

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE FUND FOR ANIMALS, ANIMAL WELFARE INSTITUTE, AND HSUS'
MOTION FOR A PROTECTIVE ORDER**

Civ. No. 1:07-cv-1532

Ex. 7

Mem. Op. 4, *Pottker v. Feld*, No. 1999 CA 8068 B

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division**

JAN POTTKER, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	1999 CA 008068 B
v.	:	Calendar 3
	:	Judge Brook Hedge
KENNETH J. FELD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

Introduction

This case arises from an article published by plaintiff Jan Pottker in *Regardie's* magazine that discussed Irvin Feld and defendant Kenneth J. Feld, Irvin Feld's son and successor at the helm of the Ringling Bros.-Barnum & Bailey Combined Shows ("Ringling"). Angered and concerned that Pottker would write further about his family and the circus, defendant Feld hired Clair E. George, the then former Deputy Director of [covert] Operations at the Central Intelligence Agency, and Robert Eringer, an author, publisher and attorney, to divert Jan Pottker from attempting any further publications about the Feld family or the Ringling Circus.

Before the Court is the Feld Defendants' Motion for Summary Judgment on the remaining claims against them from plaintiffs' Third Amended Complaint ("TAC"): Count I – Invasion of Privacy; Count III – Intention Infliction of Emotional Distress ("IIED"); Count IV – Tortious Interference with Prospective and Existing Business Relations; Count V – Fraud; Count VI – Civil Conspiracy; Count IX – Breach of



Fiduciary Duty; and Count X – Inducement to Breach Fiduciary Duties.¹ Defendants Joel Joseph and National Press Books have also filed for summary judgment. Plaintiffs oppose the motions contending material facts are in dispute. The filings have included voluminous material from discovery to support the various positions of each side. Defendants contend that the record establishes no material facts in dispute and that, in any event, the claims are time-barred.² For the reasons that follow, the Court denies the Feld Defendants' motion as to plaintiffs Pottker and WCI, and grants the motion as to plaintiff Fishel. The Court grants the Motion for Summary Judgment filed by Defendants Joel Joseph and National Press Books.

Factual Background

Plaintiffs in this case are Jan Pottker ("Pottker"), the corporation of which she is President, Writer's Cramp, Inc. ("WCI"), and her husband, Andrew S. Fishel ("Fishel").³ The individual plaintiffs are residents of Maryland, and WCI is incorporated in the State of Maryland.⁴ The Defendants are: the Feld Defendants,⁵ as well as Clair E. George ("George"), Robert Eringer ("Eringer"), National Press Books ("NPB"), and Joel D. Joseph (who was with NPB) ("Joseph").⁶

Jan Pottker is a published author. In July 1988, plaintiff wrote defendant Kenneth Feld that she was writing a book about the management style of young executives titled

¹ The suit was filed November 10, 1999. The Third Amended Complaint was filed January 14, 2002. A separate order will issue regarding the motions to exclude expert witnesses.

² Defendant George joined in the Feld Defendants' Motion. Defendant Eringer served a document titled "Dispositive Motion." It was either not sent to the clerk's office for filing or was not accepted for filing because it is not on the docket. The Court will treat the document as one for joining in the Feld Defendants' Motion.

³ Unless otherwise specified, when the opinion refers to "plaintiff," it is to Jan Pottker.

⁴ Plaintiffs had full-time employment with separate federal agencies in the District of Columbia. Plaintiff's office for WCI, however, was in her home in Maryland.

⁵ The "Feld Defendants" include: Kenneth J. Feld; Feld Entertainment, Inc.; Ringling Bros.-Barnum & Bailey Combined Shows, Inc.; Sells-Floto, Inc.; and I&K Trading Company Limited Partnership.

⁶ During the time period in question, none of the defendants resided, or were incorporated, in Washington, D.C. Some or all of the defendants, however, engaged in business in Washington, D.C.

Taking Charge: A New Generation of American Business Leaders Shapes America.

(This book was later called *Born to Power: Heirs to America's Leading Businesses* ("*Born to Power*"). As she explained in the letter, the book was to focus on those who succeeded a parent who was a chief executive of a nationally-known business. She further stated "you are a natural for inclusion . . . because your management style epitomizes today's thrust toward strengthening employee creativity and progress."⁷ She indicated she wanted to devote a chapter to him and provided a list of questions which were oriented towards what made for a successful leader of such a company, including how his father's role may have played in that development. She included a brief biography indicating she had published articles and books. Defendant Kenneth Feld granted the requested interview.

On October 22, 1989, plaintiff wrote her literary agent, Ron Goldfarb, stating that she had interviewed defendant Feld's sister, Karen Feld, that she had gathered "good" information that would be suitable for a local magazine, preferably *Regardie's*. She indicated that no one had uncovered the suit between the Feld siblings, Kenneth's and Karen's father's (Irvin Feld) "controlling personality," Kenneth Feld's "wild adolescence, or the mother's suicide."⁸ She further indicated that she wanted local exposure, that this could be published quicker than the book, and, if she wanted to leave her salaried job to write full-time, she would need to sell magazine pieces.⁹

⁷ July 5, 1988 Letter from Pottker to Feld. See Defendants' Memorandum in Support of their Motion for Summary Judgment ("MSJ"), Volume 1, Tab 1, Exh. 1.

⁸ October 22, 1989 Letter from Pottker to Ron Goldfarb, MSJ, Volume 3, Tab 24. In January 1990, plaintiffs Pottker and WCI entered into a contract with Barron's Educational Series, Inc., to write *Born to Power*. TAC, ¶ 20.

⁹ October 22, 1989 Letter from Pottker to Ron Goldfarb, MSJ, Volume 3, Tab 24.

In February 1990, plaintiff requested a further interview with defendant Feld. She indicated it was to shadow his management style but she wanted to confirm facts from the prior interview. He declined, but she did meet with Allen J. Bloom (“Bloom”), a senior officer and vice president for marketing in a Feld company. Plaintiff informed Bloom that *Regardie’s* magazine had contacted her for first serialization rights of her proposed book and that it wanted to profile Feld in a feature story.¹⁰

The *Regardie’s* article was published in August 1990, under the title *The Family Circus*, with the description: *Find a Tale of Illicit Love, Suicide, and Sibling Warfare*. The article disclosed what could be said to be highly personal family matters and has been described as scandalous. It appears to be undisputed that Kenneth Feld was extremely upset by the article, developed an intense dislike for plaintiff, and wanted to keep her from publishing about the circus or his family again.

In May or June 1990, plaintiff and David Cutler (“Cutler”) were discussing her writings regarding the circus.¹¹ Cutler was a published author, had engaged in free-lance public relations work, including for the circus, and, by this point, had an independent literary agency. According to plaintiff, Cutler was “an established and well-regarded figure in the Washington literary scene.”¹² On June 27, 1990, plaintiff sent Cutler her draft for *Regardie’s* because she said she was not satisfied with the edits done by the magazine’s editors.¹³ She also discussed the idea of *Highwire: The Unauthorized Biography of Irvin Feld and His Three Ring Circus* (“*Highwire*”), and they discussed his

¹⁰ TAC, ¶ 20.

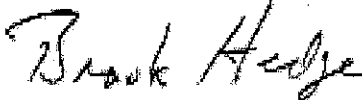
¹¹ It is unclear who approached whom first. The TAC suggests Cutler approached Pottker, ¶ 21. Cutler’s deposition suggests Pottker contacted him perhaps because of his background with the Circus. Deposition of David Cutler (“Cutler Dep.”) at 50-52.

¹² TAC, ¶ 21.

¹³ Cutler Dep. at 51.

separate judgment against plaintiff Fishel in favor of the defendants will be entered on Counts I and III.

August 14, 2008
Date


BROOK HEDGE
JUDGE
(Signed in Chambers)

Copies served electronically through eFiling for Courts on:

Roger C. Simmons, Esq.
Adam H. Oppenheim, Esq..
Janell M. Byrd, Esq.
Barry Simon, Esq.
Joseph T. Small, Jr., Esq.
Richard A. Hibey, Esq.

Copies served by U.S. Mail on:

Mr. Robert Eringer
78 Marylebone High Street, Ste. 747
London W1
England

Mr. Joel Joseph
National Press Books
8022 Cypress Grove Lane
Cabin John, MD 20810