

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY  
LAW DIVISION - CIVIL PART  
DOCKET NO.: MON-L-2893-07

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TOWNSHIP OF MANALAPAN, :
ET AL, :
      :
      Plaintiffs :      TRANSCRIPT
      :
      -vs- :      OF
      :
STUART J. MOSKOVITZ, :      MOTIONS
ET AL, :
      :
      Defendants :
x- - - - - x

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Held at: Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey

Heard on: December 21, 2007

B E F O R E:

THE HONORABLE TERENCE P. FLYNN, J.S.C.

**TRANSCRIPT ORDERED BY:**

FRANK L. CORRADO, ESQ.  
(Barry Corrado Grassi & Gibson)

**A P P E A R A N C E S:**

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1 THE COURT: Good morning. This is the matter  
2 of the Township of Manalapan versus Stuart Moskovitz,  
3 Esq., Jane Doe, and/or John Doe, Docket Number Monmouth-  
4 L-2893-07. Everybody note your appearance please,  
5 starting I guess with the Township.

6 MR. WEEKS: David Weeks of Ruprecht Hart and  
7 Weeks on behalf of the Township of Manalapan.

8 MR. McCARTHY: Good morning, Your Honor, Daniel  
9 McCarthy from Rogut McCarthy Troy on behalf of Manalapan.

10 THE COURT: Okay.

11 MR. MOSKOVITZ: Good morning, Your Honor,  
12 Stuart J. Moskovitz.

13 MR. CORRADO: Good morning, Your Honor, my name  
14 is Frank Corrado. I'm from the law firm of Rossi Barry  
15 Corrado and Grassi of Wildwood, New Jersey. I'm here on  
16 behalf of the proposed intervenor, John Doe. With me is  
17 Matthew Zimmerman from the Electronic Frontier  
18 Foundation whose motion for admission pro hac vice is  
19 before Your Honor today.

20 THE COURT: All right. Is everybody aware of  
21 his application for admission pro hac vice?

22 MR. WEEKS: Yes.

23 THE COURT: Anybody have any objection to the  
24 admission pro hac vice?

25 MR. WEEKS: Provided that the admission is for

1 the limited purpose of opposing, moving to quash the  
2 subpoena, and the flip side of that, opposing the motion  
3 to issue letters rogatory, there would be no objection.

4 MR. CORRADO: That's correct, Judge, that's the  
5 scope of our --

6 MR. WEEKS: That's what I thought. Then  
7 there's no objection on my part. And as far as the  
8 motion to intervene, I'm not sure it's necessary,  
9 procedurally, to actually intervene. I think he can come  
10 in here and have standing to move to quash.

11 MR. CORRADO: Well, it's a belt and suspenders  
12 approach, Judge. So I'd ask you to grant the motion to  
13 intervene, and to admit Mr. Zimmerman.

14 THE COURT: All right, I'll grant the motion to  
15 both intervene and to appear pro hac vice, Mr.  
16 Zimmerman.

17 MR. CORRADO: Thank you, Your Honor.

18 THE COURT: But now let me ask you. What ever  
19 happened to Google? Are they appearing at all?

20 MR. ZIMMERMAN: Your Honor, no they're not.  
21 Google takes the position as they've stated in other  
22 cases, we've included one case, the GREENBAUM case from  
23 New York, take the position that this is a dispute  
24 between other parties and they will abide by the wishes  
25 of the other parties.

1 THE COURT: Of the Court, okay. All right.  
2 Well, let's -- this is an application for letters  
3 rogatory, initially. So, it's yours.

4 MR. WEEKS: Really, having dispensed with the  
5 first two issues, I think there's two basic things that  
6 are being asked for by all parties, or two issues. The  
7 first one is the motion to quash and the letters rogatory  
8 really the issues are the same.

9 Then after that, it seems that everybody seems  
10 to think that they're entitled to sanctions for the  
11 conduct of other folks.

12 As to the letters rogatory, it's real simple.  
13 We issued -- the defendant, has been mentioned in this  
14 blog. He has said in court and in a certification that  
15 he submitted in connection with these motions, that he is  
16 not the blogger. And that he hasn't posted anything on  
17 the internet. He hasn't written anything in that.

18 It would be coy to suggest that, well, he might  
19 have, or one might come to the conclusion that he did.  
20 The fact of the matter is, you read that thing and you  
21 come to the inescapable conclusion that it's either Mr.  
22 Moskovitz or his alter ego. Because of that, and because  
23 those statements were made in court and under oath, we  
24 issued a subpoena to Google to find out who the identity  
25 is of the blogger.

1 THE COURT: What, in what context did the  
2 identity of the blogger first appear in court?

3 MR. WEEKS: First appeared, ah gee, Judge, I  
4 confess, the procedural history in this thing, although  
5 only six or seven months old, is so convoluted that I  
6 don't remember when it first was mentioned.

7 THE COURT: Well, let me get to the point of my  
8 interest in your application.

9 MR. WEEKS: Sure.

10 THE COURT: You're seeking the right to depose  
11 or subpoena the records. Essentially you're looking to  
12 subpoena the records because you have to set a deposition  
13 date in order to get the records available by that date.

14 MR. WEEKS: All we want is the paper.

15 THE COURT: Okay. You allege, in your papers  
16 anyway, and the only allegation you essentially made in  
17 the papers was that this may constitute, if Mr. Moskovitz  
18 is in fact the blogger, it may constitute a violation of  
19 Judge English's order, which in that order was issued by  
20 Judge English in July.

21 MR. WEEKS: July 23.

22 THE COURT: It was in response to an order to  
23 show cause that was filed. And at that time Judge  
24 English entered an order, precluding the parties or their  
25 attorneys from discussing the case with the press or the

1 public.

2 And essentially I'll have to assume it was your  
3 draft order that Judge English signed.

4 MR. WEEKS: No. That was actually requested by  
5 the defendant and it was the plaintiff that opposed that  
6 and successfully got the Court to say no, we're not going  
7 to prevent people from talking about this.

8 THE COURT: Well, that was later on.

9 MR. WEEKS: Yes. But we didn't --

10 THE COURT: Okay. Well, okay, but Judge  
11 English issued the order I think sometime in July 23<sup>rd</sup> I  
12 think.

13 MR. WEEKS: Correct.

14 THE COURT: And he said you're not supposed to  
15 talk whatever, whoever. Now, what you contend in your  
16 papers is that he violated this order. And that's what  
17 you're looking for. You're trying to figure out, you  
18 know, did he violate the Court's order.

19 MR. WEEKS: That's one thing.

20 THE COURT: Well, that's the main thing that  
21 you asked for in your papers.

22 MR. WEEKS: Judge, that, perhaps we didn't make  
23 it clear in the papers. Frankly, if I were to find proof  
24 that in fact Mr. Moskowitz is this blogger, then he would  
25 have lied under oath, because he submitted a

1 certification in these papers here that says he's not.

2 THE COURT: Okay. But at least in terms of  
3 Judge English's order, what you say, you wanted to look  
4 at this to find out if he violated the Court's order.  
5 That's what you said you wanted to find out. The  
6 question is, I don't have anything in front of me that  
7 you have submitted, or anything else, saying that in fact  
8 there was, even if it was not Mr. Moskowitz, somebody  
9 said something, did something on this blog, from the time  
10 the Judge issued his order which said that nobody's  
11 talked to them, pending the final hearing in this case,  
12 which was on August 20<sup>th</sup>.

13 So for less than a month period of time, I  
14 don't know whether or not anybody said anything on this  
15 blog. Or did anything in violation of the Court's order.

16 MR. WEEKS: Fair enough. But the fact remains,  
17 and frankly, the overriding concern I have is the issue  
18 of credibility. I'm less concerned about whether Mr.  
19 Moskowitz violated at Court order, than I am as to  
20 whether he made sworn statements that are not true.  
21 Because that pervades the --

22 THE COURT: Well, the question is, -- the  
23 question then becomes though, the relevance of his  
24 statements. If his statements are not relevant at all,  
25 the fact that Mr. Moskowitz may have said something that

1 wasn't true, somewhere along the line, why is it relevant  
2 to this litigation?

3 MR. WEEKS: Because he's going to be a witness  
4 in the case. And his credibility, like all witnesses'  
5 credibility, is at issue.

6 THE COURT: Yes, but how -- under what basis  
7 are you going to attack his credibility? What legal  
8 basis do you have by simply saying, he said something  
9 that wasn't true in the past. That's it? That he said  
10 it under oath?

11 MR. WEEKS: Sure.

12 THE COURT: That something -- but did it relate  
13 to this case in any way?

14 MR. WEEKS: Well --

15 THE COURT: Certainly not a prior conviction.

16 MR. WEEKS: Oh, I don't -- Judge, if I've got a  
17 sworn statement by a witness that I can prove is false,  
18 that goes to his credibility and whether it relates to  
19 the actions or not, it's still an appropriate area for  
20 examination of a witness and to argue to a jury that he's  
21 not worthy of belief.

22 THE COURT: Do you have any evidence from these  
23 blogs?

24 MR. WEEKS: I'm sorry?

25 THE COURT: Because I haven't seen anything

1 about these blogs. I have nothing, no idea what's in  
2 the blogs.

3 MR. McCARTHY: Can I be of some assistance,  
4 Your Honor?

5 THE COURT: You could.

6 MR. McCARTHY: On July 17<sup>th</sup> Judge English  
7 entered the original order to show cause in this case  
8 that was requested on an ex parte basis by Mr. Moskovitz.  
9 And essentially it had this gag order. In response, in  
10 our application --

11 THE COURT: Yes, he later said it wasn't a gag  
12 order.

13 MR. McCARTHY: Well, I understand that, but the  
14 order reads as it reads. And you know, for the record, I  
15 can read it in.

16 THE COURT: No, no, I'm aware what the order  
17 says.

18 MR. McCARTHY: And in response to that, in  
19 actually my firm's papers to Judge English, we pointed  
20 out to the Judge, July 17<sup>th</sup> the order is entered. On July  
21 18<sup>th</sup> these's an article in the news transcript that says,  
22 "Reached for comment, Moskovitz said he was immune to any  
23 retaliatory measures," et cetera, et cetera.

24 So we were pointing out to the Judge that he's  
25 out there talking to the media. He's saying this is

1 going to, the basis for his request for the injunction  
2 was that, I'm going to be irreparably harmed. My  
3 reputation is going to be destroyed. And he's out  
4 talking to the media.

5 And we also pointed out to the Judge in our  
6 papers, and these are exhibits 14, 15, 16, to my  
7 certification on this motion, that all of these blog  
8 entries are in here. And again, as Mr. Weeks said, it's  
9 you know, you read these, and they were attached to our  
10 papers, you come to the inescapable conclusion that it's  
11 Mr. Moskovitz or someone that is directly connected to  
12 Mr. Moskovitz that writes these things. And he's doing  
13 that after the order is entered. Does it on July 17<sup>th</sup> and  
14 July 20<sup>th</sup>.

15 So, that's the background of this. And then  
16 July 23<sup>rd</sup>, after a telephone conference, Judge English  
17 recognized that he needed some adjustment to this order.  
18 And really on the Court's own initiative, issued the  
19 second order of July 23<sup>rd</sup>.

20 THE COURT: Well, the only one I saw was July  
21 23<sup>rd</sup> order. Okay.

22 MR. MCCARTHY: And the July 17<sup>th</sup> order, Your  
23 Honor, is again, Exhibit 14 to my certification on this  
24 motion.

25 THE COURT: Okay. Mr. Moskovitz?

1 MR. MOSKOVITZ: Yes. A couple of things. And  
2 I won't argue my motion for sanctions because we'll wait  
3 until this is done obviously before we get to that. But  
4 you just heard the reason for the motion for sanctions.

5 The inescapable conclusion? As I said to you  
6 under oath, and I would only do that for one reason, and  
7 that's because it's true, that not only am I not  
8 datruthsquad, but if I were given truth serum, I would  
9 not be able to tell you who datruthsquad is. I  
10 absolutely have no idea.

11 The fact that it's somebody that supports me,  
12 well, you know, out of 37,000 people in Manalapan, that  
13 narrows it down to about 36,500. Hardly an inescapable  
14 conclusion.

15 The July 17<sup>th</sup> order was issued because Manalapan  
16 was trying this case, not Manalapan, Manalapan's  
17 attorneys, was trying this case in the newspapers. Judge  
18 English issued an order which was, a gag order so to  
19 speak, although he didn't like that term, telling the  
20 plaintiff to stop, and only the plaintiff.

21 The Rules of Professional Conduct have two  
22 components with respect to communications with the press.  
23 One is that you do not try your case in the press  
24 obviously. However, there is an exception, and that  
25 exception is, where the publicity of that case is so

1 harmful to you or your client, that you need to counter  
2 that, you are permitted to do that.

3 From July 23<sup>rd</sup> on, the Judge did change his  
4 order. I don't believe it was by telephone, I believe we  
5 were here. And in that order the Judge then said, okay,  
6 you know what, nobody talks to the press. You're correct  
7 in saying even datruthsquad, from July 23<sup>rd</sup>, actually I  
8 don't know that datruthsquad spoke, said anything before  
9 July 23<sup>rd</sup>, but certainly post July 23<sup>rd</sup> to the time the  
10 order was changed, in August, datruthsquad said nothing  
11 about this case. I'm not even sure if datruthsquad  
12 posted during that time period. But in any event, there  
13 were certainly no postings about this case.

14 This whole nonsense about datruthsquad was  
15 started by Mr. McCarthy. And again, we'll get to that  
16 when we get to my motion for sanctions. Out of the blue,  
17 and it may not be out of the blue, because my suggestion  
18 is, that was the whole reason for this case to begin  
19 with, Mr. McCarthy writes a lengthy dissertation on  
20 datruthsquad, in something that proposes to be a land use  
21 case.

22 I responded saying, let's get this out of the  
23 case right now. I'm not datruthsquad. But you're right.  
24 It doesn't have anything to do with what is alleged to be  
25 the basis of this case.

1 Bottom line is, this is a complete distraction.  
2 If that's the reason for the case, the case should be  
3 dismissed. But in any event, there's no justification  
4 for letters rogatory.

5 And as far as evidence on credibility, we all  
6 know the Rules of Evidence, you cannot have a trial  
7 within a trial. If a witness lies on the stand, you  
8 can't sit there and call witnesses and do other things  
9 and have an entire trial to determine the credibility of  
10 that witness. So he wouldn't be able to use that  
11 information anyway.

12 THE COURT: All right, counsel, you want to be  
13 heard on any of the issues that we've talked about here,  
14 as opposed to just the general right to be able to  
15 subpoena and obtain records with regard to an anonymous  
16 blogger?

17 MR. ZIMMERMAN: Surely, absolutely, Your Honor.  
18 I'll limit my comments to what we've just discussed. To  
19 begin with, I don't represent Mr. Moskovitz. I represent  
20 the blogger in this case. I've never met Mr. Moskovitz.  
21 That should resolve the issue before us right now.

22 As to the issue of it being an inescapable  
23 conclusion that Mr. Moskovitz must actually be the  
24 blogger in this case, all we have to go on is the  
25 speculation, as you just heard from counsel. Now,



1 they've attempted a number of different times to point to  
2 various pieces of the evidence in the record, but as  
3 you've also heard, that story continues to change. Let  
4 me just point to the two flimsiest pieces of evidence  
5 that they attempt to point to.

6 One is in the opposition, their December 12<sup>th</sup>  
7 opposition where they actually come out and say, "For  
8 example, on datruthsquad blog the poster refers to  
9 himself as the damosked (phonetic) man," the nickname  
10 that this blogger uses for Mr. Moskovitz. Which  
11 obviously bears as they continue to say, a striking  
12 similarity to the surname of the defendant in the  
13 litigation.

14 That's absolutely made up. This never exists.  
15 Such a statement doesn't exist and Your Honor --

16 THE COURT: It doesn't exist where?

17 MR. ZIMMERMAN: It doesn't exist in the record,  
18 the screen shots of this blog that the plaintiffs have  
19 introduced into evidence. You asked earlier about the,  
20 actually seeing those blog posts. I've attached them as  
21 Exhibit D to our motion to quash. You can take a look at  
22 them themselves, nowhere does such a statement exist  
23 because no such statement exists.

24 Abandoning that rationale, in their final  
25 briefing they say, "The blog repeatedly refers to the

1 character damosked man, in obvious reference to the  
2 defendant, Stuart Moskovitz, in vehemently defending the  
3 defendant's action regarding the execution of the Drier  
4 property."

5 Well, so all we have is that we have a  
6 dissenting voice in the community. Someone who's  
7 criticizing the actions of the government. That's not  
8 enough. That's nothing less than speculation. That's  
9 certainly not a basis for moving forward here.

10 And on the issue of credibility, you know I  
11 would like to point out the precedent that this would  
12 set. It's true that the plaintiffs in this case invented  
13 this accusation with no evidence. They came into court  
14 and said, not even an accusation, they simply state it as  
15 fact, that Mr. Moskovitz was in fact the blogger.

16 And when Mr. Moskovitz denied it and he said,  
17 this is ridiculous, they're now saying, well, that's a  
18 basis for us to turn around and investigate it. I mean,  
19 just think of the judicial -- the impact on Your Honor's  
20 court if every single time someone came into court and  
21 made a ridiculous accusation that became an independent  
22 basis for someone to investigate the critics in the  
23 community. And we simply don't think that that's the  
24 case.

25 THE COURT: All right. In the interest of

1 giving everybody an opportunity to be heard on the  
2 question of the appropriateness of the subpoena. And  
3 then for a blogger.

4 So this is your application, let me hear from  
5 you.

6 MR. ZIMMERMAN: Your Honor, would you like  
7 plaintiffs to go first, we also have the parallel motion  
8 to quash. We could go forward if you'd like.

9 THE COURT: All right. We will do that.

10 MR. ZIMMERMAN: As we've outlined in our  
11 papers, there's a series of independent grounds for  
12 quashing the subpoena. I think the easiest one that  
13 disposes of the issue, is simply on procedural grounds.  
14 Plaintiffs have contended that their motion for letter  
15 rogatory alleviates those procedural defects. That's not  
16 the case. I don't want this, that issue to be lost here,  
17 the original subpoena that was issued in the case was  
18 issued improperly out of State. That subpoena, the  
19 subpoena of September 26<sup>th</sup> needs to be quashed.

20 But moving to the substantive areas, there's at  
21 least three different grounds for quashing this subpoena.  
22 First is the simple matter that Federal Law prohibits  
23 precisely this, precisely the course of discovery that  
24 the plaintiffs are undertaking. The Federal Story  
25 Communications Act specifically prohibits plaintiffs from

1 using civil discovery to seek the content of  
2 communications or records stored with online service  
3 providers such as Google. It's very clear, it's a  
4 blanket exception. It makes it very clear that the  
5 government is not able to bypass, bypass these  
6 restrictions unless a very specific exception applies.

7 The only exception that the plaintiffs have  
8 pointed to is actually a criminal investigatory  
9 exception, which is, it's hard to overstate how  
10 inappropriate that is. The Courts, the Civil Court does  
11 not have the jurisdiction or the authority to issue such  
12 an order as the statute makes clear. There's no ongoing  
13 criminal investigation. The plaintiffs haven't  
14 articulated any specific and articulable facts. No  
15 exception exists.

16 Now that doesn't mean that if in fact there was  
17 a legitimate inquiry that plaintiff would not be able to  
18 obtain this information. But it can't use it, they can't  
19 use the civil discovery process to do it. The statute  
20 makes very clear there are alternative means, a trial  
21 subpoena, a Grand Jury subpoena, an administrative  
22 subpoena.

23 THE COURT: Not Grand Jury subpoena.

24 MR. ZIMMERMAN: Excuse me?

25 THE COURT: Not Grand Jury subpoenas. The

1 alternative means that they have for trial subpoena and  
2 Grand Jury subpoenas, Grand Jury subpoenas are going to  
3 be criminal.

4 MR. ZIMMERMAN: Well, that's what I'm saying,  
5 but the statute only authorizes that. And that's  
6 actually not that, that's not appropriate here, you're  
7 right, Your Honor.

8 Second, the First Amendment very clearly bars  
9 what they're attempting to do here. The Supreme Court  
10 has made it very clear that anonymous speech is a  
11 protected right, it's not some deviant practice and some  
12 practice, it's highly protected by the Supreme Court. In  
13 fact, the New Jersey Court of Appeals has made very clear  
14 what the procedure should be if someone is trying to  
15 pierce the anonymity of an online speaker.

16 In 2001 the Court in the DENDRIGHT (phonetic)  
17 case laid out a five part test. We've highlighted that  
18 in our papers. The fifth part of the test is the only  
19 thing we need to pay attention to here. And that's the  
20 balancing aspect. And the Court made very clear that a  
21 Court must balance the First Amendment right to anonymous  
22 speech with the necessity for the disclosure of the  
23 speaker's identity to allow the plaintiff to move  
24 forward.

25 Now, it's very clear as Your Honor alluded to

1 earlier, there is not any necessity for this information.  
2 This goes to none of the underlying issues in the case.  
3 The malpractice statute is quite separate from, or excuse  
4 me, the claims of a violation of the malpractice statute  
5 based on actions in 2005 have nothing to do what someone  
6 said about the Government's action in 2007.

7 Even if, as they allude to, the credibility of  
8 the witnesses at stake. Again, I point you to, I point  
9 Your Honor to the statute, in every element of the  
10 statute there's objective. There's no point at which Mr.  
11 Moskovitz is going to have to demonstrate one way or the  
12 other whether he's trustworthy or not. All of the  
13 evidence in the record is objective and can be pointed  
14 out from other sources.

15 I would point out that even the DENDRIGHT test  
16 however is not as high a standard as the one the Court  
17 should apply. Although I think that the DENDRIGHT test  
18 certainly accomplishes what we're doing here today. The  
19 DENDRIGHT test is all about party discovery. We're  
20 talking about third party discovery. And I pointed Your  
21 Honor in our papers to the MART (phonetic) case which is  
22 a Western District of Washington case. It deals  
23 specifically with the issue of what do you do when you're  
24 trying to unmask non parties.

25 And there the Court made clear that the

1 interest of non parties need to be protected even more  
2 than parties. They don't, you know, in trying to avoid a  
3 situation where someone is sideswiped into a litigation  
4 where it has nothing to do with them, and yet their  
5 rights are violated.

6 So the Court there raises other issues, you  
7 know, determining whether the subpoena was issued in good  
8 faith, whether information relates directly to a core  
9 claim or defense, and whether the information sufficient  
10 to prove or disprove the claims is available from any  
11 other source.

12 All of those weigh in favor of quashing the  
13 subpoena here. None of those factors weigh in favor of  
14 the plaintiff.

15 And finally, I would just point Your Honor to  
16 the, simply the relevance grounds, pointing you to the  
17 discovery standard in New Jersey. All discovery issued  
18 in the State has to be reasonably calculated to lead to  
19 the admission of relevant information.

20 There's nothing reasonably -- there's no  
21 reasonable calculation going on here. This is merely, as  
22 they point out, this is merely speculation. Mr. Weeks  
23 actually said a few weeks ago, I don't know one way or  
24 the other whether this is the, whether he's the speaker.  
25 He could be. You know, we have no, there's absolutely no

1 evidence that they're pointing to other than the fact  
2 that the blogger here exercised his First Amendment right  
3 to criticize the Government. And that's the only thing  
4 that they're trying to hang this application on.

5 In addition to that, just one additional point.  
6 The subpoena is massively over broad. Even assuming  
7 everything that they're saying is correct. That they  
8 need the identity of this blogger. That's not what  
9 they've asked for. They've asked for the identity and a  
10 whole laundry list of personal information. They want  
11 emails, they want documents, they want who they emailed,  
12 who the emails came from. I think that's a rather  
13 transparent attempt, you know, to demonstrate that  
14 they're doing something more here than trying to find  
15 information that's relevant to their case. Thank you.

16 THE COURT: All right.

17 MR. WEEKS: Judge, there is a protection. We  
18 don't argue against that. It's a qualified privilege  
19 though. And it's true that there's a balancing test.  
20 And what has to be balanced is the need for in the action  
21 versus the First Amendment rights.

22 Here we're not seeking to limit anybody's right  
23 to speak. We simply want to know who the speaker is to  
24 determine the relevance to this action. And if it's not  
25 Mr. Moskovitz, I agree, there is no relevance.

1 THE COURT: Wait. If it's Mr. Moskowitz, why  
2 is that relevant to this action, other than to say that  
3 Mr. Moskowitz lied in the papers. Other than that,  
4 anything else?

5 MR. WEEKS: That's how it's relevant.

6 THE COURT: That's it?

7 MR. WEEKS: Yes, sir. And I can't think of  
8 anything more relevant than somebody's -- relevant to a  
9 case than a party's credibility.

10 THE COURT: You agree that the substance of the  
11 documentation, what he wrote or the fact that he wrote  
12 things like that, is not relevant? It has nothing to do  
13 with whether or not he was negligent or committed  
14 malpractice in connection with a land deal that happened  
15 several years ago.

16 MR. WEEKS: No, correct. Correct.

17 THE COURT: On whether or not a oil spill, what  
18 should have been dealt with and discovered appropriately.

19 MR. WEEKS: Obviously it does not go there.

20 THE COURT: And so --

21 MR. WEEKS: And I think --

22 THE COURT: You want this information about a  
23 blog, and it just coincidentally happens to be a blog  
24 that's critical of the administration of Manalapan.

25 MR. WEEKS: Absolutely coincidental, Judge. I

1 have, I was hired by this Township that I don't know  
2 because they thought that I could do a good job on a case  
3 like that. They looked at the case, determined -- and  
4 had it reviewed by an expert who authored the affidavit  
5 of merit in the case. And it wasn't until all of that  
6 that I said, okay, I'll take this case.

7 THE COURT: Yes, but you took the case, we're  
8 talking about, when we talk about the case, it's Mr.  
9 Moskowitz's alleged malpractice.

10 MR. WEEKS: Correct. And my point is, that I  
11 am so distant from Manalapan politics that I have no  
12 interest whatever, one way or the other. I couldn't tell  
13 you the names of the people on their committee.

14 THE COURT: Does Manalapan know that you're  
15 spending funds, or putting resources into trying to find  
16 the identity of a blogger who is critical of their  
17 administration?

18 MR. WEEKS: They, I assume they're aware of  
19 this. It's been in the front page of the Star Ledger.  
20 You'd be, have to be under a rock not to know that this  
21 is going on.

22 THE COURT: Well, I think I've been a rock, I'm  
23 afraid. But that's all right.

24 MR. WEEKS: Well, Your Honor has less of an  
25 interest in it than the Government body of Manalapan.

1 Have I spoken to them directly and do I know what they  
2 know specifically? No. But I'm comfortable that they're  
3 aware of it.

4 THE COURT: That's not the question.

5 MR. WEEKS: And we're not expending their  
6 resources, sir. Mr. Moskowitz has gone to great lengths  
7 to make it clear that I am not on an hourly rate basis,  
8 so this costs no one but my firm.

9 THE COURT: Okay.

10 MR. WEEKS: Now, in balancing it, there's a  
11 real easy way to protect any concerns that the Electronic  
12 Freedom Foundation has for their blogger. And that is,  
13 Google, who has no problem complying with the subpoena,  
14 complies with the subpoena. Sends the information to me.  
15 I don't distribute it to anybody but Your Honor. Your  
16 Honor conducts an in camera review. And determines in  
17 your discretion, whether there are materials there that  
18 ought be released or not.

19 THE COURT: Well, let's deal first with the  
20 scope of the subpoena, as brought up. What are the  
21 things you're asking for?

22 MR. WEEKS: What really just the identity, Your  
23 Honor. The thing was described fairly broadly so that  
24 there wouldn't be any room to try to look at it over  
25 technically and somehow or another not provide the

1 information.

2 THE COURT: So all you want, you're willing to  
3 strike all the other suppressage (phonetic) in the  
4 subpoena. All you want is the identity of the blogger.

5 MR. WEEKS: Yes, Your Honor.

6 THE COURT: Okay. Now, counsel for the  
7 anonymous blogger says that you have not established a  
8 reasonable basis to conclude that it is Mr. Moskowitz.  
9 And he says that damosked man was not in actually in any  
10 publication. Do you have a citation for that that you  
11 can show me it's there?

12 MR. WEEKS: Oh, no, he doesn't say that, he  
13 wouldn't say that. Because he's all over the thing.

14 MR. ZIMMERMAN: Just to clarify, Your Honor,  
15 the blogger certainly discusses Mr. Moskowitz. But  
16 nowhere does he say or indicate in any way that he  
17 himself is the Mr. Moskowitz.

18 MR. WEEKS: No, no. He doesn't say that. But  
19 when you read these blogs, which are part of the papers  
20 that have been submitted by Mr. McCarthy, damosked man is  
21 dahero of dablog. And everybody else is a bunch of bad  
22 guys.

23 THE COURT: Does that imply that somebody else  
24 could not consider Mr. Moskowitz to be the hero?

25 MR. WEEKS: I have never said that it's, that

1 he is the blogger. I don't know that. What we have it,  
2 we have a bunch of representations, and in this case it's  
3 become a cause celeb, but I routinely will issue  
4 subpoenas, take discovery to see if I can prove that an  
5 adversarial witness is not telling the truth under oath.

6 I mean, that's just common practice in civil  
7 litigation and criminal litigation. But civil  
8 litigation. You do that. That's all we did here, is we  
9 got these representations from the man. We read the blog  
10 and said, boy, the author of that thing sure looks to be  
11 Stuart Moskovitz. Is it? I don't know. But it sure  
12 looks to be. And he's saying he's not. So, my goodness,  
13 I'm going to issue a subpoena to see if he's a truth  
14 teller or not.

15 THE COURT: Anything else, Mr. Moskovitz? Is  
16 there something you want to say?

17 MR. MOSKOVITZ: Very quickly. Just to clarify  
18 certain things. One of the other problems that has not  
19 been raised with the subpoena is when you issue a  
20 subpoena under the Rules of Procedure, you are supposed  
21 to be serving the other side with a copy. I've never  
22 been served with a copy of that subpoena. So it should  
23 be quashed for that reason alone.

24 As far as this expert witness that Mr. Weeks  
25 brought in saying there was legal malpractice, he was so

1 expert, he didn't even refer to the 2004 court order.

2 You have an attorney here who just admitted  
3 he's not communicating with his alleged client, which is  
4 another violation of the Rules of Professional Conduct.

5 THE COURT: Mr. Moskovitz, that's, you know,  
6 we'll get to your application in a little bit.

7 MR. MOSKOVITZ: Well, no I understand.

8 THE COURT: Let's just deal with this  
9 application.

10 MR. MOSKOVITZ: Right. And basically the  
11 important thing here with respect to the subpoenas is, I  
12 don't want to step over people's grounds, I think it's  
13 pretty clear, there is absolutely no basis whatsoever for  
14 issuing this. You are imposing a violation of a person's  
15 First Amendment rights who has nothing to do with this  
16 case. And until there's a showing that whoever  
17 datruthsquad is, is related to this case. Not  
18 speculation, not conjecture, but an actual showing that  
19 the person who is datruthsquad, has some relationship to  
20 this case, their First Amendment rights should not be  
21 violated.

22 MR. McCARTHY: Your Honor.

23 THE COURT: Yes.

24 MR. McCARTHY: If I may on this point. One of  
25 the interesting things about this datruthsquad is that on

1 December 4<sup>th</sup> 2007, they posted on datruthsquad, a PDF  
2 version of a document that was to be filed by Mr.  
3 Moskovitz in court. It is not a stamped filed copy. It  
4 is a PDF, that is unsigned. So it's not even signed.  
5 And while we've heard the protest, I have nothing to do  
6 one with the other, somebody was distributing an unsigned  
7 copy, unfiled copy, that somehow managed to end up on  
8 this website.

9 So just in terms of connections, you read the  
10 thing, you see what these people are doing. It's, you  
11 know, there's really no question that this is a Moskovitz  
12 enterprise.

13 MR. ZIMMERMAN: Your Honor, I can resolve that  
14 great mystery. Mr. Moskovitz forwarded me a PDF copy, a  
15 courtesy copy of his brief that day that he filed it.  
16 And we put it up on our website. If you look at the PDF  
17 that our blogger, or Mr. McCarthy is pointing to, they're  
18 pointing to a link on our website that has the court docs  
19 publicly viewable. So, again, to undermine the  
20 implication here that this is some great conspiracy by  
21 Mr. Moskovitz.

22 THE COURT: Okay. Well, the Court has reviewed  
23 the arguments and the papers that have been submitted  
24 here. The central basis for the defendant's application  
25 for letters rogatory that a subpoena be issued, and

1 documents be obtained to Google as to the identification  
2 of the blogger who is operating under the name,  
3 datruthsquad, is based on the evaluation of the postings  
4 on the blog that have been made up until the filing of  
5 this application.

6 The relevance claimed by the defendants is that  
7 in fact Mr. Moskovitz in response to allegations that the  
8 defendants made in previous motions filed before the  
9 Court that Mr. Moskovitz was indeed broadcasting through  
10 datruthsquad, his positions with regard to the  
11 litigation. And that allegedly Mr. Moskovitz in those  
12 papers denied that he was the author of datruthsquad.

13 And thereafter, wishing to establish that under  
14 his denial of that particular claim, that this  
15 information would constitute under oath a falsehood which  
16 might be then used by way of litigation in an attack on  
17 Mr. Moskovitz's overall credibility under the underlying  
18 action, which is a malpractice action, which is alleged  
19 to have occurred substantially before this whole scenario  
20 erupted.

21 The Court is aware that in fact false  
22 statements under oath may be considered as impeachment  
23 material. And generally the idea is the false statements  
24 under litigation, in litigation and question may also be  
25 considered an impeachment material. However, I'm also



1 aware that where the factual issues are so remote and so  
 2 outside the scope of the litigation that the Court in  
 3 balancing the equities in the case and deciding whether  
 4 or not the probative value is outweighed by the delay of  
 5 time and consequence, the Court may also decide that in  
 6 fact the information is inadmissible in evidence.

7 However, that is the standard that the Court  
 8 has to consider. The Court has to consider the standard  
 9 as to discoverable evidence or whether or not the  
 10 evidence sought would lead to relevant evidence.

11 I have reviewed the underlying basis for the  
 12 defendant's application and looking at what he says is  
 13 datruthsquard and the speculation, at least, and the Court  
 14 considers it at this point only speculation, that Mr.  
 15 Moskovitz is the issuer of this blog. And I am not  
 16 satisfied that in issuing, or asking for the  
 17 identification of Mr. Moskovitz, that the underlying  
 18 basis for this application is forthrightly offered.

19 This case is a case is where each of the  
 20 parties have spread out the application, the allegations,  
 21 and we're going to hear that when we hear Mr. Moskovitz's  
 22 application, but they've sought to spread out this  
 23 application to essentially see, amount to a battle, a  
 24 political battle in Manalapan between whoever it is  
 25 that's supporting Mr. Moskovitz, if anyone, and the

1 people who are involved in either the current or past  
 2 administration.

3 And I also recognize that there are First  
 4 Amendment issues with regard to disputes with the past  
 5 administration. And that anyone having a right to, has a  
 6 right to make their feelings clear. And they have a  
 7 right not to be intimidated by the issuance of discovery  
 8 requests in order to shut them down.

9 For that reason, in many ways, the authority  
 10 cited by the intervenor is correct and accurate. And  
 11 first of all the intervenor's, the blogger, if in fact  
 12 it's an individual person, and I'm assuming absent any  
 13 evidence that it is another individual person, has a  
 14 right not to be drawn into the litigation and forced to  
 15 reveal identity or to impede on his or her First  
 16 Amendment rights simply on a suspicion, however founded  
 17 or unfounded, and I don't believe that this suspicion is  
 18 sufficiently founded at this point to determine that it  
 19 is Mr. Moskovitz. That person should not be drawn into  
 20 the litigation and forced to abide by the rules with  
 21 regard to exchange of information that the parties have,  
 22 as opposed to a third party.

23 So the Court is satisfied that there is no  
 24 authority under law for this particular subpoena to  
 25 obtain this private information. To allow the subpoena

1 would be undue and unjust infringement on the blogger's  
2 First Amendment rights. There's no factual basis at this  
3 point, other than a mere suspicion for the justification.  
4 And ultimately that even if the information were  
5 obtained, it would be so remote to the actual elements of  
6 this litigation that it would not be admissible under any  
7 circumstances. So I'm going to deny the letters  
8 rogatory at this time.

9 MR. MOSKOVITZ: If I could just clarify one  
10 thing, Judge.

11 THE COURT: Yes.

12 MR. MOSKOVITZ: Because people have a habit of  
13 quoting exactly what you say, the defendant is me, I  
14 didn't bring the motion.

15 THE COURT: I'm sorry. You're the defendant,  
16 I'm sorry, Mr. Moskovitz. You're correct. I just got  
17 involved. I'm so used to people taking that seat. And  
18 that just subconsciously got into my mind. I'm sorry.

19 MR. ZIMMERMAN: Your Honor, just one  
20 clarification too, there were the two parallel motions  
21 that were the plaintiff's motion for letters rogatory.  
22 There was also our motion to quash. And I want to make  
23 sure --

24 THE COURT: Okay, I'm granting the motion to  
25 quash, and denying the letters rogatory.

## Moskovitz/Argument

35

1 MR. ZIMMERMAN: Oh, and I'm sorry, the  
2 remaining issue of the protective order as well.

3 THE COURT: The protective order that you're  
4 seeking?

5 MR. ZIMMERMAN: To prevent the further issuance  
6 of discovery. We filed our motion to quash, and it was  
7 after that point that the plaintiffs issued their new  
8 request.

9 THE COURT: No, I'm not going to issue the  
10 protective order at this point because I have no idea  
11 what the evidence is going to be down the road.

12 MR. ZIMMERMAN: Okay.

13 THE COURT: All right, Mr. Moskovitz, you may  
14 have some hint of my feeling with regard to your motion.

15 MR. MOSKOVITZ: Let me take up where you left  
16 off. It's been my contention that this case is nothing  
17 but a political battle. So I agree with that comment 100  
18 percent. And I don't believe that a political battle  
19 belongs in the judiciary.

20 Unfortunately, I'm not convinced that this case  
21 is anything but a political battle.

22 THE COURT: Okay, you understand, my  
23 recognition is this case has spread, I am not saying by  
24 any means, that this Court is making any finding as to  
25 whether or not the allegations with regard to your

1 conduct or misconduct -- by the way, have you filed your  
2 answer yet?

3 MR. MOSKOVITZ: Oh, yes, that was filed  
4 December 11<sup>th</sup>.

5 THE COURT: Okay. All right, I'm not saying  
6 that their application with regard to you is in anyway in  
7 itself a political issue. You may contend that, but I am  
8 not necessarily buying into that position at this time.

9 MR. MOSKOVITZ: Getting to the motion, we made  
10 a motion to quash, there's two components to that motion,  
11 one against Mr. Weeks' firm, one against Mr. McCarthy's  
12 firm. The one against Mr. Weeks' firm is confined to a  
13 very simple issue. And that is that taking up on Mr.  
14 McCarthy's wild accusations they issued a subpoena. And  
15 that subpoena was issued in total violation of the Rules  
16 of Civil Procedure because they surreptitiously attempted  
17 to violate somebody's First Amendment rights using my  
18 name without sending me a copy. And I'm the opposing  
19 counsel in the case. So there should be sanctions for  
20 that.

21 Frankly, I think the entire conduct with  
22 respect to the subpoena is sanctionable, but at the very  
23 least, not sending me a copy of that subpoena, which I  
24 found out about, I would say, six or seven weeks after it  
25 was issued, when I was contacted by Attorney Zimmerman.

1 So that was, that's solely the motion against Mr. Weeks'  
2 firm.

3 The motion against Mr. McCarthy's firm is the  
4 persistent and unbridled continuation of knowing  
5 misrepresentations to this Court. He tried to couch, I  
6 mean he raised all of these issues way back in the answer  
7 to the order to show cause. And he produced all of these  
8 statements of the blog. Not one of which was within the  
9 time period covered by Judge English's order.

10 THE COURT: That was my questions.

11 MR. MOSKOVITZ: Right. And it was for the sole  
12 purpose of besmearing my name. It was for the purpose of  
13 discouraging anybody who might be datruthsquad from  
14 posting, in fact datruthsquad did go blank for several  
15 months. They were intimidated. They were chilled.

16 To state under oath, number one, I have  
17 personal knowledge of the facts in my certification. And  
18 two, Mr. Moskovitz appears to be datruthsquad. And then  
19 after making that qualification, makes statements on and  
20 on and on forgetting about the qualification and making  
21 it clear he is. Those are misrepresentations to the  
22 Court that were designed to prejudice the Court. They  
23 were designed and they admit they actually succeeded in  
24 getting the order to show cause changed based on those  
25 misrepresentations to the Court.

1           There has to be at the end of the day, some  
2 penalty for misrepresentations so dramatic as those by  
3 Mr. McCarthy. That is, despite his response to that  
4 motion, the sole basis for the motion.

5           THE COURT: All right, so what are you asking  
6 for?

7           MR. MOSKOVITZ: What we're asking for is  
8 several things. But again very simple. With respect to  
9 Mr. McCarthy's firm, we're asking for attorney's fees in  
10 the amount of \$5,000, which is what we expended for  
11 everything related to what Mr. McCarthy did.

12           We're also asking for something that I believe  
13 is legitimate. I don't expect the Court to award it in  
14 all candor, but I believe it's a legitimate request. And  
15 that is to preclude him from appearing on behalf of any  
16 party in this litigation. And the basis for that is set  
17 forth in my certification. The Manalapan is supposedly  
18 represented by Mr. Weeks on a contingent basis, while Mr.  
19 McCarthy is billing the Township on an hourly basis,  
20 including every hour expended in connection with these  
21 subpoenas.

22           And given his conduct in this case so far, I  
23 think it's fair for this Court to say, Mr. Weeks is the  
24 attorney, and we don't need somebody clouding the record  
25 as an extra attorney thrown in.

1           With respect to Mr. Weeks' firm, we've asked  
2 for attorney's fees in the amount of \$2,000 because  
3 that's all that really my time was expended in  
4 relationship to what their firm did. And we're also  
5 asking the Court to prohibit them, or any attorney for  
6 plaintiff from engaging in any discovery without a prior  
7 order of the Court, after a showing of relevance to this  
8 case.

9           Now, I know you've kind of addressed that  
10 already, but that is what I'm asking for. And the reason  
11 for that, it's not necessarily the same thing as a broad  
12 protective order, but what we are saying in that case is  
13 where they're issuing subpoenas without notice to us, how  
14 in the world do we have any protection from that  
15 happening again without such an order. Thank you.

16           MR. WEEKS: If I understand the basis for this  
17 request, it is that the subpoena that was sent by mail to  
18 Google was not copied to Mr. Moskovitz. I don't know if  
19 that's the case. I'm assuming that he's right. If he  
20 is, that was an oversight by my office. I notice people  
21 when I give them subpoenas, and the rest of everything  
22 you've seen in this, you can see that we're up front and  
23 candid about everything. As soon as, I believe it was  
24 Mr. Zimmerman who first raised the issue saying, well,  
25 you know, technically you can't just mail a subpoena.

1 And that's true, but in practice if the person to whom a  
2 subpoena is sent, is willing to comply, we all do it all  
3 the time.

4 As soon as that was said, I said, okay. Fair  
5 enough. And that's why we brought the motion for letters  
6 rotatory because that is technically the way it should be  
7 done.

8 The reality is that there is no harm done by  
9 overlooking giving him notice of the thing if we did that  
10 because he got notice. He got to oppose it. We granted  
11 every request for every adjournment that Mr. Zimmerman  
12 asked for. Even though he wasn't even admitted here, we  
13 agreed to every request, and there were three or four of  
14 them.

15 And so that everybody has the time to brief  
16 this, to submit all the papers. So that's just not  
17 appropriate. I think if there's to be sanctions against  
18 anybody, it ought to be to Mr. Moskowitz for the misuse  
19 of the vehicles that have been used to delay this  
20 litigation to the point it is.

21 THE COURT: Okay. As to the motion for  
22 sanctions, I'm satisfied that the plaintiffs' explanation  
23 are acceptable, that it was an oversight in one instance.  
24 And I assume that oversight will not occur again. That  
25 you'll provide the appropriate notice.

1 MR. WEEKS: Correct.

2 THE COURT: Certainly Mr. Moskowitz has not been  
3 damaged as a result of this by the very nature of the  
4 proceedings we're having today. Everybody has been  
5 eventually aware of the subpoena. Nobody could expect  
6 that such a subpoena could exist and be executed without  
7 everybody knowing about it. And Mr. Moskowitz certainly  
8 was aware of it. And ultimately he has not been damaged  
9 by the fact that he wasn't notified. He now knows.

10 I would encourage you to make sure that people  
11 are aware of discovery. I'm not going to put any limits  
12 on discovery, for a court order to limit discovery in the  
13 future.

14 And the application for counsel fees are  
15 denied.

16 All right, anything else from me? How are we  
17 doing on discovery now?

18 MR. WEEKS: Your Honor extended the defendants'  
19 time to I believe January 4, I think, to respond to the  
20 discovery that was served.

21 THE COURT: You got your answer.

22 MR. WEEKS: I'm sorry? Yes, we received the  
23 answer. And third party complaint.

24 THE COURT: And a third party. And who did Mr.  
25 Moskowitz bring in?

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MR. WEEKS: When I told you before I didn't know the names of the people on the Council, I meant it. I think it's somebody on the Council, but I'm not sure who.

MR. MOSKOVITZ: We brought a third party claim against Andrew Lucas, the Mayor.

THE COURT: Okay. All right. Okay, gentlemen, you're going to get a copy of my order.

MR. MOSKOVITZ: Just also for to clarify that, we do have Richard Roe, third party defendants, who are all the professionals which will be determined as discovery proceeds. They were all the professionals who were actively involved in the 2004 court order.

MR. WEEKS: Is it Your Honor's practice that we wait for the order today?

THE COURT: Yes. I'm just going to -- it's going to be here in just a second.

MR. WEEKS: Thank you.

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**C E R T I F I C A T I O N**

I, PATRICIA POOLE, Certified Agency Transcriber, do hereby certify that the foregoing transcript of proceedings on Tape No. CV-125-07, Index No. 3470 to 6876 and Tape No. CV-126-07, Index No. 1 to 1012, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded in the matter of TOWNSHIP OF MANALAPAN, ET AL v MOSKOVITZ, ET AL, heard by the Monmouth County Superior Court, on December 21, 2007.

\_\_\_\_\_  
PATRICIA POOLE

\_\_\_\_\_  
AOC Number

TERRY GRIBBEN'S TRANSCRIPTION SERVICE

\_\_\_\_\_  
DATE