

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2007-CA-027976-XXXX-XX

EAPPRAISEIT, LLC,
a Delaware limited
liability company,

Plaintiff,

-vs-

PAMELA CROWLEY,
individually,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN D. MOXLEY, JR.,
CIRCUIT COURT JUDGE

Thursday, June 28, 2007
Historic Titusville Courthouse
506 South Palm Avenue
Titusville, Florida 32796
2:15 p.m. - 3:30 p.m.

Reported By:
Tamara L. Gulker, RPR
Notary Public, State of Florida
Esquire Deposition Services
Orlando Office - Job No. 878094

COPY

1 APPEARANCES:

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7 On Behalf of Defendant:

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16 ALSO PRESENT:

17 ANTHONY MERLO (Via Telephone)

18 PAMELA CROWLEY

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P R O C E E D I N G S

1
2 THE COURT: This is an emergency motion for
3 injunctive relief.

4 MR. BOLANOVICH: Correct, your Honor. My name
5 is John Bolanovich. I'm an attorney for the
6 Plaintiff, eAppraiseIT, LLC. We noticed this for
7 an emergency hearing, our motion for injunctive
8 relief. I have a single witness today testifying
9 by telephone. He will be on the line shortly, or
10 if you are ready to proceed right away, I can just
11 give him a buzz and tell him to call.

12 THE COURT DEPUTY: He's on hold right now.

13 MR. BOLANOVICH: He's on the line? I don't
14 know how you want to do it. Do you want to do
15 opening statement or just go right into the
16 testimony?

17 THE COURT: Probably want to know what the
18 issues are before we have testimony. And
19 eAppraiseIT, LLC?

20 MR. BOLANOVICH: Correct.

21 THE COURT: A Delaware limited liability
22 company?

23 MR. BOLANOVICH: Correct.

24 THE COURT: And Pamela Crowley?

25 MR. LANIGAN: Eric Lanigan on behalf of

1 Ms. Crowley who's here seated behind me.

2 THE COURT: Okay. All right. Opening?

3 MR. BOLANOVICH: Yes, your Honor. Just
4 briefly, my client is a company in California. We
5 are here today on an emergency motion for
6 injunctive relief, but the complaint itself alleges
7 cause of action for defamation per se and tortuous
8 interference with advantageous business relations.

9 My client is an appraisal management company.
10 It acts -- his company acts as a buffer between
11 lenders, like banks, for residential mortgages and
12 the individual appraiser that is ultimately hired.

13 THE COURT: They're brokers?

14 MR. BOLANOVICH: Correct. He has established
15 goodwill, as you'll hear in his testimony, with
16 several large clients, namely banks. He also has
17 established a large network of appraisers that he
18 uses with his company.

19 He is currently -- his company is currently
20 being irreparably harmed by statements made by
21 Ms. Crowley on the Internet that are not only
22 false, but directly attack the characteristics
23 that are contrary to customary and lawful
24 appraisal management business practices. So it's
25 a defamation per se against the company's interest

1 in that regard.

2 You'll hear testimony that the company
3 contacted Ms. Crowley several times through
4 writing to attempt to have her cease this
5 behavior, to meet and confer, and we asked
6 repeatedly what facts do you have to support these
7 statements because they're not right, and no
8 response whatsoever. So we had no other choice
9 but to seek relief through the courts, and
10 primarily we want to have an order entered today
11 that would enjoin her from any other statements
12 made about my client until the litigation can get
13 to the bottom of this. If she has defenses that
14 these are true allegations or any other defenses,
15 we'll be glad to hear that in discovery, but she
16 has failed to produce those today, up until today,
17 so we have no other belief other than that she's
18 going to continue this, and she refuses to support
19 the statements with any competent evidence. So
20 that's why we're here today.

21 I only have one witness, the president of the
22 company testifying from California via telephone,
23 Anthony Merlo. And if Ms. Crowley testifies, I'll
24 be -- obviously I'd like to cross-examine her, but
25 other than that, that's what we have for today.

1 THE COURT: Thank you.

2 MR. BOLANOVICH: Okay.

3 THE COURT: Yes, sir.

4 MR. LANIGAN: Your Honor, I have a series of
5 cases that I'm going to refer to here, if I may
6 approach, and give you a copy of these.

7 THE COURT: Sure.

8 MR. LANIGAN: I've provided copies to counsel
9 as well.

10 THE COURT: You just need to do an opening
11 right now. I'll give you plenty of opportunity to
12 address --

13 MR. LANIGAN: Okay.

14 THE COURT: -- all the case law and
15 everything, but generally, where are you going
16 and --

17 MR. LANIGAN: Well, to be begin with, what
18 they are seeking to do here, as Mr. Bolanovich
19 said, is to enjoin any other statements by
20 Ms. Crowley about his client, in other words, to
21 cut off her First Amendment right to free speech.
22 That's what they're seeking to do. That's really
23 what the issue here is all about. And the reason I
24 placed these cases here before you is for
25 preliminarily to hearing this, is the adequacy of

1 the basic pleadings that are before the Court at
2 this time.

3 As I'm sure the Court knows the four criteria
4 for injunctive relief is irreparable harm, a clear
5 right, no adequate remedy at law, and
6 considerations to public interest. There are
7 several cases that literally go back over 100
8 years that talk about the need for a verified
9 complaint or affidavit in support of a complaint
10 if the complaint itself is not verified when
11 seeking a preliminary injunction.

12 In this case, the complaint itself is not
13 verified. The motion for preliminary injunction
14 has a verification attached to it, apparently
15 signed by Mr. Merlo, in which it states that he's
16 read the motion and the complaint, and to the best
17 of his knowledge, information and belief, the
18 statements stated in there are true.

19 There are two cases that I have there,
20 Zuckerman and the Supreme Court case of Ruge v.
21 Apalachicola Oyster. Both of these hold that
22 specifically a verification or an attempted
23 verification which is based upon exactly the same
24 language, that based upon my knowledge,
25 information and belief that these statements are

1 true is on its face inadequate, because it is that
2 the law does not require -- the law does require
3 an affidavit of the facts from those from whom the
4 knowledge, information and belief of the affiant
5 were derived.

6 THE COURT: I have a question.

7 MR. LANIGAN: Yes, sir.

8 THE COURT: Will that be cured if we have live
9 testimony of the witness?

10 MR. LANIGAN: Well, we're -- first, I think
11 they have to come here on an adequacy of pleadings.
12 You can't -- you can't file defective pleadings and
13 then say, "Well, don't worry about it because when
14 we get to court, gee, we'll clean all of that up."
15 The fact of the matter is, is that the pleadings on
16 their face are inadequate to be here today, much
17 less have a hearing in which you try then to clean
18 up the inadequacies that they have here.

19 Further, as to that subject -- I mean, we
20 would certainly object to any telephonic
21 testimony. We don't know who these people are.
22 We have no way of verifying their identity. We
23 have no way of verifying the circumstances under
24 which they're testifying. Are they using
25 materials? Do they have someone with them

1 assisting them?

2 THE COURT: Let me ask you: Isn't your
3 strongest argument the First Amendment?

4 MR. LANIGAN: Absolutely.

5 THE COURT: Why don't we get to that? And
6 what I think you're going to talk about is prior
7 restraint under the First Amendment.

8 MR. LANIGAN: Absolutely.

9 THE COURT: So that's where we're at. Did you
10 put any First Amendment cases in there?

11 MR. LANIGAN: Yes, sir. In fact, there are
12 cases in there that deal specifically with an
13 attempt to put a restraint on speech based upon
14 identical -- well, substantively identical
15 circumstances as we have here, and that is a claim
16 of loss of business revenue as a result of signs,
17 posters and speech of all kinds, of verbal, written
18 speech impacting the Plaintiff's business. And in
19 that regard they're the same as they are here.

20 The other fatal defect that we have here is
21 neither the petition, the complaint, nor the
22 motion even allege an actual loss. There is -- in
23 essence, they're stating that these statements are
24 made. We claim that they're not true, and we're
25 going to suffer irreparable harm. All of the

1 cases that deal with that point indicate that in
2 those cases, even though they were denied on First
3 Amendment privilege, those parties came to the
4 court with documented losses. They put up the
5 sign. Sales went down. They picketed. Sales
6 went down.

7 MR. BOLANOVICH: Your Honor, if I may object.
8 I think this is more of a closing argument than an
9 opening statement. If we could get on with the
10 testimony, I think it would be more appropriate.

11 THE COURT: I'll overrule that at this point.

12 MR. LANIGAN: Okay. So I think that, again,
13 it's another example of the fatal defect existing
14 in the pleadings which create the underlying right
15 to even be here to argue this.

16 THE COURT: Thank you, sir. I note your
17 objection under the Rules of Judicial
18 Administration to telephonic testimony, but I'll
19 overrule it.

20 And is the witness on the line?

21 MR. BOLANOVICH: I believe he is, your Honor.
22 Mr. Merlo?

23 THE CLERK: She hasn't transferred him yet.

24 MR. BOLANOVICH: Oh, okay.

25 THE COURT: You'll hear it beep.

1 (Short pause.)

2 MR. BOLANOVICH: Is he going to hear me
3 through this microphone?

4 THE COURT: No. You're going to need to come
5 up. Hello?

6 (Short pause.)

7 THE COURT: Hello?

8 THE WITNESS: Hello.

9 THE COURT: Would you raise your hand, sir.

10 Thereupon,

11 ANTHONY MERLO,

12 having been first duly sworn via telephone,

13 was examined, and testified as follows:

14 THE WITNESS: I do.

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BOLANOVICH:

18 Q. Sir, could you state your name for the record,
19 please?

20 A. Anthony Merlo.

21 Q. Okay. And what position do you hold
22 professionally?

23 A. I'm the president and CEO of First American
24 eAppraiseIT.

25 Q. Is your company the Plaintiff in this lawsuit

1 that we are here today on?

2 A. We are.

3 Q. Okay. Could you explain for the Court just by
4 way of background, briefly, what type of business your
5 company performs?

6 A. We are a nationwide appraisal management company,
7 commonly referred to as an AMC, and we provide valuation
8 products on a national basis for lenders in the mortgage
9 space, in the -- primarily in the Prime A first mortgage
10 market.

11 Q. Okay. Have you had the opportunity through your
12 business venture to establish goodwill with clients?

13 A. We have.

14 Q. What about potential clients?

15 A. Potential clients as well. In the -- in the last
16 four years, our business has grown well over 200 percent,
17 and that's not through a great sales effort. It's through
18 word of mouth and the reputation we have with existing
19 clients who pass our name on to potential clients as a
20 company that they might want to deal with.

21 Q. Okay. Could you give me an example of some of
22 these advantageous business clients?

23 A. Currently today we're doing business with the
24 majority of the top five lenders in America: Chase,
25 Washington Mutual, National City Mortgage. We're dealing

1 with GMAC, and so on.

2 Q. Can you approximate for me how much revenue you
3 obtain from your top two clients per month?

4 A. Our top two clients per month are generating
5 today approximately \$8 million a month in revenue.

6 Q. Have the statements made by Ms. Crowley that
7 we'll get into in this hearing, have they damaged these
8 relationships with any of these clients?

9 A. Yes, they have.

10 Q. Could you explain, please?

11 A. With -- with a few of the clients, as they became
12 aware of these, these accusations, at a minimum, they
13 contacted us and were concerned that somewhere along the
14 way our reputation for quality and ethics had diminished.
15 So we obviously had to demonstrate to them once again
16 through audits and several meetings that nothing has
17 changed on our side, and in fact, we've increased our level
18 of security and ethics and our policing role in the
19 mortgage lending arena.

20 Q. Is this harm continuing in nature?

21 A. It is.

22 Q. Okay. Do you have advantageous business
23 relationships with appraisers themselves?

24 A. Yes, we do.

25 Q. And is that important to your company?

1 A. It's very important to our company. As an
2 appraisal management company, we only have a few hundred
3 staff appraisers that are actually employees in certain
4 major markets. We rely heavily upon the local fee
5 appraiser who is willing to work with us under our
6 parameters, and without them, obviously it makes our
7 operation and our performance very difficult for our
8 clients.

9 Q. Have the statements made by the Defendant on the
10 Websites damaged those relationships as well?

11 A. They have.

12 Q. Do you have a set of exhibits in front of you?

13 A. I do.

14 Q. Could you turn to Exhibit 8, please?

15 A. Okay. Okay. I am there.

16 Q. Yeah. I'm here. All right. Can you tell me,
17 can you identify for me what Exhibit 8 is?

18 A. Exhibit 8 is, from what I'm seeing here, an
19 internal e-mail that was passed on to me. At the bottom of
20 it is a correspondence from an appraiser we have just
21 signed up, a Michael White, indicating that he will no
22 longer accept orders from us.

23 MR. LANIGAN: Your Honor, I'm going to object
24 on the basis of hearsay. He's not the author of
25 this alleged e-mail, and it and its contents are

1 hearsay. The proper party to testify as to a
2 representation by -- apparent representation by
3 this individual would be that individual.

4 MR. BOLANOVICH: Your Honor, this is --

5 MR. LANIGAN: I can't cross-examine a piece of
6 paper.

7 MR. BOLANOVICH: This is the best evidence we
8 have. Had we had a computer here and things like
9 that, we could bring it up online. He is just
10 testifying to the fact that this person made this
11 statement, not to the fact, necessarily, that it
12 was true. We have -- all of these exhibits are
13 mainly these statements by Pamela Crowley that I'll
14 have him authenticate as he saw on the Website, he
15 downloaded it, that this is a true and accurate
16 copy. And if we want, I'll stop here and have
17 Pamela Crowley testify and authenticate that
18 that -- she made that statement because it's her
19 signature underneath it, but I think he's
20 sufficient to comment. And even if we don't have
21 this exhibit, I can have him testify as to whether
22 or not he lost an advantageous business
23 relationship with an individual. So if you want to
24 rule out the exhibit, that's fine, but I think the
25 testimony is relevant.

1 THE COURT: I'll overrule the objection.

2 MR. BOLANOVICH: Okay.

3 BY MR. BOLANOVICH:

4 Q. You were referring to the bottom of page 2 of
5 Exhibit 8; were you not?

6 A. Yes, I was.

7 Q. And do you have reason to believe that that
8 individual is no longer going to do business with your
9 company as an appraiser?

10 A. I do.

11 Q. Is this a true and accurate copy of what you
12 retrieved from the relevant computer and e-mail exchange?

13 A. It is.

14 Q. Okay. I'd like to get into the actual statements
15 that are alleged here, and first, if you turn to Exhibit 2,
16 can you tell me what that exhibit is? Can you identify it
17 for me?

18 A. Exhibit 2 is the motion for injunctive relief.

19 Q. Okay. And if you turn to page 6, the last page
20 of it, is that your signature?

21 A. That is my signature.

22 Q. Did you review this document before it was filed
23 with the court?

24 A. I did.

25 Q. Do you believe everything expressed in this

1 motion, as well as the complaint, are true and accurate to
2 the best of your belief and knowledge, subject to the
3 penalties of perjury?

4 A. I do.

5 Q. Okay. Now, let's go on. If you go to Exhibit 2,
6 which is the motion we're talking about, on page 2 there is
7 a numbered paragraph 9(a). Do you have that in front of
8 you?

9 A. I do.

10 Q. Can you read the statement that's expressed in
11 paragraph 9(a)?

12 A. In quotes here, it says: "I have many stories
13 coming in from appraisers all over the nation regarding
14 EappraiseIT demanding that they do what is unethical at the
15 least" and --

16 Q. Okay. Just stop there. Now, if you go to
17 Exhibit 3, which is several pages, if you go to the
18 numbered page 3 of Exhibit 3 where it says "aside," and
19 there's a paragraph, and then there's an entry called
20 "Pamela Crowley" underneath it. Is that what your
21 allegation and your motion and complaint is based upon?

22 A. Yes.

23 Q. Is that a true and accurate -- is Exhibit 3 a
24 true and accurate copy of the Internet exchange that you
25 observed and printed out?

1 A. It is.

2 Q. Does that statement identify your company,
3 eAppraiseIT?

4 A. Oh, by name, yes, but not by practice.

5 Q. Okay. Do you take exception to this statement?

6 A. Absolutely.

7 Q. Why?

8 A. Well, simply, first of all, it's not true.

9 Q. Okay.

10 A. If we -- if we operated unethically, at the
11 least, we wouldn't be around as long as we have, and we --
12 well, it just violates every business principle that I have
13 personally.

14 Q. Has it placed your company in a bad light?

15 A. Absolutely.

16 Q. Does your company utilize unethical practices?

17 A. No.

18 Q. In that exchange that we are looking at authored
19 by Pamela Crowley, does she identify the alleged, quote,
20 appraisers all over the nation, closed quote?

21 A. No.

22 Q. Has your company asked her to identify that?

23 A. Yes, we have.

24 Q. And how does she respond?

25 A. No response.

1 Q. Okay. And does she provide any facts in that
2 dialogue to support this allegation, for example, what it
3 is that you demand of appraisers that is unethical?

4 A. No, she didn't.

5 Q. Have you asked her to do that?

6 A. Yes.

7 Q. What was her response?

8 A. No response.

9 Q. Okay. This is the format I'd like to follow with
10 the other allegations of statements. Back to Exhibit 2 in
11 paragraph 9, you have a Section (b). Do you have that in
12 front of you?

13 A. Hold on one second.

14 Q. It's page 2 of the motion.

15 A. Yes, I have it.

16 Q. Could you read into the record Part (b)?

17 A. "LSI, eAppraiseIT, AppraisalPort, and many others
18 are," capitalized, "unlocking your appraisal reports,
19 converting them," converting is in quotes, "them to
20 something else, delivering them completely unlocked, doing
21 whatever they want with and to the data along the way. At
22 this point I very strongly suggest that all," capitalized
23 all, "appraisers should immediately stop sending anything
24 in to any of these AMCs," all in caps with five exclamation
25 points. "The evidence I already have that is being

1 delivered to the various Federal and State law enforcement
2 and regulators, and others, with much more coming in
3 regularly, would make your eyes pop out of your heads."

4 Q. Okay. Now, if you turn to Exhibit 4, is
5 Exhibit 4 a true and accurate copy of that text as it
6 appeared on the Website?

7 A. Yes, it is.

8 Q. Okay. Do you take exception to those collection
9 of statements?

10 A. Absolutely.

11 Q. Does your company unlock appraisal reports to
12 convert them to something else and deliver them completely
13 unlocked and do whatever you want with them to the data
14 along the way?

15 MR. LANIGAN: Objection --

16 A. No.

17 MR. LANIGAN: Objection. Mischaracterizes the
18 statement. It doesn't say "unlock appraisal
19 reports to convert them. It says "unlocking your
20 appraisal reports," comma, "converting them into
21 something else," comma. So it's a
22 mischaracterization of --

23 THE COURT: Sustained.

24 MR. LANIGAN: -- of the representation.

25 THE COURT: Sustained.

1 BY MR. BOLANOVICH:

2 Q. Do you convert your appraisal reports to
3 something else?

4 A. No.

5 Q. Do you deliver them completely unlocked?

6 A. No.

7 Q. Do you do whatever you want with them and to the
8 data along the way?

9 A. No.

10 Q. Has Ms. Crowley ever provided you any support for
11 this alleged evidence that she has that she's delivered to
12 various federal and state law enforcement and regulators
13 and others?

14 A. No.

15 Q. Have you asked?

16 A. Yes.

17 Q. Okay. Then we'll go to paragraph 10 of the
18 motion, which is on page 3 of it. And if you can read into
19 the record the statement made in paragraph 10(a) by
20 Ms. Crowley.

21 A. "One of the best examples of the power and
22 results of what I've been doing is what happened with
23 eAppraiseIT pressuring an appraiser to raise the value and
24 finding out that they do," capitalize do, "unlock each and
25 every appraisal delivered through them" exclamation.

1 "Without the contacts I've been able to collect, I don't
2 know that anything could have happened."

3 Q. Okay. If you look at Exhibit 5, is that a true
4 and accurate copy of the statement as it -- what appeared
5 on the Website?

6 A. It is.

7 Q. Okay. Has there ever been a finding by anybody
8 that your company ever pressured an appraiser to raise the
9 value?

10 A. No.

11 Q. Did she ever identify for you the, quote,
12 contacts, closed quote, that she's been able to collect?

13 A. No.

14 Q. Okay. And then let's do the same with
15 Paragraph 10(b). Could you read that into the record?

16 A. Sure. 10(b): "Please know that eAppraiseIt
17 opens your appraisals to make additions to it. Knowing
18 that, how is your signature secured anymore?"

19 Q. And is Exhibit 6 a true and accurate copy of that
20 statement as it appeared on the Website when you first saw
21 it?

22 A. Yes, it is.

23 Q. Okay. Did your company ever open appraisals to
24 make additions to it?

25 A. We did.

1 Q. Explain.

2 A. We -- we uncovered a fraud ring in Atlanta,
3 Georgia, for a national lender who's affiliated with a
4 builder. The mandate of the company was to use eAppraiseIT
5 exclusively to their loan officers. One particular branch
6 found a work-around, contracted their own appraisers, had
7 them fulfill orders and mark them as being from and managed
8 through eAppraiseIT without our knowledge.

9 The property began to default. The lenders sent
10 these files to us to exercise their rights under our reps
11 and warrants, which I should mention we warrant and rep
12 every appraisal for -- against fraud and gross negligence.
13 They began to file claims. We began to notice that they
14 weren't in our system, and in fact, we did not receive
15 these orders. The number grew well into dozens of orders
16 through this branch.

17 The lender asked if there was something we could
18 do to indicate that these were in fact from us. We came up
19 with the idea of a watermark, essentially our logo, to go
20 on the appraisal and admonish them that if our watermark
21 was not on the appraisal, do not underwrite and accept it.
22 Immediately call us. We will check and make sure that it's
23 not a fraudulent appraisal.

24 Other lenders began to embrace the same procedure
25 as a stopgap against fraud and a violation of their own

1 policy to use eAppraiseIT. What we did was simply, when an
2 order came in, opened the appraisal. Under much discussion
3 and counsel from what we believed to have been experts, we
4 felt that it was safe to unlock them, enter our
5 watermarking, immediately relock them, secure them with a
6 password, and continue our process of QC and delivery to
7 the client. We were told that it would be safe to do this
8 as long as we did not alter the values, the comparables,
9 the data that would affect the opinion of value, or tamper
10 with it.

11 Q. Was there a point in time where you ceased that
12 procedure?

13 A. We did. When it became -- when it came to my
14 attention that it made our appraiser partners, those that
15 worked with us and those that vowed never to work with us
16 again, through these postings that it made them very
17 uncomfortable, I immediately regrouped our senior
18 management team, called in our counsel again, heard
19 everybody's side of it, and the decision was to continue
20 because we could make the basis that what we were doing was
21 actually a stopgap measure. However, I took it under
22 consideration, and in the abundance of caution, I
23 authorized our IT department and our operations department
24 to cease. And we stopped adding watermarks on April 12 of
25 this year. 6:30 Pacific Time we rolled them into

1 production, and we no longer add our watermark, much to the
2 disappointment of our lenders, and in fact we added another
3 password to it to make doubly secure that nobody could open
4 it in our shop or the lender's shop.

5 Q. Okay. Did you communicate to Ms. Crowley that
6 your company had ceased unlocking reports for that limited
7 purpose?

8 A. We did.

9 Q. And did she continue to make the same allegation
10 thereafter?

11 A. Yes, she did.

12 Q. Okay. A couple more exhibits. If you look at
13 Exhibit 7, the next to the last page, do you see an entry
14 there that's identified by "Mortgagefraudwatchlist.org"?

15 A. I do.

16 Q. Do you want to read that into the record for us?

17 A. I believe it's the one from Pamela Crowley. It
18 says on top --

19 Q. Yeah.

20 A. "Given the choice between a BPO and an
21 eAppraiseIT appraisal: Go with the BPO," exclamation
22 point.

23 New paragraph: "If you decide to go the
24 appraisal route, especially through EappraiseIT, demand
25 true identification of the person that comes to your home,"

1 parenthesis, "not," capitalized, "just a business card, but
2 photo ID," exclamation point, closed parenthesis, "write
3 that name down, and let us check that out to see if they
4 really are an appraiser. EappraiseIT will probably pay the
5 appraiser maybe \$200 +/- and there just are not very many
6 competent and/or ethical appraisers that will do the job
7 for that. On top of that, there are questions about
8 EappraiseIT's practices in handling the appraisals that are
9 sent through them." In capitalized bold, it finishes with
10 "If your only choice is between a BPO and an EappraiseIT
11 appraisal: Go with the BPO."

12 Q. Is that a true and accurate copy of the statement
13 as you found it on the Website?

14 A. It is.

15 Q. Why do you take exception to this allegation?

16 A. A few different reasons, several different
17 reasons. Number 1, this was a potential customer who was
18 seeking guidance on the forum on the Website about removing
19 private mortgage insurance. He was speaking with one of
20 our clients that contracted us to be an independent third
21 party to manage that valuation assessment process for them.
22 The client was just asking about that and mentioned our
23 name.

24 Where I take exception beyond that and how this
25 obviously came to the attention of our client, these false

1 accusations, is that we send out people that aren't
2 appraisers, and it stipulates what we pay and actually
3 insults our appraisers that do work for us, that they can't
4 be ethical if they work for \$200. And so I take exception
5 to that and the fact that she indicates if you have a
6 choice, go with a BPO, when the client, you know, obviously
7 contracted us for appraisals, and drove away a source of
8 revenue for our company.

9 Q. Does your company -- did they ever send out
10 people that are not appraisers to appraise someone's home?

11 A. No, absolutely not. We do allow, if the lender
12 allows, appraiser trainees to go, but they have to operate
13 under the guidelines as a trainee, and they have to operate
14 under a supervisory appraiser.

15 Q. Okay. And we have one more statement which is
16 Exhibit 9. If you look at the 5th page of 7, do you see an
17 entry there by Pamela Crowley?

18 A. Oh, I do.

19 Q. Can you read that into the record?

20 A. (As read) "Appraiser's fee is contingent of their
21 value opinion. The SOW, a type of appraisal ordering
22 report, and the appraiser's fee all being contingent on the
23 initial," parenthesis, "first appraisal," closed
24 parenthesis, value opinion of the appraiser, with the fee
25 to the appraiser being higher if they just say I don't

1 think I can hit that value wanted," parenthesis, in caps,
2 "unless you upgrade this order and pay me more," closed
3 parenthesis and caps. And she has in parentheses "second
4 appraisal."

5 Q. Okay. And is this -- is this "hollow" an
6 identification of your company on the next page?

7 A. It does.

8 Q. Okay. Does she ever provide you with any facts
9 to support that allegation?

10 A. No, no.

11 Q. Okay. Now, can you turn to Exhibit 10? Tell me
12 if you can identify that two-page document.

13 A. It is -- this is a letter from our attorney,
14 Christopher Jafari, to Ms. Crowley.

15 Q. And what was the purpose of sending this letter?

16 A. I asked him to send this letter to her after
17 correspondence we had with one of our major clients where
18 she passed on, through her efforts as a fraud fighter,
19 which I think is very commendable, by the way, to them and
20 an appraiser who had an issue with us and felt that we
21 pressured him. I submitted all the facts to the lender and
22 courtesy copied her since she brought it to our attention,
23 and I want to know these things. And then she made the
24 statement. So I asked our attorney to write to her to
25 substantiate those statements because our client was

1 concerned, and my staff called my attention to this
2 Website, which I didn't know existed, and I started reading
3 these statements that she had been writing, and so I asked
4 him to just send her this information so I could have the
5 information so I could launch an investigation of any
6 appraiser that feels pressured, and if any of my employees
7 are doing that, I want to take disciplinary action, and in
8 fact terminate them. We don't promote that at eAppraiseIT.

9 Q. Was this letter an attempt to resolve this with
10 Ms. Crowley without resorting to litigation?

11 A. Absolutely. I don't want to sue an appraiser or
12 a popular appraiser who is an advocate fighting fraud. I
13 mean, I agree with that. So we tried everything we could
14 to get the information and to stop false statements, but
15 this was the first of a couple attempts.

16 Q. Did she respond to this letter?

17 A. To my knowledge, no.

18 Q. Okay. And tell me what Exhibit 11 is.

19 A. Exhibit 11 is a document that, again, our
20 attorney, Christopher Jafari, said that he would draw it up
21 and send it to her as an example of what we would intend to
22 file if we had to go the litigation route, which we didn't
23 want to do. If she would just please stop making these
24 false accusations or provide us evidence in support of her
25 accusations so we could investigate and report back to

1 anybody that might have been involved.

2 Q. Did she respond to that attempt?

3 A. To my knowledge, no.

4 Q. Okay. And one final exhibit is Exhibit 12.

5 Could you tell me what that is?

6 A. Exhibit 12 -- oh, okay. Exhibit 12 is, again, at
7 my request. I thought maybe since -- I thought it would be
8 prudent for Chris to continue to ask her to have her
9 attorney contact us because we were now considering relief
10 through the courts. And she did respond and say that she
11 would have her attorney contact us, but he never did.
12 Chris reminded her again, and I asked him to put in the
13 letter this time to tell her that, you know, we stopped
14 doing the watermark entry. I thought that would -- and
15 then she would publicize that on her postings that okay,
16 eAppraiseIT has stopped doing it, you know. We told them
17 it was wrong. They didn't -- we didn't like it, so they
18 stopped it in an abundance of caution. And then he -- but
19 the postings continued, and then he reminded her on this
20 document again that we have notified her and were reminding
21 her again that we no longer do it, and he cites that it
22 could -- you know, that the consequences could be severe if
23 she continues to say that we open their files and alter
24 data to our liking and send them unlocked, when in fact we
25 haven't. We stopped on April 12.

1 Q. All right. To summarize it, have these
2 statements attributed conduct and characteristics to your
3 company that are contrary to customary and lawful appraisal
4 management business practices?

5 A. Absolutely.

6 Q. Have they negatively impacted your business's
7 trustworthiness and character?

8 A. They have.

9 Q. Have they injured your company's reputation and
10 goodwill in the appraisal management industry?

11 A. They have.

12 MR. LANIGAN: Objection, your Honor. No
13 predicate for this witness to testify as to other's
14 ideas of their reputation in the industry.

15 THE COURT: Sustained.

16 BY MR. BOLANOVICH:

17 Q. Didn't you testify already, Mr. Merlo, as to the
18 adverse effect of one of your top clients once they found
19 out about these allegations by Ms. Crowley?

20 A. Yes. They questioned us. They were concerned,
21 and we found ourself in -- moving from a position of
22 trustworthiness as an outsource solution for them to more
23 of a defensive posture. Fortunately, we've proven to them
24 that we not only uphold their policies, but we have several
25 of our own to prevent pressure, to fight fraud, and that we

1 do not open the files -- why we did it in the first place,
2 we don't do it any longer. And it was just a long, arduous
3 process to have to defend ourselves against the false
4 allegations.

5 Q. Do you have a reasonable belief that these
6 statements are going to continue if the Court does not
7 enter into an injunction?

8 MR. LANIGAN: Objection. Calls for
9 speculation.

10 THE COURT: Sustained.

11 BY MR. BOLANOVICH:

12 Q. Do you believe -- do you have any reason to
13 believe that Pamela Crowley will stop sending these types
14 of defamatory statements without court intervention?

15 MR. LANIGAN: Same objection. Speculation,
16 conjecture.

17 MR. BOLANOVICH: I'm asking if he has a basis
18 to believe that she'll stop.

19 BY MR. BOLANOVICH:

20 Q. Do you have a basis to believe that she'll stop
21 without --

22 THE COURT: I'll overrule.

23 BY MR. BOLANOVICH:

24 Q. Okay. You can answer the question.

25 A. I do not believe that she will stop.

1 MR. BOLANOVICH: Okay. I don't have any other
2 questions. Opposing counsel is entitled to
3 cross-examine you now.

4 THE COURT: You may proceed, sir.

5 CROSS-EXAMINATION

6 BY MR. LANIGAN:

7 Q. Mr. Merlo, my name is Eric Lanigan, and I
8 represent Ms. Crowley. I'm going to ask you a few
9 questions.

10 When was it that your company stopped unlocking
11 the appraisals that were coming through your office?

12 A. April 12, 2007.

13 Q. Okay. I want to call your attention to the dates
14 on the Web postings that you referred to, specifically
15 Exhibit 7 where it refers -- you refer to things in here
16 about opening up the appraisals, and you referenced that,
17 well, this was wrong because you had stopped.

18 Do you see the date on the bottom right-hand
19 corner of that printout?

20 A. I do.

21 Q. What's the date?

22 A. March 9, 2007.

23 Q. Okay. So this was posted before you made the
24 change.

25 A. Correct.

1 Q. Okay. So any reference to unlocked appraisals
2 was at that time true, correct?

3 A. Um -- let me look at what she wrote.

4 MR. BOLANOVICH: I'm going to object, your
5 Honor. I don't think it's been established that
6 that date is the date of the Internet entry as
7 opposed to the date it was downloaded.

8 MR. LANIGAN: Respond?

9 THE COURT: Sure.

10 MR. LANIGAN: We all know what the date on the
11 bottom of these printout means. That means the
12 date that this page was printed out. Okay. If it
13 was printed out on that day, then the posting had
14 to have logically appear --

15 THE COURT: Overruled.

16 A. (continued) I don't see anything. If I'm looking
17 at the right exhibit, there's no reference on this
18 that's -- we have BPO versus appraisal entry that speaks to
19 unlocking an appraisal report. Am I looking at the right
20 exhibit?

21 Q. Yeah. I'm asking you that that date is before
22 you unlocked it. Is that correct?

23 A. March 9, yes.

24 Q. Okay.

25 A. It is before we ceased doing it on April 12.

1 Q. All right. The first phrase up there on this
2 entry that you referred to, it says, "Given a choice
3 between a BPO . . ." What's BPO?

4 A. A broker price opinion.

5 Q. Okay. "And an EappraiseIT appraisal: Go with
6 the BPO." That's an expression of an opinion; is it not?

7 A. (No audible response.)

8 Q. If I say buy a Cadillac instead of a Chevrolet,
9 that's an opinion that I have about which would be a better
10 car to buy, isn't it?

11 A. Yes.

12 Q. Okay. And you're not attempting to stop, or are
13 you attempting to stop Ms. Crowley from expressing opinions
14 that she may have?

15 A. No, we're not.

16 Q. Okay. Do you think there is anything wrong with
17 someone recommending that an individual demand true
18 identification of a person that comes to your home?

19 A. No.

20 Q. Okay.

21 A. Itself, no.

22 Q. All right. The statement that there aren't many
23 competent and/or ethical appraisers that will do the job
24 for maybe \$200 plus or minus, isn't that likewise a
25 statement of opinion?

1 A. I don't view it so. I view it as a statement of
2 fact.

3 Q. Okay. So if I -- if I said here in open court
4 that, gee, any lawyer who charges maybe \$200 an hour is
5 probably not competent, that's a statement of fact or is
6 that a statement of opinion?

7 A. Well, I mean, it's a fact in her mind. I believe
8 it's a statement that she would make to cast us in a poor
9 light.

10 Q. I'm talking about on an objective basis. I'm not
11 trying -- I don't want you to try to get yourself in Pam
12 Crowley's mind. I'm asking you on an objective basis,
13 that's a statement of opinion; is it not?

14 A. I mean, I'm reading it. I believe being stated
15 to somebody that's not familiar with the industry, that
16 would be taken as fact.

17 Q. Okay. Now, the last sentence in that entry says,
18 "On top of that, there are questions about EappraiseIT's
19 practices in handling the appraisals that are sent through
20 them." Do you read that?

21 A. Yes.

22 Q. And one of the practices that was in question
23 back in early March of 2007 was the unlocking of appraisal
24 reports, correct?

25 A. Correct.

1 Q. Okay. Now, let me ask you, you mentioned in
2 regards to irreparable harm that some of your clients had
3 expressed concern about your practices in light of
4 Mrs. Crowley's -- or Ms. Crowley's postings; is that
5 correct?

6 A. Correct.

7 Q. And then you said at the end here that you had
8 proven to these clients that in fact you were acting in an
9 ethical and aboveboard manner, correct?

10 A. Correct.

11 Q. Okay. So if you've proven to these clients that
12 you're acting in an ethical and un -- aboveboard manner,
13 then you haven't suffered any irreparable harm with these
14 customers. You've proven to them that you're a-okay,
15 right?

16 A. That is not true.

17 Q. Okay. What's the ongoing irreparable harm that
18 you have with these customers to whom that you are acting
19 in an ethical and aboveboard manner?

20 A. One particular client has notified us that they
21 are in fact looking for at a minimum an additional vendor,
22 not necessarily to replace us, but an additional vendor in
23 the essence of caution.

24 Q. Let me ask you this: Who is that vendor?

25 A. Washington Mutual.

1 Q. Okay. Have they, in stating that they might want
2 to have more than one vendor like eAppraiseIT, indicated to
3 you in any writing that their pursuit of an alternative or
4 extra vendor would be based on representations made by
5 Ms. Crowley?

6 MR. BOLANOVICH: I'm going to object to the
7 form, your Honor. I don't know that I understand
8 the question, but if the client does, he can.

9 THE COURT: Do you understand the question,
10 sir?

11 THE WITNESS: You know, I really don't.

12 MR. LANIGAN: All right. Let me try again.
13 It did get kind of long-winded there.

14 BY MR. LANIGAN:

15 Q. Did Washington Mutual tell you that they were
16 looking at the potential of adding another vendor because
17 of representations made by Ms. Crowley?

18 A. Verbally, yes.

19 Q. Who told you that?

20 A. It was in a committee meeting in their
21 headquarters.

22 Q. And who said it?

23 A. I'd have to -- I'd have to go back and think
24 about that. There were eight of us in that room during our
25 meeting.

1 Q. Well, you want to take a minute and think about
2 it?

3 THE COURT: No, we don't need to do that.

4 BY MR. LANIGAN:

5 Q. Okay. So right now you're saying that somebody
6 said it, but you don't know who.

7 A. No, that's not true. I'm saying that it came up
8 in the meeting, and we were notified that there would be
9 additional vendors sourced in the marketplace.

10 Q. And you don't know who said it?

11 A. You know, I truly don't.

12 Q. Okay. But your testimony is that that person
13 said that they were taking that action because of
14 representations made by Pamela Crowley?

15 A. Because of the negative publicity and press that
16 we were receiving on these postings, yes. I mean, they --
17 even though we proved to them that nothing had changed,
18 they just still had concerns, because like any lender, they
19 have to prove that they also are fighting the fraud fight
20 and any type of -- anything like that.

21 Q. So now what you're saying is, there was no
22 specific representation that it was coming as a result of
23 statements by Ms. Crowley.

24 MR. BOLANOVICH: Objection. Misconstrues
25 testimony.

1 MR. LANIGAN: He can correct it if it's wrong.

2 THE COURT: Anytime you begin a question with
3 the word "so," it's argumentative, so -- and I
4 understand his testimony. I'll sustain it.

5 MR. LANIGAN: Okay.

6 BY MR. LANIGAN:

7 Q. Isn't it a fact, Mr. Merlo, that there were
8 countless, or let's say numerous, numerous negative Web
9 postings regarding eAppraiseIT from people other than --
10 far removed from Pamela Crowley?

11 A. Yes.

12 Q. Okay. Now, you mentioned that an appraiser
13 expressed concern to you about reading Ms. Crowley's
14 postings; is that correct? And let me make that a little
15 more detailed. I think you testified that an appraiser
16 indicated to you that they had concern about her postings
17 and that you had reason to believe that he won't do
18 business with you in the future. Do you recall that?

19 A. Yes, but his concern wasn't just the wide
20 postings, if you look at that exhibit. He and -- he and
21 several others since then, by the way, have said they won't
22 deal with us because of this litigation. And when they
23 cite the purpose of the litigation, they're clearly
24 misinformed by these postings of what this litigation is
25 about, coming from her.

1 Q. All right. Did they tell you they weren't going
2 to do business with you because of this litigation, or did
3 they tell you they weren't going to do business with you
4 because of what Ms. Crowley said?

5 A. Here it reads: Because of our lawsuit against
6 Ms. Crowley to try to close, shut down her site, or shut
7 her up.

8 Q. Okay. So they're upset with your attempting to
9 impede upon Ms. Crowley's First Amendment privilege,
10 correct?

11 A. No, that's not true.

12 Q. Okay. But it says they're upset because of this
13 lawsuit. Well, never mind. The language speaks --

14 A. It stems from the postings and the misinformation
15 and false accusations.

16 Q. Okay. The language speaks for itself.

17 All right. Now, let's look at paragraph 9 of
18 your complaint, which is Exhibit 1.

19 A. Exhibit 1?

20 Q. Yes. It's page --

21 A. I have it.

22 Q. Just a minute. I probably -- I'm sorry. Let's
23 go to Exhibit 2 which is your motion for injunctive relief,
24 paragraph 9.

25 A. Okay.

1 Q. Okay. You referred in there to paragraph 9(a),
2 and you read that. "I have many stories coming in from
3 appraisers all over the nation regarding EappraiseIT
4 demanding they do what is unethical at the least." And you
5 said that statement's not true, right?

6 A. Correct.

7 Q. How many -- how do you know that Ms. Crowley has
8 not heard stories from appraisers to that effect? How do
9 you know that's not true?

10 A. She hasn't produced them to me.

11 Q. Okay. Regardless of the fact of whether she
12 feels obligated or not obligated to produce them to you, on
13 what basis, other than that, do you represent to the Court
14 that she doesn't have stories coming in from appraisers all
15 over the nation?

16 A. It wouldn't fit our motto, our reputation, and
17 our experience.

18 Q. Okay. So you don't have any concrete proof that
19 she does not have stories from appraisers all over the
20 nation.

21 A. I do not.

22 Q. Okay. So it's speculation on your part based
23 upon the way you do business.

24 A. Yes.

25 Q. Okay. Now, you go to Subsection (b) there, which

1 I'm going to refer to it as the second representation, that
2 eAppraiseIt and I guess some similarly situated companies
3 are unlocking your appraisal reports.

4 Okay. I think we've established that at the time
5 that that representation was made in March of '07, that
6 statement's, by your own admission, true, correct?

7 A. At that point in time, yes.

8 Q. Okay. And "converting them to something else,"
9 did your company provide the appraisal reports in a
10 different software format to lenders than what you received
11 it in?

12 A. It depends how the appraisal comes in from the
13 appraiser, but we don't convert the appraisal data or the
14 data behind it, the opinion of value, to something else.

15 Q. I didn't ask you that. I asked you if you
16 converted it to a different software format from that in
17 which you received it.

18 A. That is a standard and acceptable practice in the
19 industry, sir --

20 Q. So you did --

21 A. -- how the bank wants and which software company
22 they would like it to come from. We don't control that.

23 Q. So there was a conversion to a different format.

24 A. Well, I --

25 Q. Yes or no?

1 A. You're taking liberties with the intent of that
2 statement.

3 Q. No --

4 A. That's not what is being referred to.

5 Q. Well, I think the Court will determine the intent
6 of the statement. I'm asking you to answer the question.
7 Is it not true that you did convert the appraisals to a
8 different software format?

9 A. EappraiseIT converting it to a different software
10 format, the answer is no.

11 Q. That was never done?

12 A. Utilizing a software company that will convert it
13 to the format that harmonizes with the bank's software, the
14 answer is yes.

15 Q. Okay. And that activity by this third-party
16 software company was done at the direction of eAppraiseIT,
17 correct?

18 A. It's done at the direction of the bank.

19 Q. Okay. And overseen by eAppraiseIT?

20 A. We are in the middle, passing the order through
21 that software.

22 Q. Okay. And is it your representation that
23 appraisers' appraisals were not delivered unlocked?

24 A. Yes.

25 Q. What does locked mean versus unlocked?

1 A. Password protected to prevent either an employee
2 of eAppraiseIT or at the bank to go in and alter the data
3 and raise the value or do anything inappropriate.

4 Q. You would get appraisals in a locked format from
5 the appraisers; do you not?

6 A. Typically, yes.

7 Q. And then they were unlocked.

8 A. To add the watermark, yes.

9 Q. Okay. And then when they're locked back up,
10 they're locked up in a format chosen by you.

11 A. They're locked back up in its original format and
12 password protected.

13 Q. Okay. And are we talking about the password that
14 the appraiser put on it or the password that eAppraiseIT
15 puts on it?

16 A. I'd have to -- you know, I truly don't know. I
17 would have to check.

18 Q. Okay. Now, let's go to the next page in your
19 motion there, paragraph 10.

20 A. Uh-huh.

21 Q. Now, it refers there to a -- and I'm going to
22 paraphrase this. I'm going to try to be accurate. And
23 it's talking about there's an example of eAppraiseIT
24 pressuring an appraiser to change a value. Would that be
25 an accurate characterization?

1 A. Yes.

2 Q. Okay. Let's look at Exhibit No. 3 from your
3 exhibits.

4 A. Okay.

5 Q. And if you go to the third page of that, you've
6 got an e-mail -- I don't know what the phrase is. It's
7 like a trail of e-mails here, and one of them is in here
8 which is from Pamela Crowley, and it's referring to an
9 Oregon appraiser, all right? Do you see that?

10 A. Yes, I do.

11 Q. Okay.

12 MR. BOLANOVICH: What page are you on, sir?

13 MR. LANIGAN: Well, that was page 2, but --
14 where it starts, and then he flipped now to page 3.

15 BY MR. LANIGAN:

16 Q. Okay. I'm going to call your attention to --
17 it's not really a paragraph, but there's a break, and then
18 it says "today get a rebuttal." Do you see that?

19 A. Uh-huh, yes.

20 Q. Okay. And if you read through there, the third
21 or fourth sentence starts with the words "called rep."

22 A. Yes.

23 Q. Okay. (As read) "Called rep who informed me that
24 if I could only squeeze another 20 to 25K, loan would
25 close. Tried to tell him that my landscape value

1 contribution was based upon market extracted information,
2 but was told that, quote, from one appraiser to another I
3 know you can find the small amount, closed quote. Well,
4 told him to go away and would not change my value. Was
5 told then that I have a reputation of being hard to get
6 along with. Boy, am I proud of that." Do you see that?

7 A. I do.

8 Q. Do you think that an accurate representation
9 there is of an appraiser being pressured to change a value?

10 A. I think that's a -- first of all, I also circled
11 the "called rep" portion. I'm not sure who he's referring
12 to. With this particular lender, we brought on board and
13 we utilized some of their internal appraisal people on
14 rebuttals when there's a question on value and there's data
15 that we think would provide a higher value. I don't know
16 if he spoke to an eAppraiseIT employee or if he talked to
17 one of the internal appraisal oversight employees at this
18 lender. Based on the language here about the loan was
19 closed, well, we don't know what makes a loan close. So I
20 question who he really talked to.

21 Q. But you don't know.

22 A. I truly don't know exactly --

23 Q. Okay.

24 A. -- who he talked to in this case.

25 Q. And if you flip back to page 2 at middle of the

1 page there where it's the start of this e-mail from Pam
2 Crowley, it says, "The AMC he's dealing with is
3 eAppraiseIT. Here is what he has written."

4 A. Correct.

5 Q. Okay. Do you have any reason to believe that
6 what she has said, "here is what he has written," do you
7 have any reason to believe that what follows from that
8 point down is not what in fact that appraiser wrote?

9 MR. BOLANOVICH: Objection, your Honor --

10 A. I don't have any reason to believe that.

11 BY MR. LANIGAN:

12 Q. Okay.

13 MR. BOLANOVICH: I mean, we're really going
14 into double hearsay now as to what somebody --

15 MR. LANIGAN: I couldn't agree more.

16 MR. BOLANOVICH: -- on a Website said about
17 somebody else. I mean, that's not why this exhibit
18 was entered into and that's not what we questioned
19 the witness on.

20 THE COURT: I have a procedural question.
21 What relief are you seeking?

22 MR. BOLANOVICH: I have a proposed order, if
23 you'd like --

24 THE COURT: No. What relief are you seeking?

25 MR. BOLANOVICH: Today?

1 THE COURT: Yes.

2 MR. BOLANOVICH: We're seeking an injunction,
3 preliminary injunction.

4 THE COURT: For what?

5 MR. BOLANOVICH: To stop her from making any
6 statement -- publicizing any statements about my
7 client or any of its subsidiaries until we can go
8 through discovery, see if she has defenses, see if
9 she can support her defenses, and then we -- she
10 can move to dissolve the injunction.

11 THE COURT: Let me ask you, in your complaint,
12 the prayer for relief -- or the verified motion for
13 injunctive relief, the prayer for relief was:
14 Respectfully requests this Court to enter a
15 temporary injunction against Defendant from further
16 publication of defamatory statements on the
17 Websites.

18 Is that what you're seeking?

19 MR. BOLANOVICH: Well, when I wrote --

20 THE COURT: Is that what you're seeking?

21 MR. BOLANOVICH: I would like --

22 THE COURT: Yes or no?

23 MR. BOLANOVICH: I would like it to be broader
24 than that. I would like it to be --

25 THE COURT: Well, that's what you -- that's

1 what we're here on. And of course, you're aware of
2 the law that says in the state of Florida that an
3 injunction cannot be issued to restrain threatened
4 defamation. Are you aware of that?

5 MR. BOLANOVICH: I am aware that any
6 statements by her could be determined to be
7 defamatory. Whether they are defamatory is going
8 to be a --

9 THE COURT: Well, if it's not defamatory at
10 this point, no need for an injunction.

11 MR. BOLANOVICH: Well, I think there's
12 sufficient evidence --

13 THE COURT: Well --

14 MR. BOLANOVICH: -- today that at least some
15 of these are defamatory.

16 THE COURT: There's three cases counsel
17 provided to me and -- actually, there's two cases,
18 and I found a third case, and they basically stand
19 for this proposition: Injunctive relief is
20 unavailable to redress a past harm or to restrain
21 an actual or threatened defamation. That's
22 Rodriguez v. Ram Systems, Inc., 466 So.2d 412.
23 It's cited in the Fifth District case of Animal
24 Rights Foundation of Florida, Inc., v. Siegel,
25 867 So.2d 451, decided by the Fifth on February 6,

1 2004. And there's another case of Demby v. -- it's
2 Demby v. English, and it's cited at 667 So.2d 350,
3 and it says, quote: "It is a well established rule
4 that equity will not enjoin either an actual or a
5 threatened defamation."

6 Your injunction asks me to enjoin something
7 that the district courts of appeal tell me that I
8 can't do.

9 MR. BOLANOVICH: And we also have a Count II
10 for tortuous interference, your Honor, and --

11 THE COURT: Well, that's not what --

12 MR. BOLANOVICH: -- he's stating --

13 THE COURT: That's not -- I understand that.

14 MR. BOLANOVICH: Well --

15 THE COURT: That's your injunction, sir.

16 MR. BOLANOVICH: I'd like to amend it here,
17 then. I mean, I --

18 THE COURT: No, I'm not going to grant you --
19 I mean, you have to tell me by pleading what you're
20 asking for, and what you asked for is not
21 permissible under the law of this state, and
22 therefore, I deny it. You can file whatever you
23 want to in the future, but what you filed here is
24 not permitted under the law of the state, aside
25 from the First Amendment. So I deny it. Thank

1 you.

2 MR. BOLANOVICH: All right.

3 MR. LANIGAN: Thank you, your Honor.

4 THE COURT: Now, there are exhibits mentioned
5 here. Madam Clerk does not have those exhibits
6 that you have indicated by -- so what has to
7 happen, she needs to be informed what the exhibits
8 are so that she can mark them, okay?

9 MR. BOLANOVICH: You mean a description of
10 them?

11 THE COURT: Well, no, so she just knows what
12 they are so that she can mark them appropriately.
13 Thank you, sir.

14 MR. LANIGAN: I want a copy.

15 THE REPORTER: Are you ordering the original?

16 MR. LANIGAN: Unless he does.

17 (Thereupon, the proceedings were concluded at
18 3:30 p.m.)

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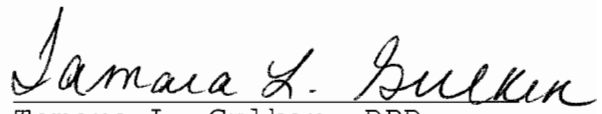
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C E R T I F I C A T E

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I, TAMARA L. GULKER, RPR, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 9th day of July 2007.


Tamara L. Gulker, RPR

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