

THE STATE OF NEW HAMPSHIRE
Rockingham Superior Court

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NOTICE OF DECISION

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08-E-0572 The Mortgage Specialists, Inc. vs. Implode-Explode Heavy Ind

Enclosed please find a copy of the Court's Order dated 3/11/2009
relative to:

Final Order

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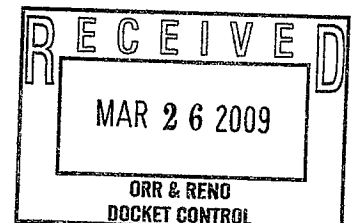
03/25/2009

Raymond Taylor
Clerk of Court

cc: Donald L. Smith
William L Chapman

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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

The Mortgage Specialists, Inc.

v.

Implode-Explode Heavy Industries, Inc.

Docket No: 08-E-0572

FINAL ORDER

The petitioner in this case, The Mortgage Specialists, Inc. (MSI) is a New Hampshire cooperation licensed by the New Hampshire Banking Department to engage in mortgage brokering and mortgage banking services. It has a principal place of business at 2 Main Street in Plaistow, New Hampshire. The respondent Implode-Explode Heavy Industries, Inc. (Implode-Explode) is a Nevada cooperation with a business address of 5348 Vegas Drive, Las Vegas, Nevada. It operates a website which ranks various businesses in the mortgage industry on a ranking device that it calls "The Mortgage Lender Implode-O-Meter." The respondent was founded in 2007 and has been publishing information on its website since that time which is accessible in all 50 States. It openly seeks information from any source that has a bearing on the mortgage industry.

In October of 2008 two references to the petitioner and its president appeared on the respondent's website. The first was in the nature of a reported story which suggested that the petitioner was in trouble with the New Hampshire Banking Department as a result of its alleged improper mortgage activities which were detailed in the story. Included was information obtained from a document known as the 2007 Loan Chart that the petitioner prepared and filed with the New Hampshire Banking Department pursuant to RSA 383:10-b. Said statute provides that the information contained on these Loan Charts "shall not be made public" unless an overriding reason requires it as determined exclusively by the New

Hampshire Banking Department. A few days after this story appeared on the respondent's website there appeared on the same website comments by an entity known as "Brianbattersby." Those comments purportedly contained false and defaming allegations about the petitioner's president, accusing him, among other things, of fraud for signing borrower's names on loan applications.

When this information came to the attention of the petitioner it immediately contacted the respondent through counsel and made it aware of the relevant banking statute concerning the dissemination of Loan Charts and also providing information to suggest that Brianbattersby's comments were both false and defamatory. While the respondent agreed voluntarily to not republish the information it had already published, on a temporary basis, it refused to commit to the non-publishing on a permanent basis. Nor would it agree to provide the petitioner with what the petitioner requested, specifically the identity of both the source of the story containing the unauthorized 2007 Loan Chart information and the identity of Brianbattersby. This litigation was filed so that the petitioner could obtain the information sought.

It is important at the outset to make it clear that the petitioner does not "blame" the respondent for the publishing of the unauthorized and allegedly defamatory website postings, and it asks for no sanctions or money damages as against the respondent. The petitioner does not claim that the respondent had some duty or responsibility to verify the information with respect to either the story or the Brianbattersby comments prior to posting them on its website. The petitioner does not allege that the respondent knew or should have known that the publication of the 2007 Loan Chart was prohibited under New Hampshire law.

Even now, months after the story and comments appeared on the respondent's website, the petitioner has not asked this Court to have the respondent remove its article

about MSI, with the exception of the 2007 Loan Chart, nor has it asked this Court to prohibit the respondent from publishing any additional information about MSI on its website. The petitioner has also not asked this Court to ban Brianbattersby from posting any further comments on the respondent's website or from posting the comments of any other person or entity with respect to the operation of MSI. All that the petitioner has requested is that the 2007 Loan Chart and any future loan charts prepared pursuant to New Hampshire law not be included in any other report referencing MSI, and further that the respondent be ordered to divulge the identity of the person or entity that provided the unauthorized 2007 Loan Chart information to it and also identify Brianbattersby who allegedly provided it with defamatory information.

At first blush it seemed to this Court that the petitioner's requests were reasonable. The Court has every reason to believe that the respondent is a reputable entity desirous of only publishing legitimate information about the mortgage industry to various interested parties. In fact when the respondent disseminated its "standards for reporting information," the following appeared on its website:

"All leads on companies must be supported by multiple independent sources. We prefer in the following order: (1) communication from the company itself; (2) mainstream or industry press coverage (or blog coverage with clear supporting evidence); (3) multiple independent tips from individuals."

It appears the respondent did not comply with its standards when reporting on the purported conduct of MSI. Then when the respondent was asked to disclose the identity of persons or entities that had provided it with unauthorized information and potentially defamatory information the respondent refused outright. One would have hoped that when a legitimate publisher of information was notified of the fact that certain unauthorized information was given to it which was then published, presumably in good faith; the

publisher would, in order to maintain the integrity of its publication, willingly provide the wronged party with the information requested. Instead, the respondent exhibited a knee-jerk reaction.

A review of all the pleadings filed by the respondent suggest that it is of the opinion that because it is a member of the loose organization known as "the press," it can publish anything, be it true or false, and not be restricted in any way. The respondent has categorized the petitioner's request as an attack on the press and on its first amendment protection. Particularly in this case such a stance rewards and encourages the proliferation of unauthorized communication. The respondent's position is akin to one who uses a sledgehammer to kill an ant. It wants this Court to believe that if the petitioner is granted the relief requested then that is procedurally the first step in eliminating the freedom of the press. The respondent's pleadings contain the following conclusion:

"News organizations every day receive anonymous, unmarked envelopes containing sensitive documents in their mailboxes. The essential role of the press in a democratic society would be utterly undermined if each news organization had to first ascertain whether the documents obtained in this matter were covered by some confidentiality agreement or privilege, and the free press would be destroyed if news organizations were prohibited from publishing these documents if their confidentiality were known."

While that language is troubling to this Court, that is not the issue that is involved in this case. Again, the petitioner does not claim that the respondent wrongfully published the information about MSI. It is willing to hold the respondent harmless with respect to the publication of that information. All it wants from the respondent is the identity of the individual or entity which provided unauthorized information to the respondent and also the identity of the entity or individual that made alleged defamatory statements about the petitioner to the respondent. One would hope that the ideals of truth and justice are not

lost in the respondent's desire to protect its right to publish anything without consequence to the provider of unauthorized and defamatory information.

The Court also takes issue with several positions espoused by the respondent in its pleadings. First, the respondent claims that while the publication of the 2007 Loan Chart may have been unauthorized, it was not illegal. Secondly, the respondent argues that to the extent that anyone has the right to attempt to enforce the statute prohibiting dissemination of loan charts, it is the New Hampshire Banking Department that is the sole entity that can do so not a mortgage company that provided the banking department with the chart in the first place. Thirdly, the information contained on the 2007 Loan Chart cannot fit into the category of "defamatory" because presumably the figures on the chart were accurate. Finally, the respondent argues that injunctive relief is not authorized under New Hampshire law when there is an adequate remedy in a civil court for money damages. Certainly that statement is true. However the petitioner has not sought any damages against the respondent. While it may seek money damages as against the two individuals or entities whose identity is sought herein, obviously no claims for damages can be made against these individuals or entities unless their identity is first known.

The parties have agreed that the Court can resolve the issues raised in this litigation without the need of an evidentiary hearing. Both parties were given an opportunity to file whatever pleadings they were desirous of filing on these issues. Upon review of those pleadings the Court enters the following Order:

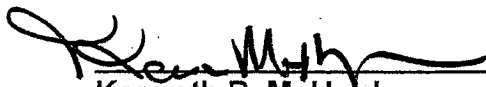
1. The respondent, and all of its agents, servants, employees, and representatives, are enjoined from displaying, posting, publishing, distributing, linking to and/or otherwise providing any information for the access or other dissemination of copies of and/or images of a 2007 Loan Chart and any information or data contained therein, including on the website operated at www.ml-implode.com and any other websites under respondent's ownership and control;

2. The respondent is ordered to immediately disclose the identity of the individual and/or entity that provided it with the 2007 Loan Chart;
3. The respondent is ordered to immediately produce all documents that concern petitioner that it received from the individual or entity that provided it with the 2007 Loan Chart;
4. The respondent is ordered not to re-post or re-publish the October 4, 2008, and October 7, 2008, false and defamatory postings by "Brianbattersby;" and
5. The respondent is ordered to immediately disclose the identity of "Brianbattersby," including his full name, address, email address, phone number, and any other personal information respondent possesses.

Hopefully the parties will, upon reflection, understand that there is a good faith basis for the Court's ruling herein. This ruling should not be considered to be an attack on the press. Rather it should send the following message. If persons or entities choose to provide legitimate publishers with information they know or should have known is either unauthorized or defamatory, they may be subject to legal process even though the publisher of the information may not. The maintenance of a free press does not give a publisher the right to protect the identity of someone who has provided it with unauthorized or defamatory information. At its core this is not even a press issue; this Court has not concluded that the press has any responsibility to "police" the information it is given. Rather the issue here is notice to individuals that they may well have to accept the responsibility of their actions in a civil court if they elect to seek to disseminate through the press any unauthorized or defamatory material. They cannot attempt to invoke the power of the press to hide their improper actions.

So Ordered.

DATED: March 11, 2009


Kenneth R. McHugh
Presiding Justice