

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,**

Plaintiffs,

v.

**RINGLING BROS. AND BARNUM &
BAILEY CIRCUS, et al.,**

Defendants.

Case No. 1:03-CV-02006 (EGS)

OPPOSITION TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE SUR-REPLY

Defendant Feld Entertainment, Inc. (“FEI”) hereby opposes Plaintiffs’ Motion to File a Sur-Reply to Respond to Three Incorrect Statements of Fact Contained in Feld Entertainment Inc.’s Reply Memorandum in Support of Its “Motion to Enforce the Court’s September 26, 2005 Order” (July 18, 2006) (“Motion”). FEI opposes the motion because the three statements identified by plaintiffs are not “incorrect” and therefore the premise for the proposed sur-reply is flawed.

The statement in FEI’s Reply about the media was that “FEI has consistently refused to comment on this case to the media,” which is different from the assertion that counsel for plaintiffs, in her pre-filing request for consent, indicated that she was going to address, namely, that “FEI never talks to the media about this case.” Ex. A hereto. The latter statement was never made and the former statement, while perhaps overly broad, is fundamentally accurate. FEI has consistently refused to respond to requests from the media for comments about the specific claims made in this case. As one of the news articles that plaintiffs attach states, “[w]hile circus representatives would not discuss specific allegations due to the pending lawsuit, they did issue a

statement saying that, overall, the case has no legal merit.” Motion, Ex. 1 at p. A 00698. Plaintiffs’ seizure upon this statement is beside the point in any event. The issue raised by the Motion to Enforce is not commenting about the case; it is *using discovery documents outside the case in the media*. Plaintiffs still point to no instance in which FEI has done that.

The statements about Rider were true. When the Reply was filed, there was no indication in the record of this case that he had filed income tax returns. He admitted not having done so when he was deposed in October 2006; plaintiffs’ response to the motion for leave to file the RICO counterclaim merely indicated that Rider was in the process of filing his returns; and Rider has still not produced any tax returns in discovery. When FEI recently requested that the returns be produced, the responding letter from his lawyer merely stated that the documents had been “recently generated” and that she had not yet “had a chance to review them.” Motion, Ex. 2. Nowhere in that letter is it stated that the returns had actually been filed with the IRS, which would not be surprising since many of them were years overdue. Indeed, if they had already been filed, review by counsel would not appear necessary. In any event, the first time that plaintiffs have represented that Rider has actually filed his tax returns with the government was in the proposed sur-reply.¹

Likewise, the statement that Rider “was declared a deserter from the United States Army” is accurate and based on the record in this case. Rider’s military transcript states in plain English that on two separate occasions he was “Dropped From Rolls – Deserter” and was a “Prisoner” on at least one occasion. Motion, Ex. 3. There may be reasons that Rider now would like to offer to

¹ Plaintiffs’ citation of 26 U.S.C. § 1603(b)(2) has nothing to do with this issue. Presumably, plaintiffs meant to cite 26 U.S.C. § 6103, but that statute and the cited case only address restrictions that exist on the government’s disclosure of tax return information. Neither authority places any restriction on a taxpayer’s disclosure of his own returns to a third party. In addition, the sur-reply actually backs away from the purported offer of production under confidentiality agreement, now claiming that the offer applied to “the relevant portions of those returns” (p. 2) when counsel’s letter contains no such restriction. *See* Motion, Ex. 2.

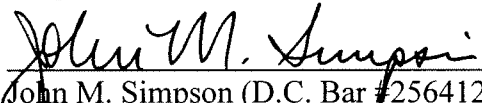
explain this away, but he had a chance to do so in his deposition and was improperly instructed by his lawyer not to answer questions about his military service, all of which is discussed at length in FEI's pending motion to compel. Docket No. 101. Rider's official military record supports the statement that FEI made. Furthermore, the official cover sheet to this transcript (which plaintiffs *omit* from their filing but which *was included* in the version that FEI previously filed with the Court) shows that this information about Rider was produced by the Army Reference Branch of the National Archives and Records Administration and is "information releasable under the Freedom of Information Act" and is "consistent with the Privacy Act." Ex. B hereto. Therefore, the assertion that Rider has some kind of privacy interest in a public record freely accessible under FOIA or that a violation of the Privacy Act has occurred is baseless.

CONCLUSION

Plaintiffs' motion should be denied.

Dated this 19th day of July, 2007.

Respectfully submitted,



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