

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/05/2018

TIME: 02:29:00 PM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes

CLERK: Richard Cersosimo

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00016311-CU-BC-CTL** CASE INIT.DATE: 05/04/2017

CASE TITLE: **Proper Media LLC vs Bardav Inc [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

APPEARANCES

The Court, having taken the above-entitled matter under submission on 05/25/2018 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

(1) Defendant/Cross-Complainant SNOPEs MEDIA GROUP, INC.'s Application for Order to Show Cause Regarding Contempt Against Plaintiffs/Cross-Defendants Drew Schoentrup and Proper Media, LLC is GRANTED.

The Court issued a preliminary injunction on September 7, 2017 ("Injunction"), enjoining Proper Media and others, *inter alia*, from the following:

(1) Withholding from Bardav any revenues procured from the placement of advertisement on the Snopes.com website except for those expressly authorized to be withheld pursuant to the formula set forth in the Agent Commission Rate provisions of the parties' written General Services Agreement ("GSA") up through the effective date of the GSA's termination on May 8, 2017.

(2) Withholding from Bardav any revenues procured from the placement of advertisement on the Snopes.com websites occurring after the effective date of the GSA's termination on May 8, 2017, except for hard costs incurred.

(ROA #123.)

A declaration in support of an application for an order to show cause regarding contempt "need only make a prima facie showing of the elements of contempt." (*Crawford v. Workers' Comp. Appeals Bd.* (1989) 211 Cal.App.3d 485.) The elements of contempt are: "(1) the making of the order; (2) the accused's knowledge of the order; (3) the accused's ability to render compliance, and (4) the accused's

willful disobedience of the order." (*Coursey v. Superior Court* (1987) 194 Cal.App.3d 147, 154.) Plaintiffs do not dispute that the first three elements of contempt have been shown by Bardav, now known as SNOPEs MEDIA GROUP, INC. ("Snopes"), but they do dispute Snopes' interpretation of the Injunction and that they willfully violated the Injunction.

The Court interprets the term "hard costs" to mean those costs that would put Plaintiffs in a place they would have occupied were they not required to continue providing services to Snopes. With this interpretation, it appears some of Proper Media's claimed expenses may not qualify as hard costs. Proper Media's person most knowledgeable testified in deposition that a certain allocation of Proper Media's general business expenses and overhead such as rent, janitorial costs, employer 401(k) plan, office meals, and health plans for Proper Media's employees were categorized as hard costs. (Snopes Exhibit N: 25:9-26:13.) While Proper Media's person most knowledgeable testified that he considered them to be hard costs, Plaintiffs have not justified how a certain allocation for some of these costs, such as janitorial or office meals, could qualify as necessary costs that Proper Media was forced to incur to continue providing services. In fact, Proper Media's person most knowledgeable testified, that for most of the items allocated, the costs were incurred before and after Proper Media's contract with Snopes. (Snopes Exhibit N: 30:10-15.) While there is evidence that Proper Media may have interpreted the meaning of "hard costs" in good faith, there is enough evidence to meet the low prima facie standard for setting a hearing for an OSC.

Further, the Injunction prohibited Plaintiffs from withholding any revenues from advertisements except for those expressly authorized pursuant to the formula in the "Agent Commission Rate" provisions of the GSA, which does not permit withholding monies for any private settlements. (Snopes Exhibit A, § 3.5.) Plaintiffs do not dispute that they withheld revenues beyond that which comports with this formula. While Plaintiffs provide evidence that indicates Proper Media was instructed to withhold settlement payments from Snopes for payment towards a private settlement, such instructions were not contemplated in the Injunction. The Injunction expressly disallows withholding revenue not contemplated by the Agent Commission Rate formula. Plaintiffs have admittedly withheld settlement payment amounts that are not contemplated by the Agent Commission Rate formula. This is prima facie evidence that Plaintiffs knew they were violating the Injunction.

The Court sets an OSC regarding contempt for August 10, 2018 at 10:30 am. The Court does not address every argument raised by Snopes; however, the Court will not limit the OSC to the scope of the arguments addressed above. The Court will permit the parties to address the arguments concerning contempt raised by Snopes in their papers.

(2) Defendant/Cross-Complainant SNOPEs MEDIA GROUP, INC.'s First and Second Application to Seal Unredacted Versions of Pages and Exhibits in Support of Ex Parte Application of Defendant/Cross-complainant Snopes Media Group, Inc. for Order to Show Cause Regarding Contempt Against Plaintiffs/Cross-Defendants Drew Schoentrup and Proper Media, LLC is DENIED, in part, and CONTINUED, in part, to August 10, 2018 at 10:30 am.

California Rules of Court Rule 2.550 states, in relevant part:

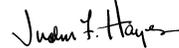
(d) Express factual findings required to seal records

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Snopes seeks to seal exhibits A through O and references made in the ex parte papers to some of the exhibits. Snopes argues that the documents were designated as confidential under a protective order and Snopes is obligated to maintain such confidences. Snopes does not specify which documents Plaintiffs designated as confidential, but broadly asserts it seeks "to seal only those materials designated as "CONFIDENTIAL" by Plaintiffs and confidential information Snopes must provide in response to Plaintiffs' purported justification for withholding advertising revenues despite the clear mandate of the Injunction." Snopes has the burden to show the Court why the right of public access to the record is overridden by an overriding interest and that the request is narrowly tailored.

Snopes has failed to show that the requested sealing is narrowly tailored. Snopes merely explains that it limits the request to those Plaintiffs designated as confidential. Such designation does not automatically qualify such documents for sealing. The Court will return the exhibits conditionally lodged under seal. The Court continues the portion of the first application to seal related to the redactions in the ex parte papers until August 10, 2018, to be decided along with Plaintiffs' motion to seal.



Judge Judith F. Hayes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Proper Media LLC vs Bardav Inc [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2017-00016311-CU-BC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the final ruling on 5/25/2018 motions was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 06/05/2018.

Clerk of the Court, by:  _____, Deputy
R. Cersosimo

KARL S KRONENBERGER
KRONENBERGER ROSENFELD LLP
150 POST STREET, SUITE 520
SAN FRANCISCO, CA 94108

PAUL A TYRELL
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
525 B STREET # 2200
SAN DIEGO, CA 92101

PAUL A TYRELL
525 B STREET # 2200
SAN DIEGO, CA 92101

Additional names and address attached.