

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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RIAN WATERS

v.

AIDAN KEARNEY, ET AL.

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Docket No.
1879CV00344

BEFORE THE HONORABLE JANE E. MULQUEEN
JANUARY 17, 2019

APPEARANCES:

For the plaintiff:

BY: Rian Waters, Pro Se

For the defendant, Aidan Kearney, et al.:

KC Law

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Room 7

Christine D. Blankenship
Court Reporter/Transcriber

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1 (Court in session.)

2 THE CLERK: The next matter before the Court, Your
3 Honor, is Waters vs. Kearney, docket 2018-344.

4 MR. CHRISANTHOPOULOS: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. CHRISANTHOPOULOS: Kevin Chrisanthopoulos for the
7 defendants.

8 THE COURT: All right. Good afternoon.

9 MR. WATERS: Rian Waters for the plaintiff.

10 THE COURT: Good afternoon.

11 So before the Court today is plaintiff's motion for
12 preliminary injunction, correct?

13 MR. CHRISANTHOPOULOS: Yes.

14 MR. WATERS: Yes.

15 THE COURT: And that's all that's before the Court
16 today.

17 MR. WATERS: Yes, if we could cover a little bit of, I
18 forget Rule 30 or 16 pretrial, basically what they just did
19 conference of --

20 THE COURT: It's not scheduled for such.

21 MR. WATERS: Correct.

22 THE COURT: So actually the Court can only entertain
23 what is scheduled. So the motion for preliminary
24 injunction is I believe, that's what I was asking for
25 confirmation of, is the only thing that is scheduled for

1 today.

2 MR. WATERS: Correct.

3 THE COURT: All right. So I will hear you on your
4 motion.

5 MR. WATERS: May I present some stuff to the Court? I
6 gave him copies already.

7 THE COURT: All right.

8 MR. WATERS: This is a CD and I talked to the clerk
9 yesterday and I guess I didn't make it clear enough that I
10 needed it for today. The exhibit -- the affidavit is
11 mostly to explain the contents of the CD, and the purpose
12 -- the main one that I wanted to play was just a threat to
13 show that while the words -- the words themselves don't
14 seem that threatening as playing it certainly was
15 threatening.

16 THE COURT: Have you been provided a copy of the CD?

17 MR. CHRISANTHOPOULOS: Just today in court, Your Honor.

18 THE COURT: Do you have any objection to the Court
19 taking it as an exhibit in this hearing? And I can listen
20 to it at some point. I assume this is in regard to your
21 argument on the preliminary injunction in terms of
22 likelihood of success on the merits.

23 MR. WATERS: Yes.

24 MR. CHRISANTHOPOULOS: Judge, I just don't know what's
25 on the CD, so I'm having trouble.

1 THE COURT: Can you explain what's on the CD?

2 MR. WATERS: It's clips from recordings of his live
3 show from Aidan Kearney.

4 THE COURT: So it's clips of a live show, and I don't
5 know are the live shows archived and accessible after the
6 live shows on some social media platform?

7 MR. WATERS: Yes.

8 THE COURT: Is that accurate?

9 MR. WATERS: Yes, I got that from --

10 THE COURT: Hold on; is that accurate?

11 MR. CHRISANTHOPOULOS: Honestly, Your Honor, I don't
12 know.

13 THE COURT: So on the CD, you've indicate it's clips
14 from the live show. What else is contained on the CD?

15 MR. WATERS: That's all it is, and each one I list the
16 time and the live show that it's from and the length.

17 MR. CHRISANTHOPOULOS: Sorry.

18 MR. WATERS: No, that's fine.

19 MR. CHRISANTHOPOULOS: Judge, just when he's saying
20 clips, I might have a problem with that if it's not the
21 full context. If he's just, you know, cutting and pasting
22 certain clips, and I don't know how it's lining up, I don't
23 what the context of the show is, and so --

24 THE COURT: So you didn't -- I'm sorry I didn't mean to
25 interrupt. You've indicated these are clip from live shows

1 and somehow you've identified what show it's from?

2 MR. WATERS: Yes.

3 THE COURT: Is that identified by date and time?

4 MR. WATERS: No, not date but it is the time in the
5 show, and I list at the end of it I say that if this Court
6 wants the full ones I could produce a clip and I could burn
7 it in this courtroom, and I could have it done before we
8 leave.

9 THE COURT: And the importance of this information is
10 what?

11 MR. WATERS: Well there's two important ones. There is
12 the one where he -- the threat to show that it was serious
13 and the second one which, I mean, I guess maybe the
14 affidavit kind of covers, but he admits that there is no
15 insurance and he states that even if I win a judgment, he
16 is going to bankrupt the company and he's going to still
17 collect assets through other means thereby making it so
18 that I can't recover any judgment. And he also says that
19 his wife -- that the house is in his wife's name on purpose
20 because she's a good girl and she's not going to get sued.

21 THE COURT: So what's contained or what you're seeking
22 of the Court to listen to that's on the CD, is that
23 information not contained anywhere else in your
24 submissions?

25 MR. WATERS: The threat is contained in words. The CD

1 -- but, no, the fraud part was not or --

2 THE COURT: All right. So you were just simply seeking
3 for the Court to hear the actual words as opposed to
4 reading them.

5 MR. WATERS: Correct. Well, at least on the threat.
6 The threat was the main one to be heard. The affidavit I
7 feel like the description in the affidavit is sufficient
8 for the Court to just read.

9 THE COURT: And when you say the threat, is this the,
10 "I'll murder you with words?"

11 MR. WATERS: Correct.

12 THE COURT: I don't think it's necessary for the Court
13 to take because the issues we're going to happen with the
14 CD I don't think it's necessary for the Court to take it
15 into evidence because I do have the information, you've
16 provided it, and I understand it may have been said in a
17 certain tone and things of that nature, but because of the
18 issues and the lack of identification in terms of the CD
19 itself, I just think I can adequately rule on this motion
20 based on your submission and your oral argument. Okay?

21 MR. WATERS: Okay.

22 THE COURT: So you can continue.

23 MR. WATERS: Well, at a minimum I promised the people I
24 live with that I would try to -- I asked in my last TRO
25 motion to -- for the impoundment of address and maybe I

1 have to write that another way, but it's not fair for these
2 innocent people to be living under threat. I mean, Aidan
3 Kearney, that was another thing on the CD which I guess you
4 still have the affidavit, where Aidan Kearney he was
5 talking about how someone listed his address and sending
6 postcards, and he goes, "That's an obvious way to threaten
7 or to get other people to threaten," I forget the word he
8 used. And so it's just really unfair, and I would love to
9 do -- I haven't even been at my house because ever since
10 that threat I've been away from it. I mean, partly because
11 I feel uncomfortable there, and also even more so, I feel
12 uncomfortable with him thinking that I live there. And so
13 if -- I would love for this Court to allow or compel motion
14 service because like I haven't even been getting the papers
15 from the courtroom. I have to -- like, I've only been
16 showing up once a week to collect whatever envelopes are
17 there.

18 THE COURT: All right. So I'm not sure what you're
19 asking of the Court. Are you saying you're not getting
20 documents from the other side?

21 MR. WATERS: Yes, because I can't go to my house. I
22 mean, I can but it's not convenient. I've been staying
23 away ever since the threat.

24 THE COURT: So what are you looking for them to do?

25 MR. WATERS: Compel email service, motion service, and

1 I guess maybe if separately impound my address, the new
2 address that I'm staying at.

3 THE COURT: And this is based on?

4 MR. WATERS: There's numerous threats. He's saying --
5 he's making me the number one enemy and his site is a
6 public shaming device, so they have like a group of people
7 that do harassment for him where he often makes jokes where
8 he will say Aidan Kearney or the Turtle Boys Sports
9 Facebook page, where they will say, you know, please for
10 the love of God do not send these guys emails and harass
11 the heck out of them -- well, they don't say harass -- send
12 them emails and stuff like basically harassment without
13 saying that, and then because they said, "Please do not,"
14 it excuses them from liability, but under like somebody
15 would ask why would you not want to do that, and the
16 Turtle Boys Sports accounts goes, "You must be new here,"
17 and somebody goes they're sarcastic, and they must do that
18 on a constant basis where they get people to harass for
19 them.

20 And so it's just there's certain that they like
21 harassing people, and so those people love Turtle Boys
22 Sports and they just sit there, and they attack people
23 target after target. But to go after all these people
24 individually is just not fair. I have people different --
25 there are people that have said you should hire a hit man

1 to him, I mean, all sorts of violence towards me, and
2 there's even people in the same live show, which I guess if
3 you wanted to pull one, there was a girl who she was
4 talking about how she was pregnant and she got punched
5 because of a blog. I mean there's violence does happen
6 because of these guys, they're surrounded with it. I mean,
7 even in the affidavit, he was talking about having guns and
8 he wants to kill somebody. He was like I wish somebody
9 would. I don't know.

10 And actually -- oh, I don't know. I guess that is that
11 as far as the threatening or at least that can come to my
12 head at the moment.

13 I think another important argument that I want to get
14 through is the consolidation factor like free speech -- by
15 if you were to limit his speech, the damage would be
16 limited by advancing it as quickly as possible and the
17 damage of my harassment would also be limited substantially
18 by advancing the trial to a much quicker date. And I can't
19 even get a witness -- like the people at my house, they
20 have had threats come to them, but they are unwilling to
21 come forward because they know that they'll be shamed if
22 they do.

23 THE COURT: So you're asking for the Court to advance
24 the trial?

25 MR. WATERS: Yes.

1 THE COURT: And try the case on the merits in terms of
2 the preliminary injunction on an expedited basis?

3 MR. WATERS: Yes, I --

4 THE COURT: Hold on one second. What is your response
5 to that?

6 MR. CHRISANTHOPOULOS: Judge, we filed a -- or actually
7 served a motion to dismiss today. We filed a 9E notice
8 with the Court yesterday. Within ten days, he'll be able
9 to file an opposition, and I would suggest to the Court --

10 THE COURT: That would be dispositive of the case.

11 MR. CHRISANTHOPOULOS: Dispositive of this case.

12 THE COURT: Okay.

13 MR. CHRISANTHOPOULOS: And if it's not, we could
14 address that issue at the time.

15 THE COURT: So he served you with a motion today.

16 MR. WATERS: Yes.

17 THE COURT: So you'll have ten days in which to respond
18 to that.

19 MR. WATERS: I have one issue. He put in an affidavit
20 from Samantha Cardin, and I believe that a deposition with
21 Samantha Cardin would be appropriate. She has committed
22 perjury and her only option is to plead the Fifth or commit
23 perjury.

24 THE COURT: Well, the affidavit is included in the
25 motion to dismiss, so what he's -- what the other side is

1 indicating is you're requesting a quick trial. He has
2 filed a motion to dismiss, you got it today so you have ten
3 days in which to respond to that and to provide the Court
4 with the your -- well, provide, I'm sorry, the other side
5 with your opposition, and then it will be filed with the
6 Court, and then that will be set for a hearing and that can
7 be done fairly quickly.

8 So depending on the Court's ruling on the motion to
9 dismiss, we could take up the expedited trial issue at that
10 point. Are you in agreement with that?

11 MR. WATERS: I just really like to get the deposition
12 in with Samantha Cardin before even really putting in my
13 argument for the --

14 THE COURT: Well, that's not -- that's not how it goes
15 actually. He's filed this motion, you have ten days to
16 respond --

17 MR. WATERS: Okay. So, fine.

18 THE COURT: -- under the rules.

19 MR. WATERS: So the last -- the important issue of the
20 preliminary injunction is limiting speech which can only be
21 done in various limited cases, and what is your -- do you
22 have issues right now -- I mean I had a 13 page motion
23 that --

24 THE COURT: The motion for preliminary injunction?

25 MR. WATERS: Yes, memorandum I mislabeled it.

1 THE COURT: I read it; I've been through the entire
2 file. I read your motion. I today received and read
3 defendant's opposition to your motion.

4 MR. WATERS: I'm sorry, I did not read yet.

5 THE COURT: So is there anything -- knowing that you
6 have to show a likelihood of success on the merits and
7 irreparable harm in order for the Court to issue a
8 preliminary injunction, is there anything more that you
9 would like to say to the Court that's not contained in your
10 written summation or that you have not already alerted the
11 Court to?

12 MR. WATERS: If you read it then, I feel like that's
13 mostly pretty good. The *London Post* case I think is
14 extremely similar, and I think that one should be -- but,
15 no, I'm good.

16 THE COURT: Okay. I'll hear you in opposition.

17 MR. CHRISANTHOPOULOS: Thank you, Judge. Just real
18 quickly. The request for email service when Mr. Waters
19 first filed the complaint, I filed an answer he started
20 emailing me. I indicated to him in the email that I would
21 prefer all correspondence be first class mail. He
22 responded, continues to email me requesting that I accept
23 motions via email. Again, I don't want to get into a
24 situation where I'm giving legal advice to him, so I would
25 prefer it's just all done first class mail. He's

1 indicating to me that I'm violating some ethical codes by
2 not emailing him, which I completely disagree with. So I
3 would oppose the Court requiring me to serve him via email.

4 THE COURT: And in terms of his indication that he
5 doesn't want your client to know where he is living now.

6 MR. CHRISANTHOPOULOS: I don't know where he lives now.
7 We just have his address that's on file.

8 THE COURT: Okay. Well, continue on and we'll get back
9 to that issue.

10 MR. CHRISANTHOPOULOS: Judge, with regard to the
11 preliminary injunction, as you know the likelihood of
12 success on the merits is the key component, and I did
13 attach a motion to dismiss to my opposition. Did the Court
14 have a chance to review that?

15 THE COURT: I did.

16 MR. CHRISANTHOPOULOS: Do you want me to go through
17 entirely? I would suggest that based on the facts of this
18 case, the truth is a defense to this case, and the whole
19 underlying case arises out of Mr. Waters assaulting
20 Samantha Cardin and their animal, their dog. Samantha
21 Cardin submitted an affidavit, which is attached to my
22 motion to dismiss, and she indicates that in fact did
23 happen. Additionally with regard to the defendants, they
24 simply republished Samantha Cardin's Facebook post, and
25 they made commentary on it. Yes, maybe some of the

1 commentary is off-color, but that gets into the whole
2 freedom of speech, which is also addressed, but I don't
3 think there's any dispute that Mr. Waters was arrested for
4 assault and battery on Ms. Cardin and animal cruelty.

5 He was arrested for those. Samantha Cardin posted on
6 her public Facebook page about it. Somebody picked up on
7 it, and a third-party blogged about it. That's what this
8 entire case is about. So, again, there's nothing false or
9 fraudulent and it's freedom of expression, freedom of
10 speech.

11 THE COURT: Thank you. Did you want to be heard in
12 response?

13 MR. WATERS: I guess just while he has the First
14 Amendment that the Ninth Amendment does state that even
15 though there's enumerated rights doesn't take away from my
16 other rights such as the right to be heard, and their
17 intimidation tactics have certainly been affecting my right
18 to be heard. And so I believe that my amendments are
19 violated as well.

20 And quickly on Samantha Cardin, I didn't get a chance
21 to look at or to respond to the affidavit, but I do have
22 evidence that proved I was innocent.

23 THE COURT: I will take the matter under advisement.
24 You will have my decision on the preliminary injunction
25 motion forthwith, but let's talk about the oral motion I

1 guess to compel email service. So I can't -- I'm not going
2 to compel him to accept or to send all of the documents via
3 email. You've indicated the address that they have is an
4 address that you do receive the mail at. You're just
5 simply not staying there anymore. Is that your legal
6 address?

7 MR. WATERS: I've only been using it for the case
8 because I mean I don't want to give my new address. He
9 posted the other address on Facebook as well or on the
10 Internet.

11 THE COURT: So the address that they currently have --
12 what is the address that you currently use?

13 MR. CHRISANTHOPOULOS: I think it's 199 Allen Street.

14 MR. WATERS: Yeah, East Longmeadow.

15 THE COURT: And is that an address that you receive
16 mail?

17 MR. WATERS: I mean, I don't even have a car, I have to
18 bus around, so it's quite a mission to get there, but it's
19 possible, yeah.

20 THE COURT: Well, I'm trying to think of an
21 alternative. I'm not going to force him to do it via
22 email.

23 MR. CHRISANTHOPOULOS: I'd be happy to take his address
24 and keep it to myself and not share it with my client.

25 MR. WATERS: That would be acceptable.

1 THE COURT: That's acceptable.

2 MR. WATERS: Yeah, as long it's never on the Internet
3 posted from his client.

4 THE COURT: Well, as an officer of the Court, he's
5 assuring the Court that he will not share it with his
6 client nor with anyone else unconnected. Go ahead.

7 MR. CHRISANTHOPOULOS: I was just going to say just in
8 the certificate of service, I'll just list his name and
9 won't list any address since these documents are
10 potentially going to be filed in the clerk's office and
11 anybody can access them if that's acceptable.

12 THE COURT: Is that satisfactory?

13 MR. WATERS: Sorry, what was?

14 THE COURT: In the certificate of service when he sends
15 you something he provides the Court with a certificate of
16 service, and he provides where he sent it to, so he doesn't
17 want to do that because it becomes a public record. So
18 he's simply going to say that he mailed it at --

19 MR. CHRISANTHOPOULOS: Just Rian Waters.

20 MR. WATERS: Awesome.

21 THE COURT: Mailed to you and that will be acceptable
22 as the certificate of service because we're in agreement
23 that that's how it's going to go.

24 All right. So is there anything else that we need to
25 deal with?

1 MR. WATERS: Okay. We'll deal with -- no.

2 THE COURT: So you will have my decision as soon as
3 possible, and then at some point we will see you back here
4 on a motion to dismiss once it's been filed and marked for
5 hearing.

6 MR. WATERS: Judge, the motion I gave you a few days
7 ago, which I'm not sure you denied or what, I think you put
8 other action. My time to appeal on the default for late
9 ends tomorrow or ends this weekend. So I guess ...

10 THE COURT: Oh, see the way the motion was written was
11 in anticipation of being denied an injunction you wanted to
12 appeal, and so I endorsed that that the Court would not
13 entertain a motion to appeal filed in anticipation of a
14 ruling. So you're indicating that the motion you want to
15 appeal Judge Sweeney's.

16 MR. WATERS: Default for judgment, yeah.

17 THE COURT: And why has that not been done yet?

18 MR. WATERS: Well, I was waiting on the reconsideration
19 and I was following it, but Judge Sweeney told me to visit
20 the Hampden County Bar, the lawyer of the day, and the
21 lawyer of the day advised me to -- I asked him a simple
22 question. I said, "Should I file a reconsideration or
23 should I file an appeal?" And he said do the
24 reconsideration first, and he said you could do the appeal
25 after if needed.

1 THE COURT: And when was the motion for reconsideration
2 denied?

3 MR. WATERS: November 20.

4 THE COURT: I'm sorry?

5 MR. WATERS: November 20, 2018.

6 THE COURT: No, that was the ruling. The
7 reconsideration -- here - January 7. "Reconsideration is
8 denied. C.M. Sweeney on 1/17/19."

9 What's today?

10 THE CLERK: The 17th.

11 THE COURT: So today's the deadline, right, ten days?

12 THE CLERK: Ten days.

13 THE COURT: Today's your deadline to appeal that
14 decision.

15 MR. WATERS: And I can't do so without permission.

16 THE COURT: What do you mean?

17 MR. WATERS: My understanding is I need leave to do a
18 late appeal, that is my understanding.

19 THE COURT: Well, you need to file your notice of
20 appeal by today.

21 MR. WATERS: Okay. So if it's acceptable today, then
22 I'll do it today.

23 THE COURT: Okay.

24 MR. WATERS: Thank you.

25 THE COURT: Thank you.

1 MR. CHRISANTHOPOULOS: Thank you, Judge.

2 (Court in recess.)

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C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT DIRECTIVE ON TRANSCRIPT FORMAT.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THIS ACTION.

Christine D. Blankenship, November 22, 2019

CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC
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