

V I R G I N I A :

IN THE GENERAL DISTRICT COURT OF ARLINGTON COUNTY
CIVIL DIVISION

RAM AVRAHAMI,

Plaintiff,

v.

Civil Action No. 95-7479

U.S. NEWS & WORLD REPORT, INC.,

Defendant.

PLAINTIFF OPPOSITION TO DEFENDANT'S MOTION FOR STAY

COMES NOW the Plaintiff, Ram Avrahami, by counsel, and opposes the Motion for Stay filed by Defendant U.S. News and World Report, Inc., ("U.S. News") on the grounds as set forth herein.

ARGUMENT

This action was filed on July 21, 1995, seeking damages for the misappropriation by Defendant of Plaintiff's name and/or likeness pursuant to Virginia Code 8.01-40.<1> At the return date of August 21, 1995, counsel for Defendant appeared in open court and agreed to a trial date of November 27, 1995. Defendant has not filed a formal answer, pleading or dispositive motion in this case.

In what amounts to an attempt by Defendant to enjoin Plaintiff's right to an action at law, on or about October 24, 1995, a full three months after Plaintiff filed this action, Defendant U.S. News filed a Motion for Stay. The essential basis for Defendant's motion is that Defendant filed a separate action in chancery in Arlington County Circuit Court seeking to adjudicate the same issue before this Court. Defendant's Motion for Stay should be denied for the following reasons: (1) this court has proper jurisdiction over Plaintiff's claim and Defendant has failed to remove the case to Circuit Court; (2) the motion is a procedural ruse to have Plaintiff's cause decided in Defendant's forum and on Defendant's position; and (3) Plaintiff filed a demurrer to

Defendant's Motion for Declaratory Judgement, attached hereto as Plaintiff's Exhibit 1.

I. This Court Has Proper Jurisdiction Over Plaintiff's Claim and Defendant Has Failed to Remove the Case to Circuit Court.

Defendant relies in support of its motion upon the allegation that staying Plaintiff's action would "conserve judicial resources" and that "the decision of this Court may be appealed to the Circuit Court de novo" Defendant's Motion for Stay, at 2. This rather disingenuous argument is defeated by the fact that Defendant was afforded the procedural opportunity to remove Plaintiff's case to Circuit Court pursuant to VA Code Section 16.1-92. Were Defendant concerned about judicial resources and the possibility of a de novo appeal, it would have attempted to remove the case to Circuit Court. The Virginia Code established an explicit procedure for removal from General District Court to Circuit Court. As required by the code, however, Defendant failed to file an affidavit indicating there was a substantial defense to Plaintiff's claim within ten days after the return day. By filing a new and separate action as Plaintiff in Circuit Court and then filing a Motion for Stay in this Court, Defendant is attempting to remove a case properly before this Court without abiding by statutory procedures. Defendant has erred procedurally and it cannot deprive this Court of its proper jurisdiction over Plaintiff's claim.

II. Defendant's Motion for Stay is a Procedural Ruse to Have Plaintiff's Cause Decided in Defendant's Forum and on Defendant's Position.

Defendant's Motion for Stay and Motion for Declaratory Judgement are together designed to permit Defendant to have Plaintiff's cause decided on Defendant's pleadings and in Defendant's chosen forum. As set forth in the attached Demurrer to U.S. News' Motion for Declaratory Judgement, declaratory judgement motions are improper when designed to choose a forum or to force a party on the defensive. This court has proper jurisdiction over Plaintiff's claim and it should remain before this Court. Plaintiff's action should proceed as scheduled to a full hearing on the merits.

III. Conclusion

WHEREFORE, for the aforementioned reasons, Plaintiff prays that this Court deny Defendant's Motion for Stay.

RAM AVRAHAMI
By Counsel

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<1> Defendant's Motion for Stay inaccurately states that Plaintiff commenced this action "on or about August 21, 1995." See Defendant's Motion for Stay, at 1.