

FILED

OCT 08 2014

JOHN P. HEHMAN, Clerk
CINCINNATI, OHIO

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
DAYTON DIVISION

JAMES RANEY,)
)
 Plaintiff,)
)
 v.)
)
 THE CONNOR GROUP,)
)
 Defendant.)

No. 3:14CV342
Judge Rice

ACTION FOR DECLARATORY RELIEF

1. This action arises out of an effort by The Connor Group (“Connor Group”), a landlord that operates several apartment complexes throughout southern Ohio and in several nearby states, to suppress a critical blog authored by James Raney, one of its former tenants. The blogger included short excerpts from a newsletter that the landlord issues for its staff, made fun of statements in the excerpts, and pointed to excerpts that might offend the landlord’s tenants. To interfere with the effectiveness of the blogger’s criticism, Connor Group repeatedly invoked its copyright in posted segments of its newsletter, sending takedown notices to the blogger’s hosting service under the Digital Millennium Copyright Act (“DMCA”). Those notices implicitly threatened the host with liability for copyright infringement unless the content was immediately removed. However, each of the blogger’s excerpted postings was fair use, and Connor Group has misused its copyright for a purpose not contemplated by the Copyright Act of 1976—the suppression of criticism. Accordingly, in this action, the blogger seeks a declaratory judgment that he has not infringed Connor Group’s copyright in any way.

2. The Court has jurisdiction of this action under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1337 and 1338.

PARTIES

3. Plaintiff James Raney is a blogger who was formerly a tenant in the Meridian Apartments in Franklin County, Ohio.

4. Defendant Connor Group is an Ohio limited liability company based in Montgomery County, Ohio.

FACTS

5. While he was living in the Meridian Apartments, which are operated by defendant Connor Group, plaintiff Raney became dissatisfied. He started a blog entitled "Meridian Tenants Association," which was located at <http://meridian-tenants-assoc.tumblr.com/> and hosted by Tumblr.

6. Among other items posted on the Meridian Tenants Association blog were short excerpts from a company newsletter that Connor Group issues for the benefit of its staff. Raney included images of segments of the newsletter along with his own brief commentary, pointing out features of the newsletter that Raney thought would be of particular interest to his readers and explaining ways in which what Connor Group was telling its employees could be offensive or annoying to its tenants.

7. For example, in one posting, Raney showed readers an article in the employee newsletter about levels of "economic occupancy" (that is to say, the percentage of potential rent actually collected) in excess of 100%, and superimposed comments about the exactions from tenants that made such figures possible. Another posting showed Raney's readers excerpts from a Connor Group newsletter about efforts to achieve high scores on ApartmentRatings.com; along with the excerpts, Raney questioned whether defendant was improperly encouraging its staff to pretend to be tenants posting positive reviews. In posting another excerpted article, praising staff for increasing rent rolls, Raney used a play on words to argue to readers that they had been "rent rolled." Other articles

showing staff being taken on trips by limousine or corporate jet were accompanied by legends from Raney suggesting that tenants were paying too much in rent to support such luxuries.

8. In each case, the copied article was only a small part of the newsletter from which it had been taken. In no case did the publication of a copy deprive Connor Group of a market for copies of the newsletter from which it had hoped to derive financial or other benefits.

9. Nevertheless, Connor Group has repeatedly invoked its ownership of the copyright in the entire newsletters that Raney has excerpted on his blog to force the removal of the excerpts from his blog. Connor Group has sent takedown notices to Tumblr under the DMCA, demanding the removal of the newsletter excerpts. The DMCA gives the hosts of user-supplied online content immunity from suits for damages for copyright infringement based on content supplied by the host's users so long as the hosts are not aware that copyrighted matter has been posted, and so long as, once the hosts learn of copyrighted matter, they promptly secure removal of the copyrighted matter or disable access to that matter.

10. Tumblr responded to Connor Group's DMCA takedown notices by removing the newsletter excerpts from the blog.

CAUSES OF ACTION

11. A justiciable and actual controversy exists before this Court with respect to whether whether Raney's posting of excerpts from Connor Group's newsletters on his blog constituted copyright infringement or fair use, and whether Connor Group has misused its copyright to secure the removal of the excerpts. Raney contends that his posting was fair use and that Connor Group has been engaged in copyright misuse; Connor Group contends that Raney's posting constituted copyright infringement.

12. Raney's blog postings of excerpts from Connor Group's newsletters were fair use.

13. Connor Group's issuance of DMCA takedown notices on the theory that Raney's fair use infringed its copyright in the newsletters, thereby threatening Raney's host with liability for infringement, and causing the host to remove the excerpts to avoid losing their immunity from such liability, was copyright misuse.

14. For these reasons, plaintiff seeks a declaration that his posting of excerpts from Connor Group's newsletters was fair use and not copyright infringement, and that Connor Group has been engaged in copyright misuse by successfully demanding the removal of those excerpts.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays the Court to order the following relief:

A. Issue a judgment declaring that Raney's posting of excerpts from Connor Group's newsletters on his blog did not constitute copyright infringement, but rather was fair use;

B. Issue a judgment declaring that Connor Group's invocation of the Copyright Act to procure the removal of excerpts of its newsletters from Raney's blog was copyright misuse;

C. Award Raney his reasonable attorney fees and costs of suit; and

D. Award such other relief as may be just and proper.

Respectfully submitted,

/s/ Paul Alan Levy
Paul Alan Levy (pro hac vice to be sought)
Jehan A. Patterson

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/s/ Eric E. Willison
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Attorneys for Plaintiff

October 6, 2014

CIVIL COVER SHEET

3:14CV342

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 in September 1974, 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.)

I. (a) PLAINTIFFS

James Raney

DEFENDANTS

The Connor Group

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

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
Paul Alan Levy, Public Citizen Litigation Group, 1600 20th Street, NW,
Washington, DC 20009 202-588-7725; Eric Willison, 4876 Cemetery Road,
2d fl. Hilliard, Ohio 43026 614-580-4316

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

(For Diversity Cases Only)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input 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 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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark 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(p)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

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):

Copyright Act of 1976 and Declaratory Judgment Act

Brief description of cause:

Defendant wrongfully asserted copyright claims to suppress criticism on a blog

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

10/06/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Paul Alan Levy

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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 in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

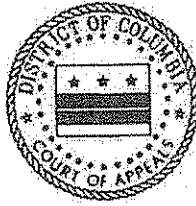
VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.



District of Columbia Court of Appeals
Committee on Admissions
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2710

I, JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals, do hereby certify that

PAUL A. LEVY

was on MARCH 14, 1978 duly qualified and admitted as an attorney and counselor entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on October 4, 2014.

JULIO A. CASTILLO
Clerk of the Court

By:

Monette Lane
Deputy Clerk