

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 18-61017-CIV-ALTONAGA

FEDERAL TRADE COMMISSION,

Plaintiff,

-vs-

POINTBREAK MEDIA, LLC, et al,

Defendants.

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**ANSWER TO RECEIVER'S REPLY
TO DEFENDANTS' DUSTIN PILLONATO AND JUSTIN RAMSEY'S
RESPONSE AND OBJECTIONS TO RECEIVER'S MOTION TO
COMPEL TURNOVER OF PERSONAL LAPTOP COMPUTERS
AND PERSONAL CELL PHONES**

To make the issues perfectly clear, the Defendant corporations do not own the laptop computers and cell phones at issue. The corporate defendants are not claiming a Fourth or Fifth Amendment right, and the corporate defendants are not even represented by this attorney. The laptop computers and cell phones in question are the exclusive and personal property of the individual defendants, Dustin Pillonato and Justin Ramsey.

The Defendants are not making a blanket refusal to produce numerous items, they are making a very specific refusal to produce two items, 1) the cell phones; 2) their laptop computer. The Receiver makes the argument

that the Defendants have not presented evidence that the subject devices, in fact, “only contain incriminating evidence.” The Defendants do not have to make such arguments, they merely must, in good faith, believe that the evidence contained on the cell phones and laptop computers may tend to incriminate them.

Here the Receiver has absolutely no idea of what is contained on either the cell phones or the laptop computers, but merely guesses and speculates. The Receiver, in his motion, at page 6 line 8-9 states:

“The Receiver has grave concerns that the laptop computers have critical information about the operations of the Receivership entities.”

That is nothing more than a fancy way to say, the Receiver takes a wild guess that maybe there is something of interest to him on these items, but has absolutely no facts to back-up such statement.

The Receiver cites cases dealing with “the act of production” in his reply on page 6, paragraph 13 the Receiver states:

The Receiver’s request is not a question of testimony, but of surrender.”

That is really only half the issue. The Receiver isn’t asking the two individual Defendants to simply turn over their cell phones and laptop computers to him; what he is really asking is to search them, and seize from them everything contained therein. The Receiver is not claiming that he wishes to take possession these items to merely place them in storage, such as the seizure of

jewelry or an automobile, he wants to search them, extract whatever is in them, and then use that in a Court proceeding against the Defendants. This is far more than simply taking custody of the items. He is not simply asking the Defendants to “produce” the items, he clearly wants to search them, and seize the information contained in them.

Moreover, he wants to do this illegal search and seizure without the necessity of a warrant, as required by the Fourth Amendment of the United States Constitution. He wants to skirt around that by stating, that the evidence submitted in support of the Temporary Restraining Order and Preliminary Injunction, was more than sufficient to establish probable cause, authorizing the Court’s entry of an order permitting the search, seizure and turn-over of the materials in question. Nothing can be further from the truth. The Receiver has absolutely no idea whatsoever, as to what may be contained in the cell phones or the laptop computers. Again I repeat, he merely states:

“The Receiver has grave concerns that the laptop computers have critical information about the operations of the Receivership entities.”

That statement is a long way from probable cause to believe that certain items, with great specificity, are to be found within either the cell phones, or laptop computers. The Receiver claims that the Defendants have no legitimate expectation of privacy, where the Receiver is seeking the turnover of the subject devices, used to conduct the business of the Receivership entities. Again, nothing can be further from the truth. Clearly, the Defendants must establish “standing” to invoke the protections of the Fourth Amendment and,

in fact, they do. The Defendants state to this Court, that the cell phones and the laptop computers are their personal property, were within their custody and control, and they refuse to let others use these objects; therefore, they clearly have reasonable expectation of privacy in their own personal property. As this Court is well aware, on numerous occasions in criminal cases, cell phones are seized from defendants at the time of their arrest. Law Enforcement Officers know that they cannot search a criminal defendant's cell phone, without a warrant. In this case, the Receiver is putting the cart ahead of the horse. He is asking the Defendants to establish standing to contest the search and seizure, when in fact, the search warrant has not been issued, nor has any search without a warrant occurred. A Motion to Suppress is a reactive motion, after the search occurs.

Again, like the Receiver's argument against the Fifth Amendment, he simply talks about presenting sufficient evidence to support the turnover of the subject devices. This is not an issue of turnover; this is an issue of search and seizure. The Receiver has submitted no authority justifying the search of the Defendants' personal property, their cell phones and their laptop computers, without a warrant.

WHEREFORE, this Court should rule that the Receiver does not have the authority to demand that the individual Defendants turn over their personal property (cell phone and laptop computers) to the Receiver so that he may conduct a search and seizure of the personal property without a warrant.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer to Receiver's Reply to Defendants' Dustin Pillonato and Justin Ramsey's Response and Objections to Receiver's Motion to Compel Turnover of Personal Laptop Computers and Personal Cell Phones was filed via electronic filing using the CM/ECF system with the Clerk of the Court which sent e-mail notification of such filing to all CM/ECF participants in this case this 26th day of July, 2018.

(S) *Frank A. Rubino*
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