his honesty, integrity, and public standing. This file is included with others who are known as “10-96” individuals—a term used by law enforcement and military officials to categorize “*deranged individuals*.”
16. The sealed portion of the ancient plates known as *The Book of Mormon* was translated and first published in October of 2005 and is known as *The Sealed Portion—The Final Testament of Jesus Christ*. Since its publication, many mainstream, active and loyal members of the Church have become inactive or left the religion because of the revelations about the Church and its doctrine, its practices, and its leaders contained therein.
17. Upon leaving the Church, many of these members have been ridiculed, publicly defamed and have lost their standing in their community due to the actions of the local leaders of the Church. FURTHER, these leaders have contributed to the defamation of the Plaintiff in the process of counseling and warning these members of excommunication for reading and accepting *The Sealed Portion*.

SECOND CAUSE OF ACTION

18. On August 4th, 2006, the Plaintiff attended a public dance at the Poway LDS Stake Center, 15705 Pomerado Road, Poway, California. He attempted to say hello to a friend and acquaintance; she immediately withdrew from the Plaintiff as if she were frightened. After a short time, the Plaintiff was confronted by a man who identified himself as the "Priesthood Leader in charge of the event." This leader asked if the Plaintiff was Christopher Nemelka associated with the "sealed book." The Plaintiff was publicly ridiculed, taken out of the dance hall and thrown off Church property.

THIRD CAUSE OF ACTION

19. On or about March of 2007, Ms. Ida Smith received *The Sealed Portion* and the book entitled *666, the Mark of America—Seat of the Beast, The Apostle John's New Testament Revelation Unfolded*. Ms. Smith immediately felt the veracity of these literary works and consequently informed her brother, the Defendant Hyrum Smith, whom she respected greatly for his opinion and standing in the Church. Subsequent to his reading the book, Hyrum Smith gave the book to his brother, Defendant Denis P. Smith, who is also a prominent member of the Church. Both Ms. Smith and her brothers have been lifelong members of the Church, and are very well connected to its highest authorities.

20. After each brother had considered and/or read the books, each responded via personal e-mail and told Ms. Smith that they had direct authority from the leaders of the Church, particularly, Elder Russell Ballard and Elder Jeffrey Holland of the First Quorum of the Twelve Apostles, concerning the Plaintiff. The e-mails read in part as follows:

"...the evidence of forgery and deceit [sic] are all over this thing. Denis talked with Russ Ballard, who talked to Jeff Holland and reported back to Denis that Nemelka is now into Polygamy and preying on 'believers' of his fraud."

"As for meeting the man to get to know him, in all honesty I would compare that to having a desire to meet Hitler after reading portions of "Mein Kampf." I find it ludicrous to think that sexual perverts are somehow exempt from their actions..."

21. From a letter written to Ms. Smith by the Defendant, Hyrum Smith, on April 19th, 2007, the following is an excerpt:

"I have done extensive research into his past and present. All of the evidence points to this fellow being a fraud."

22. On May 9th, 2007, the Defendant Hyrum Smith sent the following to Ms. Ida Smith:

"I talked to Jeff several times, Please call him at [sic] talk to him yourself. His number is (801) 240-1000. Many "crazies" have come and gone and the Church has kept silent on them. I think that is wise, because they all die eventually of their own weight."

FORTH CAUSE OF ACTION

23. Consequently, from her brothers' advice and her trust in the opinion and leadership of the Apostles of the Church, Ms. Smith called the Defendant, Jeffrey Holland. He was not available but eventually returned her call on or about June 12, 2007. Suspicious that the Church was "out to get" the Plaintiff, and wanting to assure the integrity and honesty of her conversation, Ms. Smith recorded the telephone conversation with Jeffrey Holland.
24. The following defamatory statements were made by the Defendant, Jeffrey Holland during the conversation: (The following are a few comments, but are not all of them.)

"The guy is a Whacko...he's not in touch with reality."

"He was an employee here as security, sort of a parking lot security guard."

"...He went off the deep end."

"...He got into polygamy...one aberration after another."

"...my personal assessment...very sort of unstable situation...his behavior and his track record into polygamy..."

"...his local priesthood leaders have (talked to the Plaintiff) and he's been disciplined...he's met with his local priesthood leaders repeatedly..."

"...he was initially let go from the security department...I'd tried to work with him."

"...it's not going to come to somebody down at Joe's Bar and Grill."

“...nor am I very comfortable with these walking and talking resurrected Nephites or starting polygamy.”

CONCLUSION

25. The Defendants do not want the truth about the Plaintiff to come to light, as it will show that the mission and authority to bring to the world the sealed portion of *The Book of Mormon*, as it was given in the like manner to Joseph Smith Jr., came from outside of the Church. The facts will show that this is the case. To protect themselves and their cause and agendas, the Defendants will continually lie, withhold the facts, defame the Plaintiff, and use any power within their means, which in the case of the Defendants is substantial and widespread, to dissuade others from reading the book or accepting the testimony of the Plaintiff regarding the truth of his work and his experiences leading up to it.
26. Because of the actions of the above named Defendants, the potential for public scrutiny and abasement is substantial. His life and reputation as well as those who have read his works and have left the Church have been permanently damaged. The Defendants' actions have caused and will continue to cause irreparable damage, loss and injury to the Plaintiff and his cause, for which there is no adequate remedy except by law.

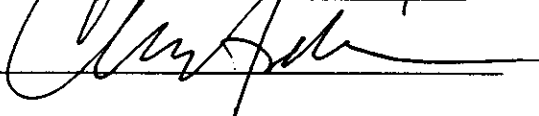
WHEREFORE,

27. The Plaintiff is entitled to damages for the acts of the Defendants, the amount of which is to be determined by a jury of his peers, taking into account the evidence, and awarding the damages to the purpose of his work—the perpetuation of the Worldwide United Foundation—which will far exceed \$75,000.
28. The Plaintiff is also entitled to an award of compensatory and punitive damages, which shall be determined by a Jury, for the Defendants' past and continuation in defaming his character.
29. The Plaintiff is further entitled to recover costs of this action, his travel expenses to appear and bring this action, and any other sanctions the court finds reasonable and acceptable.

JURY DEMAND

Pursuant to Rule 38(a) and (b) of the Federal Rules of Civil Procedure, the Plaintiff demands a trial of all issues by jury.

DATED this 13th day of JULY, 2007.


CHRISTOPHER M. NEMELKA, pro se

Serve the Defendants at the following addresses:

**CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF
LATTER-SAINTS, JEFFREY R. HOLLAND, and RUSSELL M. BALLARD**

c/o KIRTIN & McCONKIE
1800 Eaglegate Tower
60 East South Temple
Salt Lake City, Utah 84111

HYRUM W. SMITH
Eagle Mountain Ranch
Gunlock, Utah 84733 (PO Box 40)

DENIS P. SMITH
491 Crawford Street
Golden, Colorado, 80401.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

RECEIVED CLERK

I. (a) PLAINTIFFS

CHRISTOPHER M. NEMELKA

JUL 19 2007

DEFENDANTS

CORPORATION OF THE PRESIDENT OF THE LDS CHURCH
 RUSSELL M. BALLARD, JEFFREY R. HOLLAND, HYRUM W

U.S. DISTRICT COURT

County of Residence of First Listed Defendant SALT LAKE COUNTY
 (IN PLAINTIFF CASES ONLY) 55

(b) County of Residence of First Listed Plaintiff SALT LAKE COUNTY
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 PRO SE, 8851 South Alta Canyon Dr., Sandy, Utah 84093

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
 DISTRICT OF UTAH

Attorneys (If Known) BY: KIRTIN and McCONKIE, 66 East South Temple, SLC, UT 84111

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 USC 553

Brief description of cause:
Defendants have slandered and continue to slander the Plaintiff

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ over 475,000

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE July 13, 2007 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____

Case: 2:07cv00524
 Assigned To : Cassell, Paul G.
 Assign. Date : 7/17/2007
 Description: Nemelka v. Corp of Pres Church of Jesus Christ of LatterDay Saints et al