

# Enforcing Injunctions Against 3rd Parties in Online Defamation

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The Plaintiffs in *Blockowicz v. Ramey* were victims of online defamation on social networking and other websites. The Plaintiffs were successful in getting a default judgment against the Defendants and an injunction to remove the defamatory material. *Blockowicz v. Ramey*, 2009 U.S. Dist. LEXIS 118599 (N.D. Ill. Dec. 21, 2009).

The Plaintiffs' challenge: Enforcement of the injunction on 3<sup>rd</sup> parties who hosted the defamatory statements.

All but one 3<sup>rd</sup> party host provider, Xcentric, assisted the Plaintiffs in removing the defamatory statements. The Plaintiffs brought a motion to enforce the injunction against the 3<sup>rd</sup> party. The 3<sup>rd</sup> party in turn challenged the Court's authority under Federal Rule of Civil Procedure Rule 65 to enforce the injunction. *Blockowicz*, at \*2-3.

## Federal Rule of Civil Procedure Rule 65: A Legal Thrill Ride

Federal Rule of Civil Procedure Rule 65(d)(2) states, in relevant part, "an injunction binds not only the parties to the injunction but also nonparties who act with the named party." *Blockowicz*, at \*3, citing *S.E.C. v. Homa*, 514 F.3d 661, 674 (7th Cir. 2008)."

This is where things get procedurally exciting. Those who act in privity with those subject to an injunction are also subject to it.

Courts do not want situations where a defendant does an end run around an injunction by hiding behind those who have aided them in tortuous conduct. *Blockowicz*, at \*3-4.

And now the big "However": Courts may not grant a broad injunction that binds those who are independent actors whose rights have not been adjudicated. *Blockowicz*, at \*4.



## A Victory without a Victory



A party's right to sue an internet host for defamatory comments is limited by the Communications Decency Act. *Blockowicz*, at \*5.

The Plaintiffs avoided this legal barrier by originally suing those who made the defamatory comments. However, the Court refused to enforce the injunction against the 3<sup>rd</sup> party internet host provider. *Id.*

The Court found the 3<sup>rd</sup> party did not act in concert or aid in the posting of the defamatory

comments. *Blockowicz*, 6-9. The Plaintiffs forcefully argued that the 3<sup>rd</sup> party's Terms of Service effectively made them act in concert with the Defendants. *Id.*

The Court did not agree. The Court refused to ignore the 3<sup>rd</sup> party's Terms of Service prohibiting the publishing of defamatory statements or interpret the host provider's actions as aiding the Defendants. *Blockowicz*, at \*8-9.

The scope of enforcing injunctions against 3<sup>rd</sup> parties truly gave the Plaintiffs a victory without a legal recourse. While the Court was highly sympathetic to their situation, the 3<sup>rd</sup> party could not be ordered to abide by the injunction against the Defendants in this situation. *Blockowicz*, at \*9.

### **Bow Tie Thoughts**

Victims of online defamation might be able to recover against defendants, but getting 3<sup>rd</sup> party providers to comply with a court order could be the larger battle. One would hope 3<sup>rd</sup> party providers would want to avoid the negative press that could follow from not complying with judgments for online defamation.