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JUL 09 1985 UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff,
vs.
MICHAEL J. FLYNN,
Defendant.

CASE NO. CV 83-5052-R
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The following is this Courts resolution of the factual, legal, and discretionary issues that were presented to it at the March 4, 1985 hearing. See, Quality Prefabrication, Inc. v. Daniel 3. Keating, 675 F.2d 77 (3rd Cir. 1982).

FINDINGS OF FACTS

1. The parties are the plaintiff, Church of Scientology of California ("CSC") and the defendant, Michael J. Flynn. Plaintiff is an association incorporated in the State of California.

2. Federal jurisdiction in this action is invoked pursuant to 28 U.S.C. §332. The parties are of diverse citizenship. The plaintiff is a citizen of California. The

Exhibit "1"

1 defendant is a citizen of Massachusetts. The matter in contro-
2 versy exceeds the sum of \$10,000.00.

3 3. Venue is invoked "on the grounds that the plaintiff
4 resides in California and the alleged defamatory statement was
5 made in Los Angeles, California, within the Central District of
6 California on June 25, 1983.

7 4. On June 25, 1983, the defendant, Michael Flynn,
8 gave a speech in Los Angeles, California to a group of people
9 known as the "Phoenix" group. On June 25, 1983, the "Phoenix"
10 group was made up in part with former and current members of the
11 Church of Scientology Of California.

12 5. Among the statements made by Flynn at his June
13 25, 1983 speech was the following:

14 "Among the things that occurred to me in the four
15 years that I have been litigating with an
16 amorphous organization that has a few people that
17 control huge amounts of money, to hire armies of
18 lawyers to try to destroy me and my clients and
19 whether you know it or not yet, people like
20 yourself, is what the whole war and game and
21 settle is about.

22 "In October, 1979, shortly after I rejected an
23 offer from the Church of Scientology that is to
24 say whoever that is to get a refund for a client
25 which I'm going to explain to you a little about,
26 I was flying up to South Bend, Indiana, and my
27 airplane engine quit after an hour and a half in
28 the flight, and for those of you who are pilots,
you know that any degree of condensation you pick
up in a preflight examination from your fuel
tanks. Well, I was an hour and a half into the
flight and we lost power entirely and we made an
emergency landing and my eleven year old son was
in the plane, another lawyer and a college class-
mate of mine, a Vietnam Veteran, and we drained
off quarts of water from my fuel tanks. And as I
indicated, it was shortly after I rejected an
offer that I'm going to talk to you people about.

"And that's when their lawyer showed up and
offered me a check for her money plus a little

1 bit. And I told the lawyer what he could do with
2 his check and that took place shortly before the
3 plane incident. Now, for a number of years, I
4 dismissed the plane incident as being simply too
5 preposterous to believe that this organization
6 could do it."

7 6. On June 25, 1983, Flynn was an attorney who repre-
8 sented numerous individuals in litigation against the Church of
9 Scientology of California and against other Churches of
10 Scientology.

11 7. Flynn is and was a plaintiff in lawsuits against
12 various Churches of Scientology and/or its founder L. Ron Hubbard.
13 Flynn is and was a defendant in lawsuits brought by various
14 Churches of Scientology, including the Church of Scientology of
15 California,

16 8. Defendant sought to depose L. Ron Hubbard, the
17 founder of the Church of Scientology. Pursuant to Federal Rule
18 of Civil Procedure 30(a), the Plaintiff Church of Scientology of
19 California was notified that the defendant intended to take the
20 deposition upon oral examination of Hubbard in his capacity as
21 managing agent of plaintiff.

22 9. Hubbard was scheduled to appear at his duly noticed
23 deposition on January 18, 1985. Hubbard failed to appear at his
24 deposition.

25 10. On January 31, 1985, the defendant moved to
26 dismiss plaintiff's complaint pursuant to Rule 37 of the Federal
27 Rules of Civil Procedure, on the ground that L. Ron Hubbard was
28 plaintiff's managing agent, and that dismissal was the
appropriate sanction for Hubbard's willful failure to appear at
his duly noticed deposition. Alternatively, the defendant moved

1 the Court for an order to compel Hubbard to attend his deposition
2 at a date set by the Court, subject to dismissal of the action if
3 Hubbard failed to appear,

4 11, A hearing was held on March 4, 1985, in order to
5 determine if Hubbard was in fact the managing agent of the
6 plaintiff, and if so, whether his deposition would be scheduled
7 under penalty of dismissal,

8 12, At the March 4, 1985 hearing, this Court deter-
9 mined that Hubbsrd was the managing agent of the Church of
10 Scientology and scheduled his deposition for March 20, 1985.

11 13, Despite his protestations on the contrBry, and his
12 alleged non-involvement in Church affairs since 1966, Hubbard has
13 been found to be a managing agent by numerous courts.

14 14, There is ample evidence in the record indicating
15 that Hubbard has been a managing agent of plaintiff in recent
16 years and a dearth of support for the proposition that his role
17 in the Church of Scientology of California has substantially
18 changed since then. This Court takes judicial notice of the
19 findings of fact and conclusions of law of the following judicial
20 decisions wherein Hubbard was determined to be the managing agent
21 of plaintiff. Order of July 20, 1984, Church of Scientology of
22 California v. Gerald Armstrong, No. C420153 (Super. Ct.
23 Cal, 1984); Order of September 24, 1984, Church of Scientology
24 of California v. Commissioner of Internal Revenue, Dkt. No.
25 3352-78 (Tax Ct. 1984).

26 15, Among the evidence adduced during the litigation
27 of this lawsuit which supports this Courts finding that Hubbard
28 was and is the managing agent of plaintiff is the following:

1 A. Despite the claims of his attorneys that they
2 are unable to reach Hubbard, Hubbard publicly
3 urges people to contact him and states that
4 he will answer any mail delivered to him.

5 B. Hubbard has constructed within the Church of
6 Scientology of California an elaborate scheme
7 to conceal his true relationship to the Church
8 of Scientology of California and in so doing
9 he attempted to misrepresent his true
10 relationship to the Church of Scientology of
11 California and in so doing he attempted to
12 misrepresent his true relationship to the
13 plaintiff to wit, that he is its managing
14 agent.

15 C. Hubbard continues to control the Church of
16 Scientology of California as the "Commodore of
17 the Sea Organization of the Church", and
18 through his relationship with "Author
19 Services, Inc."

20 16. It is the finding of this Court that the nature
21 and extent of Hubbard's control was such that if any operation
22 was undertaken by the Church of Scientology of California against
23 the defendant, including the alleged sabotage of the aircraft
24 which is the underlying factual incident of the alleged libel,
25 Hubbard was and is in a position to have either authorized or
26 ratified such an operation.

27 17, This Court finds that a sufficient nexus exists
28

1 between the alleged sabatoge of Defendant's aircraft and the
2 involvement of Hubbard in the Church's clandestine or illegal
3 affairs,

4 18. It is the finding of this Court that Hubbard is in
5 possession of relevant evidence.

6 19, It is this Courts finding that the deposition of
7 Hubbard was reasonably calculated to produce or lead to the
8 prosecution of relevant evidence.

9 20. On the strength of the evidence presented at the
10 hearing, and the entire record of this case, defendants showed
11 that Hubbard was a managing agent of the Church of Scientology on
12 January 18, 1985, and that he directs and has directed the Church
13 and its membership, and that he is uniquely situated to provide
14 information bearing on defendant's allegation that plaintiff
15 engaged in the conduct and that this conduct was orchestrated by
16 Hubbard. His testimony is essential.

17 21. Because Hubbard is the managing agent of the
18 plaintiff, Church of Scientology, the service of a Notice of
19 Deposition for him was sufficient to require his Bpearance.

20 22, The failure of Hubbard to appear at his deposition
21 as scheduled resulted in dismissl of the cause pursuant to
22 Federal Rule of Civil Procedure 37.

23 23, Hubbard's failure to appear at his duly scheduled
24 deposition was willful and made in bad faith.

25 CONCLUSIONS OF LAW

26 1. Pursuant to Rule 26 of the Federal Rules of Civil
27 Procedure, parties may obtain discovery regarding any matter
28 which is relevant to the subject matter involved in the pending

1 action, whether it relates to the claims or defenses of the party
2 seeking discovery or to the claim of any defense of any other
3 party. It is not ground for objection that the information
4 sought will be inadmissible at the trial if the information
5 sought appears reasonably calculated to lead to the discovery of
6 admissible evidence. Rule 26(b)(1) fed.R.Civ.P.

7
8 2. The defendant could prevail on the merits of this
9 action if he could prove that the statement which plaintiff
10 alleges to be libelous was in fact true. Washer v. Bank of
11 America, 87 Cal. App.2d 501, 509 (1948); SwBtfield v. Universal
12 EKCQ Corp., 76 Cal. Rptr. 680 (Ct. App. 1969)

13 » 3. The defendant could prevail on the merits of this
14 action if the plaintiff failed to prove that the defendant mBde
15 the allegedly libelous statement without the requisite malice.
16 Oeaile v. General Telephone Company of America, 40 Cal. App.3d
17 841, 847 (1974)5 Agarwal v. Johnson, 160 Cal. Rptr. 141 (1979).

18 4. The deposition of a party or of Bnyone who at the
19 time of taking the deposition was an officer, director, or
20 managing agent, or a person designated under Rule 30(b)(6) to
21 testify on behalf of a public or private corporation, partnership
22 or association or governmental agency which is a party may be an
23 adverse party for any purpose. Rule 32 Fed.R.Civ.P.

24 5. A corporation which is a party may be deposed
25 through an officer or managing agent for corporation. Tietz v.
26 Textron Corp., 94 F.R.O. 638 (E.D. Wise. 1983).

27 6. The test as to whether one serves in such capacity
28 to a party so that the party may be deposed through him as a

1 managing agent under the Rule is not the title, or even the lack
2 of title, but the functions he performs in furthering its
3 activities and interest. Petiton of Manor Investment Co.,
4 43 F.R.O. 299 (S.D.N.y. 1967).

5 7. The determination of whether an individual is a
6 managing agent turns on the unique facts of the individual case.
7 The question turns on the function the individual performs for
8 the corporation which indicate that he has authority to speak for
9 or act on behalf of the corporation. U.S. v. The Dorothy
10 McAllister, 24 F.R.O. 316 (S.D.N.Y. 1959).


11 8. It is not the function of the Court of Appeals to
12 dray factual inferences, but only to review evidence of record to
13 determine whether inferences drawn by trial court are clearly
14 erroneous. See, Quality Prefabrication Inc. v. Daniel J.
15 Rearing Co., 675 F.2d 77 (3rd Cir. 1982).

16 9. Broad discretion must be given the trial judge with
17 regard to sanctions, local Union No. 231 v. Town Line Sand &
18 Gravel, Inc., 511F.2d 1198 (1st Cir. 1975).

19 10. Pursuant to Rule 37(b)(1)(a) of the Federal Rules
20 of Civil Procedure, the failure of a managing agent of a party to
21 appear for a deposition subjects the party to the sanction of
22 dismissal of the suit.

23 11. Dismissal of an action is appropriate upon a
24 showing of willfulness, bad faith, or fault by the non-complying
25 psrty. National Hockey League y. Metropolitan Hockey Club,
26 427 U.S. §639, 640 (1976).

27 DATED: JUN 27 1985

28 
MANUEL L. REAL
UNITED STATES DISTRICT COURT