

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED-9
2009 AUG -5 5 PM 12:44
CLERK OF CIRCUIT COURT
LAW DIVISION

LISA STONE, a mother and next)
Friend of Jed Stone, a minor,)
)
Petitioner,)
v.) No. 09 L 5636
)
PADDOCK PUBLICATIONS, INC., d/b/a)
THE DAILY HERALD, INC.)
)
Respondent.)

MOTION TO QUASH SUBPOENA

NOW COMES John Doe, user of I.P. address 24.1.3.203, and for his Motion to Quash the Subpoena issued to Comcast Cable Communications, LLC (“Comcast”) dated July 14, 2009, states as follows:

1. John Doe, as a user of I.P. address 24.1.3.203, requests that the Court quash the subpoena pursuant to Supreme Court Rule 201(c) and pursuant to the this Court’s July 21, 2009 Order. This motion is timely filed pursuant to the July 21, 2009 Order granting John Doe 14 days from receipt of notice to contest the subpoena. On or about July 22, 2009, John Doe received notice of the subpoena to Comcast. A copy of the subpoena is attached hereto as Exhibit “1”.

2. The subpoena should be quashed because it violates the Electronic Communications Privacy Act (“Privacy Act”) codified at 18 U.S.C. § 2701-2703. The Privacy Act, at Section 2702, prohibits an entity that provides electronic communications services from divulging the contents of a communication while in electronic storage. 18 U.S.C. § 2702(a)(1). The Privacy Act only allows disclosure of customer information or records to a governmental

entity pursuant to the specifically enumerated exceptions listed at § 2703, none of which apply here. Here, the subpoena seeks civil discovery prohibited by the Act. *See In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606, 611-12 (E.D. Va. 2008)(finding that the Privacy Act does not permit disclosure in response to civil discovery subpoenas).

3. Petitioner's subpoena to Comcast also violates Supreme Court Rule 224. Supreme Court Rule 224 does not provide for issuance of subpoenas to third-parties. Instead, Supreme Court Rule 224(a)(1)(ii) requires that the party seeking discovery file a verified petition naming the respondents from whom discovery is sought. Here, the Petition names only Paddock Publications, Inc. d/b/a The Daily Herald, Inc. ("Daily Herald"). Because the discovery is sought from Comcast, the subpoena does not comply with Supreme Court Rule 224.

4. A proceeding brought pursuant to Supreme Court Rule 224 is final when a court enters a discovery order adjudicating the rights of the parties. *Beale v. Edgemark Financial Corp.*, 297 Ill.App.3d 242, 245 (1st Dist. 1996). Appellate jurisdiction commences upon entry of that order. *Id.* Here, this Court's jurisdiction terminated when the order compelling discovery responses from the Daily Herald was entered. Thus, the subpoena is improper as it issued after the case terminated and this Court lost jurisdiction.

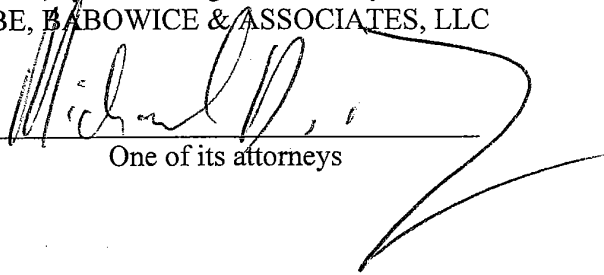
5. Supreme Court Rule 224(a)(1)(i) permits discovery "for the sole purpose of ascertaining the identity of one who may be responsible in damages... ." Here, the subpoena issued to Comcast is overly broad as it seeks information beyond the identity of John Doe. Specifically, the subpoena requests "any and all information for I.P. address 24.1.3.203 from February 1, 2009 to the present including but not limited to the name, address [sic] location, and any and all information identifying the subscriber, user and/or owner of the aforesaid I.P. address and anyone associated with said I.P. address." Supreme Court Rule 224 allows discovery solely

for ascertaining the identity of a person who may be responsible for damages. Any other information other than the identity of John Doe is beyond the scope of discovery under Supreme Court Rule 224.

WHEREFORE, John Doe respectfully requests that this Court quash the subpoena issued to Comcast.

INTENTIONALLY LEFT BLANK

Respectfully submitted,
John Doe, by and through his attorneys,
TROBE, BABOWICE & ASSOCIATES, LLC

By: 
One of its attorneys

Michael D. Furlong 6289523
Peter M. Trobe 02857863
TROBE, BABOWICE & ASSOCIATES, LLC
404 W. Water Street
Waukegan, IL 60085
(847) 625-8700