

and, (3) requiring the News to disclose the last known address of Art Penny.

I. VERIFICATION OF ANSWER

3. The News' Amended Answer to the Amended Complaint in this action is annexed hereto as Exhibit A.

II. THE NEWS' AFFIRMATIVE DEFENSES

4. In its "Amended Answer", the News has asserted four affirmative defenses.

5. Plaintiff is moving to strike the News' defenses purportedly pursuant to CPLR §§3211(b) and (c).

6. Plaintiff has not submitted, and indeed cannot submit, any evidence to support an argument that the News has not stated affirmative defenses or that its affirmative defenses have no merit. CPLR §3211(b).

7. It appears from plaintiff's papers that its motion is one to strike the News' affirmative defenses for alleged defects in pleading.

8. CPLR §3026 sets forth the standard by which the sufficiency of pleadings must be judged. It states:

"Pleadings shall be liberally construed. Defects shall be ignored if a substantial right of a party is not prejudiced."

See Foley v. D'Agostino, 21 A.D. 2d 60, 248 N.Y.S. 2d 121 (1st Dep't, 1964).

9. CPLR §3013 sets forth the "particularity" required

statements in a pleading. It states:

"Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

10. The News' affirmative defenses meet the CPLR standard of particularity in pleadings; they are more than adequate to put the court and plaintiff on notice of the transactions and occurrences which the News intends to prove in the defense of this case.

11. In essence, the News' four affirmative defenses are 1) truth of the articles at issue, 2) the articles were fair and true reports of judicial proceedings, 3) the matters published in the articles were received from reliable sources, and 4) the articles dealt with material within the realm of public concern; as a basis for the articles in issue and of its affirmative defenses, the News' relies upon judicial proceedings held in Surrogate's Court, Suffolk County during the week of June 2, 1977 and on August 16, 1977 and upon judicial papers filed with the Surrogate's Court, Suffolk County under the case entitled In the matter of the accounting George Sassower as preliminary executor of the estate of Eugene Paul Kelly, deceased, File #736 P 1972, as stated in the News' Answer to Interrogatory 22 of Plaintiff's Second Set of Interrogatories.

III. ADDRESS OF ART PENNY

12. As stated in the News' Answer to Interrogatory 1 of Plaintiff's Second Set of Interrogatories, Art Penny's last known address is 74 Sunrise Avenue, Riverhead, New York 11901.

IV. DISCOVERY RELATING TO ART PENNY

13. Art Penny is not employed by the News; the News cannot, therefore, respond to plaintiff's demand for discovery relating to him.

V. DISCOVERY RELATING TO CLIENTS OF DAVID J. GILMARTIN, ESQ.

14. The News has no relation to Mr. Gilmartin and cannot respond to plaintiff's demand of him.

* * *

WHEREFORE, on the basis of the foregoing, it is respectfully requested that the court deny plaintiff's motion with respect to the News.

Zoe Mandes

Zoe Mandes

Sworn to before me this
31st day of August, 1982

Elizabeth R. McKay
Notary Public

ELIZABETH R. MCKAY
Notary Public, State of New York
No. 31-4512121
Qualified in New York County
Commission Expires March 30, 1983