

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-021979

03/21/2008

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT
C. Castro
Deputy

P D FINANCIAL CORPORATION

WALTER ANTON ULRICH

v.

JOHN DOE

DAVID S GINGRAS

MINUTE ENTRY

Courtroom 704 – Central Court Building

8:46 a.m. This is the time set for oral argument. Plaintiff is represented by counsel, Walter Anton Ulrich. Non-Party Xcentric Ventures, L.L.C. is represented by counsel, David S. Gingras.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

10:05 a.m. Matter concludes.

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LATER:

Non-Party Xcentric Ventures, L.L.C. (“Xcentric”) filed a Motion to Quash Subpoena Duces Tecum on December 21, 2007. The Court reviewed the Motion as well as all subsequent briefing and heard oral argument earlier today. The matter was taken under advisement at that time.

Xcentric has moved to quash the subpoena duces tecum served upon it by Plaintiff PD Financial Corporation (“PD”). PD initiated this action to conduct discovery in connection with a California defamation suit filed by PD against three (3) John Doe defendants. Those defendants posted allegedly defamatory statements on Xcentric’s website using pseudonyms. The discovery seeks documents from Xcentric which may disclose the true identity of the three (3) posters. Xcentric argues that its Motion should be granted pursuant to the three prong test enunciated in the factually indisguishable recently decided case of Mobilisa v. Doe, 518 Ariz. Adv. Rep. 25 (App. 2007) (“Mobilisa”).¹

In this case the Court need not address all three prongs of the Mobilisa analysis (See Mobilisa at 30) because PD has not met its burden on one of the prongs. In short, PD has failed to show that its defamation claim “could survive a motion for summary judgment on the elements of the claim not dependent on the indent[ities] of the anonymous speaker[s].” Id.

Here as to each of the three posted messages, the statements made constitute a mélange of opinion, hyperbole and non-actionable statements. Even if all colorably factual statements are assumed to be false, they are not defamatory.

In the circumstances, Xcentric’s Motion is granted and the subpoena is quashed.

¹ Xcentric’s written Motion also urged granting its motion on the ground that PD has no standing to bring its action in Arizona pursuant to Ariz. Rev. Stat. §10-1502(A). But since PD is not transacting business in the state that argument has no merit. In addition, Xcentric’s Motion asserted that PD had failed to comply with the requirements of Ariz. Rev. Stat. §12-2214(C). However, at oral argument Xcentric conceded that argument is subsumed in its position reliant upon Mobilisa and yielded the same result.