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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

POINT RUSTON, LLC, et al.,

Plaintiffs,

v.

PACIFIC NORTHWEST REGIONAL
COUNCIL OF THE UNITED
BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, et al.,

Defendants.

CASE NO. C09-5232BHS

ORDER ON DEFENDANTS'
ADDITIONAL MOTIONS IN
LIMINE, LIMITED PUBLIC
FIGURE MOTION, AND
REQUEST FOR JUDICIAL
NOTICE

16 This matter comes before the Court on Defendants' ("the Carpenters") motions and
17 pleadings filed on September 17, 2008 (Dkts. 449, 451, 455, 456, 459, and 462). The
18 Court has considered these pleadings and the remainder of the file and hereby grants and
19 denies the Carpenters requests and motions as discussed herein.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 On September 17, 2010, the Carpenters filed the following pleadings: (1) a motion
22 in limine regarding immigration status (Dkt. 449); (2) a motion in limine to sever and/or
23 bifurcate trial (Dkt. 451); (3) a limited public figure motion (Dkt. 455); (4) a request for
24 judicial notice (Dkt. 456); (5) a motion in limine to preclude inadmissible damage
25 testimony and documents (Dkt. 459); and (6) a motion in limine regarding Point Ruston's
26 conversion claim (Dkt. 462). The Court considered Point Ruston's responses in
27 opposition and the Carpenters' replies, to the extent filed as of the date of this order.
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II. DISCUSSION

A. Immigration Status

The Carpenters move the Court to bar Point Ruston, its witnesses, and its counsel from “offering any evidence, reference, or argument related to and to preclude any mention” of the Carpenters or its witnesses’ “immigration status (collectively ‘immigration status’).” Dkt. 449 at 2. The Carpenters argue that immigration status is irrelevant and would nonetheless be highly prejudicial as compared to any marginal relevance when balanced under Rule 403. *See* Fed. R. Evid 401 (relevance), 403 (balancing inquiry).

The Court grants this motion with the following clarification. The motion is limited to any evidence, reference, or argument specifically related to legality or illegality of a person’s immigration status. For example simply stating that a person is from Mexico or does not speak English will not violate this order and will not be considered an implied reference or otherwise as to immigration status. The nature of this case and the evidence needed by both parties will not permit such a restrictive and unnecessary ruling.

B. Sever and/or Bifurcate Trial

The Carpenters move the Court to sever and/or bifurcate the trial in this matter as between Silver Cloud’s claims and Point Ruston’s claims. Dkt. 451. A district court is vested with discretion to grant or deny such a motion. *See United States v. Nguyen*, 88 F.3d 812, 818 (9th Cir. 1996). This motion is untimely at this stage of litigation and any concern may be cured through a limiting instruction and special verdict forms for the jury. Therefore, the Court denies this motion. The Carpenters are permitted to submit a proposed limiting instruction should they choose to do so.

Additionally, within this motion to sever/bifurcate, the Carpenters make the following claim

... the Court was incorrect in its ruling regarding Silver Cloud’s section 303 liability. In order to establish Section 303 liability, Silver Cloud

1 must show, among other things, (1) an improper object of embroiling a
2 neutral in primary dispute *and* (2) [sic] some type of coercive conduct. The
3 Court while finding that the [Carpenters] did have an improper object, then
4 proceeded to find Section 303 liability without determination that Section
5 303 exists will lead the jury to believe that coercive conduct was shown . . .
6 ”

7 Dkt. 451 at 4-5, n. 2 (emphasis in original).

8 To begin with, the finding of an improper object must be coupled with a finding
9 that the Carpenters conduct was intended to “threaten, coerce, *or* restrain” The use of
10 “or” is disjunctive and means that coercive conduct is not the only means of violating
11 Section 303 when combined with an improper object, e.g., “forcing or requiring any
12 person to cease . . . doing business with any other person” *See* Dkt. 430 (order on
13 summary judgment regarding Silver Cloud).

14 The Court did conclude that the Carpenters acts of writing a threatening letter that
15 was followed by the threatened conduct with the improper object getting Silver Cloud
16 embroiled in a controversy that was not their own violated Section 8(b)(4) and exposed
17 the Carpenters to liability for Section 303 damages. *See generally* Dkt. 430. To the extent
18 the Court’s order was not express enough, the Court now reexpresses its ruling on
19 summary judgment: The Carpenters conduct with respect to Silver Cloud (letter, banner,
20 leaflet, and demonstrations in general) was threatening if not coercive and was done with
21 an improper object of attempting to get Silver Cloud to inject itself into the controversy to
22 get Point Ruston to cease doing business with Rain City. *See, e.g.,* Dkt. 430. The Court, in
23 making its ruling, determined that there is no question of fact, given the context of this
24 case, that the Carpenters engaged in the threatening conduct with an improper object for
25 any other purpose than that which violates § 8(b)(4), thereby giving rise to Silver Cloud’s
26 § 303 damages claim. The Carpenters have misconstrued both the law and this Court’s
27 order on this issue.
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1 **C. Limited Public Figure**

2 The Carpenters move the Court to apply the *New York Times* actual malice
3 standard with respect to Silver Cloud. The Carpenters contend that Silver Cloud
4 “voluntarily inject[ed]” itself into a matter of public concern when it issued press releases
5 regarding its intent to build the Point Ruston Silver Cloud hotel, an option it acquired but
6 has not yet exercised. *See* Dkt. 430 at 11 (denying the Carpenters motion for summary
7 judgment with respect to Silver Cloud). In making its case for applying the malice
8 standard, the Carpenters rely heavily on *Clardy v. Cowles Publishing*, 81 Wn.App. 53
9 (1996). Dkt. 455 at 2.

10 In *Clardy*, the Washington State Appellate Court introduced the case as follows:
11

12 A public figure must prove actual malice to recover for defamation.
13 *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726
14 (1964). A public figure is one who has attained special “prominence in the
15 affairs of society.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80
16 (1964). A public figure is one who has attained special “prominence in the
17 affairs of society.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974). A
18 person may be a public figure for all purposes or for a limited purpose.
19 *Gertz*, 418 U.S. at 351.

20 John D. Clardy spearheaded the Mission Springs development, the
21 biggest planned unit development ever proposed for Spokane County. It had
22 an ultimate mortgage value of \$45 million. On behalf of Mission Springs
23 Limited Partnership, Mr. Clardy applied for mortgage insurance through the
24 United States Department of Housing and Urban Development (HUD). *The*
25 *development ran into vocal public opposition* after it had been approved,
26 but before HUD had committed to insure financing. *Mr. Clardy stepped*
27 *into the hailstorm by attending a meeting with the opposition leader*,
28 speaking out in favor of the project, and contacting public officials, all in an
attempt to keep the HUD commitment on track. We are asked to decide
whether Mr. Clardy became a limited-purpose public figure by his
involvement in the Mission Springs project. We conclude that he did and
affirm the superior court's summary dismissal of his defamation claim.

24 *Clardy*, 81 Wn. App. at 53 (emphasis added). The Court went on to describe the limited
25 public figure doctrine:

26 *Gertz* set up two categories of public figures: limited-purpose public figures
27 and general-purpose public figures. Limited-purpose public figures are
28 those who voluntarily inject themselves or are drawn into a public
controversy and thereby become public figures for a limited range of issues.
The threshold question posed in *Gertz* is whether the defamatory statement

1 involves a matter of public concern. The next focuses on the nature and
2 extent of the plaintiff's participation in that public controversy. *Gertz*, 418
3 U.S. at 352 (“*did he engage the public’s attention in an attempt to influence
its outcome*” and *did he “thrust himself into the vortex of this public
issue*”).

4 *Id.* at 59 (emphasis added, citations omitted).

5 The Court agrees that the issues surrounding the Point Ruston development
6 pass the threshold question as to whether the allegedly defamatory statements
7 involved a matter of public concern. However, that is where the similarities
8 between *Clardy* and this matter diverge.

9 In *Clardy*, the individual claiming to have been defamed stepped into the
10 public light once the development came under a public firestorm of controversy. In
11 contradistinction, no evidence has been presented that Silver Cloud did anything of
12 the sort in this case. The Carpenters merely rely on the fact that Silver Cloud chose
13 to issue press releases that expressly associate it with the Point Ruston project.
14 However, much if not all of these associating facts preceded the moment when
15 Point Ruston’s project became embroiled in a public controversy.
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17 In fact, the Court’s prior order concluded that it was the Carpenters who
18 thrust Silver Cloud onto the public stage with their demonstrations regarding an
19 entity that merely had an option to build a hotel at a controversial job site, Point
20 Ruston’s job site. *See, e.g.*, Dkt. 430. In short, no evidence has ever been presented
21 that Silver Cloud engaged “*the public’s attention in an attempt to influence its
22 outcome*” or that it “*thrust [itself] into the vortex of this public issue.*” *See Gertz*,
23 418 U.S. at 352.

24 The Carpenters’ reliance on *Clardy* is misplaced. Because the Court
25 concludes that the *New York Times* actual malice standard does not apply with
26 respect to Silver Cloud, this motion is denied.
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1 **D. Judicial Notice**

2 The Carpenters move the Court to take judicial notice of the fact that the option
3 agreement between Silver Cloud and Point Ruston has been treated by the Plaintiffs as
4 confidential. The Court has previously ordered this document sealed because it was
5 deemed to be confidential. *See, e.g.*, Dkt. 359 at 3 ¶ 2.

6 While the Court finds this request both unnecessary and nonstandard, it reserves
7 judgment on this issue until the September 23, 2010, pretrial conference.

8 **E. Inadmissible Damage Testimony/Documents**

9 The Carpenters move to prohibit certain documentary and testimonial evidence
10 from Point Ruston on the issue of damages. Dkt. 459. With respect to this issue, the Court
11 ordered an offer of proof to be made at the September 23, 2010, pretrial conference.
12 Therefore, ruling on this issue is reserved until that time.

13 **F. Preemption of Conversion Claim**

14 The Carpenters move the Court to conclude that Point Ruston's state law
15 conversion claim is completely preempted by Section 303. With respect to complete
16 preemption, the Court already adopted the Seventh Circuit's approach in *Smart*, which
17 held that Section 303 completely preempts state law claims related to secondary boycott
18 activities described in Section 158(b)(4). *See* Dkt. 76 at 14; *See also Smart v. Local 702*
19 *IBEW*, 562 F.3d 798 (7th Cir. 2009) ("Congress has provided an explicit means of
20 redressing alleged violations of section 158(b)(4) through section 187 of Title 29"). In the
21 Court's prior order (Dkt. 76), it determined that *Smart* stands for the proposition that state
22 law claims for damages are preempted by section 303 when the party "seek[s] damages
23 for conduct already prohibited by Section 158(b)(4).
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25 During the September 13, 2010, pretrial conference, Point Ruston represented to
26 the Court that it seeks damages for conversion based on the Carpenters banner
27 activities where they caused the banners to obstruct or obscure Point Ruston's sign(s) for
28

1 its development.¹ Even if Point Ruston could prevail on such a state claim the conduct at
2 issue is that which § 158(b)(4) already provides redress under Point Ruston's allegations
3 for secondary boycott activities.

4 Because Point Ruston's conversion claim is preempted, the Carpenters' motion in
5 limine on this issue is granted.

6 **III.ORDER**

7 Therefore, it is hereby **ORDERED** that

8 (1) The Carpenters' a motion in limine regarding immigration status (Dkt. 449)
9 is **GRANTED**;

10 (2) The Carpenters motion in limine to sever and/or bifurcate trial (Dkt. 451) is
11 **DENIED**;


12 (3) The Carpenters limited public figure motion (Dkt. 455) is **DENIED**;

13 (4) The Carpenters' request for judicial notice (Dkt. 456) is **RESERVED**;

14 (5) The Carpenters' motion in limine to preclude inadmissible damage
15 testimony and documents (Dkt. 459) is **RESERVED**; and

16 (6) The Carpenters' motion in limine on conversion (Dkt. 462) is **GRANTED**.

17 DATED this 22nd day of September, 2010.

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22 BENJAMIN H. SETTLE
23 United States District Judge
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26 ¹To the extent Point Ruston had another basis on which to rest its conversion claim (other
27 than the sign obstruction theory), such theories were not argued and, therefore, abandoned by
28 Point Ruston in its brief to the Court addressing the Carpenters preemption argument as it
pertained to conversion. *See* Dkt. 452 at 11-12.