

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

```

----- X
RAY REYNOLDS,           :           17cv6720 (DLC)
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
                        :           :
----- X
    Plaintiff,
                -v-
    Defendant.
    HEARST COMMUNICATIONS, INC.,

```

APPEARANCES

For the plaintiff:  
Richard Liebowitz  
Liebowitz Law Firm, PLLC  
11 Sunrise Plaza, Suite 301  
Valleystream, NY 11580

For the defendant:  
Jonathan R. Donnellan  
Ravi V. Sitwala  
Jennifer D. Bishop  
Hearst Corporation  
300 West 57th Street  
New York, NY 10019

DENISE COTE, District Judge:

On November 24, 2015, Melania Trump spoke at a rally in support of her husband, then-candidate, Donald J. Trump. Plaintiff Ray Reynolds, a photojournalist, captured a photograph of Mrs. Trump as she was on stage. Mr. Reynolds then provided the photograph to the Trump Campaign (the "Campaign"). The Campaign, in turn, provided the photograph to the defendant, requesting that it be included in a July 2016 article published

on Elle magazine's online site about Mrs. Trump's personal fashion style. Over a year later, on September 4, 2017, plaintiff commenced this lawsuit against Hearst Communications, Inc. ("Hearst"), which owns and operates Elle. Hearst has moved for imposition of a bond before the plaintiff may proceed further with this lawsuit. For the following reasons, that application is granted.

#### BACKGROUND

The complaint in this action alleged that the defendant published plaintiff's photograph without a license or plaintiff's permission. It did not reveal that the plaintiff had in fact provided the photograph to the Campaign.

At the initial conference held on December 8, when asked how the defendant could have gotten the photograph, Mr. Liebowitz did not explain that the plaintiff had actually given the photograph to the Campaign.<sup>1</sup> Instead, he speculated that Hearst may have taken the photograph from an article that the plaintiff had licensed to publish the photograph.<sup>2</sup>

---

<sup>1</sup> Mr. Liebowitz failed to appear at the pretrial conference scheduled for December 1, despite being required as principal trial counsel to appear at the conference. Instead, without seeking prior permission to do so, Mr. Liebowitz sent an associate.

<sup>2</sup> Mr. Liebowitz did not identify any article licensed by the plaintiff to use the photograph. Nor has he done so in

Defense counsel then explained that the Campaign had given the photograph to Elle.com. Only at that point did Mr. Liebowitz acknowledge that the plaintiff had in fact given the photograph to the Campaign. He asserted, however, that the plaintiff had not given the Campaign permission to share the photograph with others or media outlets. Mr. Liebowitz also admitted that he had not reached out to the defendant before commencing this lawsuit, and had not discussed the substance of the case with defense counsel prior to the conference.

After the initial pretrial conference, defendant filed a motion on December 15, 2017 to require the plaintiff to post security for costs, including attorney's fees, as a condition of proceeding with this action. The motion became fully submitted on January 26, 2018.

From the submissions made in connection with the motion, it appears that there will be a dispute between the plaintiff and the Campaign over the terms under which the plaintiff provided the photograph to the Campaign. The plaintiff explains that he was photographing Donald Trump's campaign for office in late 2015, and on November 24, photographed Melania Trump on stage at the Myrtle Beach Convention Center in South Carolina. He then provided the photograph, along with others he had taken, to the

---

opposition to this motion.

Campaign. He does not identify the person in the Campaign to whom he provided the photographs or recite their conversation. Instead, he asserts that it was his "intention" in sharing the images of the Trump Campaign events "for the Trump Campaign to use them in connection with their campaign-related social media sites, print brochures, or ads sponsored by the Trump Campaign." Then, on January 21, 2016, he deposited this photograph along with others described as "Donald Trump Campaign photos" from November 15 to January 16 with the copyright office for registration. On the plaintiff's website, he describes himself as the Photographer for the Donald J. Trump for President campaign.

On May 16, 2017, the plaintiff provided the photograph to the Liebowitz law firm, and explained that he had given it to "President Trump to use for campaign use only." He does not identify any occasion on which he has licensed the photograph for publication.

In support of this motion for a bond, the defendant explains the circumstances under which it received the photograph from the Campaign. The photograph was published on the Hearst website Elle.com as part of a story about Melania Trump. Through the Campaign's representatives at Hiltzik Strategies, Mrs. Trump provided exclusive quotes for the article to Elle.com and Hiltzik Strategies provided a digital file of

the photograph. Hiltzik Strategies strongly urged that the article use Mrs. Trump's chosen photographs, indicating that Elle.com would "get more information and exclusive content" if it agreed to use the pre-selected photographs. Hiltzik Strategies noted that Mrs. Trump felt that her selection of photographs represented "her and the clothing the best way."

#### DISCUSSION

Local Civil Rule 54.2 provides:

The Court, on motion or on its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as it may designate. For failure to comply with the order the Court may make such orders in regard to noncompliance as are just, and among others the following: an order striking out pleadings or staying further proceedings until the bond is filed or dismissing the action or rendering a judgment by default against the non-complying party.

S.D.N.Y. Local Civ. R. 54.2. A bond for costs in a copyright action may include defendant's attorney's fees, as the Copyright Act permits a prevailing defendant to recover its reasonable attorney's fees. 17 U.S.C. § 505.

A court considers the following factors in determining whether to require security for costs:

the financial condition and ability to pay of the party at issue; whether that party is a non-resident or foreign corporation; the merits of the underlying claims; the extent and scope of discovery; the legal costs expected to be incurred; and compliance with past court orders.

Cruz v. American Broadcasting Companies, Inc., Dkt. No.

17cv8794, 2017 WL 5665657, at \*1 (S.D.N.Y. Nov. 17, 2017)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.