

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
TRIAL COURT CAUSE NO. 2012-CI-01272

CHURCH OF SCIENTOLOGY FLAG) IN THE DISTRICT COURT
SERVICE ORGANIZATION, INC.)
)
)
VS.) BEXAR COUNTY, TEXAS
)
DEBRA J. BAUMGARTEN, AKA)
DEBBIE COOK BAUMGARTEN, AKA)
DEBBIE COOK, AND WAYNE)
BAUMGARTEN) 150TH JUDICIAL DISTRICT

HEARING ON MOTION FOR TEMPORARY INJUNCTION

On the 12th day of February, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Martha Tanner, Judge Presiding, held in San Antonio, Bexar County, Texas.

Proceedings reported by computerized stenotype machine.

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(February 10, 2012, 9:32 a.m.)

MR. SPENCER: Your Honor, I spoke to opposing counsel and he's agreed that I can make a brief statement before we go any further. I think it will be in the interest of everyone, if I may.

THE COURT: Certainly.

MR. SPENCER: Thank you very much.

May I proceed?

THE COURT: Certainly.

MR. SPENCER: Your Honor, the agreement upon which this lawsuit and our motion for a temporary injunction is based provided, in detail, that the defendants agreed, for consideration that they got, not to disclose confidential or private information about or deriving from their experiences in the church, and not to issue disparaging statements about the church. My client has demanded such covenants from them for good and sufficient reasons, and the plaintiffs knew that there had been a problem in the past with false and misleading statements of this nature, and we feared that she would threaten to do it again in an attempt to extort benefits from the church.

We heard yesterday that the plaintiff admitted she's violated these key and essential

1 provisions of the agreements in a fundamental manner and
2 has caused irreparable harm to our client. Similarly,
3 she's admitted that she never took any action to rescind
4 her agreement or to return the consideration she
5 received. And, in fact, has affirmatively ratified the
6 agreement by her and her husband's actions.

7 As we had predicted and feared, the
8 defendants and their counsel have used the Court's own
9 process to make numerous gross, false and disparaging
10 statements which, if made outside the courtroom, would
11 clearly violate the agreements.

12 Ms. Cook has disparaged numerous church
13 officials who are not part of this case. Conduct and
14 characterizations described of other church staff and
15 leaders is obviously disputed. The evident extreme
16 falsity of Cook's statements is shown by the simple fact
17 that she did not have a positive statement to make about
18 anyone she ever encountered in her Scientology career.

19 As we had predicted to the Court at the
20 start of the hearing, the presence of the media in the
21 courtroom in an unprecedented fashion has destroyed any
22 value of the temporary injunction which we would obtain.
23 It's been mooted. It's been rendered worthless.

24 I don't know if the Court saw this morning
25 the San Antonio Express newspaper story, front page.

1 Similar story -- here's the "Above the Fold" from a
2 Florida newspaper, reporting on what's occurred in the
3 courtroom yesterday. And there's similar stories from
4 other media outlets.

5 Fortunately, we believe the admissions
6 that we obtained from Ms. Cook during her testimony
7 yesterday will permit us to successfully seek a summary
8 judgment against her and her husband, but given the fact
9 that the Court has permitted the defendants to use the
10 processes to destroy the value that we were seeking by
11 this request for a temporary injunction, and as well as
12 under the agreement, we have elected to withdraw our
13 request, as we're permitted to do under Rule 165 --
14 withdraw our request for a temporary injunction at this
15 time.

16 Of course, any further statements that the
17 defendants may make will increase the damages they'll
18 eventually have to pay, but going forward with the case
19 in this way prevents the defendants from further using
20 the Court as a pulpit to engage in violations of their
21 agreement and to voice false statements about the
22 churches and its leaders under the protection of
23 testimonial immunity.

24 We're very concerned that the defendants
25 have used the Court proceedings to entangle this Court

1 in fundamental ecclesiastical matters that need to be
2 avoided under the First Amendment.

3 Over a century ago our United States
4 Supreme Court made it clear that courts must abstain
5 from examining matters which concern church discipline.

6 In fact, just last month, in a unanimous
7 decision, the Supreme Court reaffirmed the prohibition
8 of judicial interference with religious liberties and
9 the power to determine matters of discipline, faith, and
10 internal organization in the Hosanna-Tabor Evangelical
11 Lutheran Church and School versus EEOC. That was
12 January 12th of this year. And the proceedings of
13 yesterday were in violation of that.

14 So, as I said, under Rule 165, we're
15 withdrawing our request for a temporary injunction and,
16 so, the hearing would be over at this point.

17 Thank you.

18 MR. JEFFREY: Your Honor, since there now
19 appears that there's going to be -- the Court is going
20 to have a little more free time today, could we have a
21 brief recess so that I could -- this is the first I've
22 heard of it -- so that I could discuss this with my
23 clients and then reconvene briefly?

24 THE COURT: Certainly. We'll take 15
25 minutes.

1 MR. JEFFREY: Thank you, Your Honor.

2 (Recess from 9:37 a.m. to 9:51 a.m.)

3 THE COURT: You may be seated.

4 MR. SPENCER: Thank you.

5 MR. JEFFREY: Your Honor, now that I've
6 had a moment to absorb the legal effect of the action of
7 the plaintiff, I would like to make a request of the
8 Court.

9 For context, yesterday Mr. Spencer, the
10 plaintiff attorney, cross-examined at length my client,
11 Ms. Cook in a very vigorous cross-examination. And I am
12 now, at this stage of the proceeding, in the middle of
13 my direct examination of Ms. Cook.

14 They have announced their position in the
15 statement that was read a minute ago, that it is their
16 legal position that they have proved ratification and,
17 so, they intend to leave this hearing and use the
18 cross-examination of Ms. Cook from yesterday as summary
19 judgment proof to prove this issue of ratification.
20 Coincidentally, the first thing that I was going to
21 question Ms. Cook about this morning was ratification.

22 And, so, it's a very clever move. I
23 acknowledge that. And what I would ask the Court is
24 that I be allowed to do the limited direct examination
25 of Ms. Cook concerning only the issue of ratification,

1 so that we have a complete, rather than an incomplete,
2 record.

3 MR. SPENCER: May I respond, Your Honor?

4 THE COURT: You may.

5 MR. SPENCER: There is no right to
6 proceed. This is -- it's just on a particular claim, a
7 very limited claim, but this is like a nonsuit. I mean,
8 the thing is over.

9 If Mr. Jeffrey believes that he has -- I
10 know he believes this, but if there is additional
11 testimony that his client would offer on any topic, that
12 can be supplied by affidavit, in her deposition as the
13 case goes forward. There is zero need to continue with
14 her testimony this morning in this thing, and it can't.
15 I mean, the Court doesn't have the power to do that
16 because we've withdrawn our request.

17 So, this is over and that -- I know --
18 again, clever. I know why he's doing it, but can't do
19 it. And there's no need to do it, other -- other
20 than -- and I respect Mr. Jeffrey, but, I mean, I think
21 this is sort of playing into exactly what I'd said just
22 a moment ago, that what they want to do is to continue
23 to have her testify in front of a bunch of TV cameras.

24 MR. JEFFREY: Your -- I'm sorry.

25 MR. SPENCER: So, the thing is over. The

1 hearing is over, so there's no basis for the witness to
2 testify. He doesn't need it. And it's, I think, at
3 least partially, an improper motive.

4 MR. JEFFREY: Well, I -- Your Honor, I
5 don't know how it's an improper motive when he stood
6 here and said, we got her cross-examination yesterday
7 and we're going to come back and file a motion for
8 summary judgment.

9 I need to make clear to the Court that --
10 or let me back up. It is true what he says. If he
11 files a motion for summary judgment, we may file
12 affidavits to counter that, and that's absolutely true.
13 But what we could then receive back from the church in
14 the summary judgment proceeding is, oh, you've just made
15 that up. She testified about it in the hearing and now
16 you've come back to make all that up.

17 We were, this morning, going to address
18 the exact issue. And, so, if -- I don't know what the
19 Court is going to do on this issue, but if the Court
20 were to rule that we're not allowed to -- that we're not
21 allowed to go through the direct examination at this
22 time, I would like to at least be able to make a
23 statement on the record -- and it's not inflammatory, it
24 doesn't have any gory details in it -- of what our
25 testimony would be in that regard, so at least we're not

1 accused later of, oh, you made this up once you got the
2 summary judgment motion in.

3 MR. SPENCER: I think this thing is over.
4 And we can accuse her of making it up overnight, if
5 we're going to make that accusation.

6 You know, really, Judge, I -- with all
7 respect, I mean, when we announce this it's over.
8 There's nothing more for this Court to do.

9 THE COURT: I'll let you make your
10 statement in open court --

11 MR. JEFFREY: Thank you, Your Honor.

12 THE COURT: -- on the record.

13 MR. JEFFREY: Your Honor, if we were to
14 proceed this morning and offer the direct testimony of
15 Ms. Cook on the subject, we're specifically looking at
16 the issue of ratification. And Mr. Spencer asked
17 Ms. Cook yesterday, on cross examination, in the middle
18 of a long series of questions -- he was asking something
19 about the year 2009, and he said, and all that duress
20 was gone in 2009. And she said yes.

21 And what we would have offered this
22 morning is that, first of all, she doesn't know the
23 legal definition of duress. And what she understood he
24 was asking about was certainly her captivity and
25 restraint and her immediate fear of something very bad

1 of that sort happening to her. That was gone in '09.
2 It was gone when she got to San Antonio, Texas.

3 However, there are other aspects of duress
4 that are reported in the case law, such as the threat to
5 be separated, all contact from family, from friends,
6 from business associates, and from customers. So, that
7 threat remained and it remains today.

8 The duress has continued right up until
9 now, in spite of the fact that we're in litigation.
10 They can -- what they take away, they can give. What
11 they give, they can take away in this regard. And that
12 would have been her testimony in this regard.

13 In addition, the duress or influence of
14 being told you may never practice your religion again.
15 To practice the religion of Scientology you need to
16 participate in services. It's like a Catholic with the
17 sacraments. You receive communion. You go to
18 confession. You go to religious services.

19 She has been continuously under the threat
20 of being cut off from her spiritual life in the church.

21 So, she made that comment concerning
22 duress, but she was thinking purely about restraint, et
23 cetera. And that would have been what her testimony was
24 this morning.

25 Finally, with regard to the issue of

1 ratification and the acceptance of the money, the
2 testimony was and would be that they took the two
3 \$50,000 checks under duress, that they were -- they
4 would not have been released from the residential
5 compound unless they had taken the money, because the
6 church lawyers know that if you don't take the money,
7 there's clearly no consideration.

8 So, they would have been there
9 indefinitely until they agreed to take the money and to
10 take the -- to sign the papers.

11 The money was received and spent to start
12 their new life back in '07. And if you look at '09,
13 '10, '11, '12, they've received no further benefits
14 under this agreement. None.

15 So -- but they have remained under the
16 duress of the agreement.

17 They would willingly, happily repay the
18 hundred thousand dollars. All ability for them do that
19 was destroyed after December 31 of 2011, when the church
20 took action against them to cut them off from all of
21 their business associates and customers. Their business
22 is destroyed.

23 Ms. Cook would testify that she would be
24 willing here and now to sign a promissory note to pay
25 the money back as they are able, but, literally, the

1 plaintiff has taken away from them the ability to offer
2 the money back.

3 So, the plaintiff insisted that they take
4 the money, and then the plaintiff took away their
5 ability to ever pay the money back. Hopefully, they'll
6 get back on their feet somehow, but that is what the
7 testimony would have been from Ms. Cook this morning.

8 And, so, if I later hear that there's some
9 creation of this in response to a motion for summary
10 judgment, I will at least have this record, which I
11 appreciate Your Honor letting me make. Thank you.

12 THE COURT: Anything further?

13 MR. JEFFREY: That's all, Your Honor.

14 THE COURT: Anything further?

15 MR. SPENCER: No, Your Honor.

16 THE COURT: All right. We'll stand in
17 recess.

18 MR. SPENCER: Thank you, Your Honor.

19 (Hearing adjourned at 10:04 a.m.)
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1 STATE OF TEXAS

2 COUNTY OF BEXAR

3 I, Glyn E. Poage, Official Court Reporter in and
4 for the 166th District Court of Bexar County, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the
14 exhibits, if any, offered by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$_____ and
17 was paid/will be paid by _____.

18 WITNESS MY OFFICIAL HAND this the _____ day of

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