

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

JUN 23 2006

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

KIMMIE JO CHRISTIANSON,)
)
Plaintiff,)
)
vs.)
)
HENRY HOLT AND COMPANY, LLC, a)
domestic limited liability company, and)
MAGNUM PHOTOS, INC., a domestic)
corporation, and BARBARA EHRENREICH,)
individually,)
)
Defendants.)

Case. No. 06 -1156

Jury Trial Demanded

COMPLAINT

Plaintiff, Kimmie Jo Christianson ("Christianson"), by her attorneys, HANNA & HANNA, P.C., states as follows for her complaint against the defendants, Henry Holt and Company, LLC, ("Holt"), Magnum Photos, Inc. ("Magnum"), and Barbara Ehrenreich ("Ehrenreich"):

Nature of the Case

1. Christianson brings this suit against Holt, Metropolitan, Magnum and Ehrenreich for their unauthorized use of her photographic image on the cover of a *New York Times* bestseller book entitled, Nickel and Dimed. Holt published Nickel and Dimed. Magnum and/or one of its agents took the photograph of Christianson (whose surname was then "Larimore") in approximately 1986. Ehrenreich authored Nickel and Dimed which was first published in hardcover in 2001.

2. This lawsuit seeks damages for invasion of Christianson's right to privacy. Specifically, this lawsuit seeks damages for appropriation of another's name or likeness where the defendants have used plaintiff's image for commercial purposes and benefit without her consent.

Jurisdiction

3. This Court has diversity jurisdiction over all four defendants pursuant to 28 U.S.C. § 1332(a)(1) in that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

Holt

4. This court has general personal jurisdiction over Holt because, on information and belief, it has continuous and systematic contacts with Illinois.

5. This court has specific personal jurisdiction over Holt because, on information and belief, it has engaged in conduct giving rise to the claims herein that satisfies the Illinois long-arm statute (735 ILCS 5/2-209) including: the commission of a tortious act within Illinois, the commission of a tortious act outside of Illinois knowing and intending that such act would interfere with Illinois interests and cause injury within Illinois, and the acquisition of ownership, possession or control of any asset or thing of value within Illinois when such ownership, possession or control was required.

6. This Court has personal jurisdiction over Holt because, on information and belief, it is doing business in Illinois.

Magnum

7. This court has general personal jurisdiction over Magnum because, on information and belief, it has continuous and systematic contacts with Illinois.

8. This court has specific personal jurisdiction over Magnum because, on information and belief, it has engaged in conduct giving rise to the claims herein that satisfies the Illinois long-arm statute (735 ILCS 5/2-209) including: the commission of a tortious act within Illinois, the commission of a tortious act outside of Illinois knowing and intending that such act would interfere with Illinois interests and cause injury within Illinois, and the acquisition of ownership, possession or control of any asset or thing of value within Illinois when such ownership, possession or control was required.

9. This Court has personal jurisdiction over Magnum because, on information and belief, it is doing business in Illinois.

Ehrenreich

10. This court has general personal jurisdiction over Ehrenreich because, on information and belief, she has continuous and systematic contacts with Illinois.

11. This court has specific personal jurisdiction over Ehrenreich because, on information and belief, she has engaged in conduct giving rise to the claims herein that satisfies the Illinois long-arm statute (735 ILCS 5/2-209) including: the commission of a tortious act within Illinois, the commission of a tortious act outside of Illinois knowing and intending that such act would interfere with Illinois interests and cause injury within Illinois, and the acquisition of ownership, possession or control of any asset or thing of value within Illinois when such ownership, possession or control was required.

12. This Court has personal jurisdiction over Ehrenreich because, on information and belief, she is doing business in Illinois.

Venue

13. Venue is proper in the United States District Court for the Central District of Illinois pursuant to 28 U.S.C. § 1391(a)(2) and (3) because a substantial part of the events giving rise to the claims occurred in this judicial district and each defendant is subject to personal jurisdiction in the Central District of Illinois. Venue is also proper with regard to Holt and Magnum pursuant to 28 U.S.C. § 1391(c) as they are corporations subject to personal jurisdiction in the Central District of Illinois.

The Parties

Holt

14. Holt is a domestic limited liability company engaged in the business of publishing books. Holt is organized under the laws of the State of New York.

15. Holt is organized into divisions. Metropolitan Books (“Metropolitan”) is an imprint, or a public name, for a group of books within one of Holt’s divisions.

Magnum

16. Magnum is a domestic business corporation engaged in the business of producing and selling photographic images. Magnum is organized under the laws of the State of New York.

17. At all times relevant herein, Gilles Peress, a professional photographer, was an agent, officer and employee of Magnum.

Ehrenreich

18. Barbara Ehrenreich, a professional author, is an individual person residing in Florida. Ehrenreich authored a book entitled, Nickel and Dimed, published, sold and distributed by Holt and Metropolitan.

COUNT I
(INVASION OF PRIVACY)

19. Christianson reallages and incorporates by reference paragraphs 1 through 18 as paragraph 19 of this Count I.

20. Plaintiff, Kimmie Jo Christianson, is a resident of the State of Illinois, County of Tazewell.

21. In approximately 1986, Christianson, (whose surname was then "Larimore"), was approached by photographer, Gilles Peress, in a welfare office in Peoria, Illinois.

22. Gilles Peress, an agent and employee of defendant Magnum, asked Christianson if she and her children were willing photo subjects for an article that was to be published in Fortune magazine on single mothers supporting their families on low wage jobs.

23. Christianson agreed to let Gilles Peress take photographs of herself and her children for use in Fortune magazine.

24. One particular photo of Christianson, standing at the counter of a café where she was employed as a waitress, was indeed published in the May 26, 1986, issue of Fortune magazine.

25. Christianson did not derive monetary benefit from the use of her photograph

in Fortune magazine.

26. Christianson did not sign a written release for the use of her picture in Fortune Magazine or for use in any other publication.

27. In approximately 2001, defendant Holt, through its imprint, Metropolitan, first published a book entitled, Nickel and Dimed, authored by defendant Ehrenreich.

28. Without knowledge or consent of Christianson, the photograph of Christianson from the May 26, 1986, issue of Fortune magazine was used as the cover for the both the hard and softback versions of Nickel and Dimed.

29. Nickel and Dimed made the *New York Times* Bestseller list.

30. The defendants, without knowledge or consent of Christianson, appropriated and used for commercial purposes for the pecuniary gain of the defendant, the photographic image and likeness of Christianson.

31. Christianson at no time gave consent to use her persona or likeness in conjunction with the cover picture of Nickel and Dimed.

32. Christianson only consented to her appearance being used solely in an article in Fortune magazine in 1986. Nevertheless, defendants have continued to unlawfully use Christianson's persona and likeness in a commercial form and defendants have derived economic benefit therefrom.

33. Nickel and Dimed has been published, sold and distributed in the Central District of Illinois, throughout the continental United States and in other countries.

34. Upon information and belief, at no time did any of the defendants make any

effort to contact or locate Christianson to obtain her consent for the aforesaid use of her photographic image or likeness and with reckless with indifference to her right to privacy, used and continue to use said image to defendants' economic benefit.

WHEREFORE, Plaintiff, Kimmie Jo Christianson, requests that judgment be entered in her favor and against the defendants for the following relief:

- A. award damages to Christianson in an amount to be determined at trial;
- B. order that defendants account to Christianson for all gains, profits, and advantages derived in the sales of Nickel and Dimed;
- C. impose a constructive trust on all monies and other benefits that defendants gained or are continuing to receive from any breach of its duties to Christianson; to order defendants to perform an accounting of all such benefits; and to further order them to pay over all such monies and other benefits to Christianson as this Court may direct;
- D. award punitive damages in an amount sufficient to deter the defendants and others from committing similar conduct in the future;
- E. award all costs and attorney's fees;
- F. such other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Christianson demands trial by jury on all issues so triable.

Respectfully submitted,
Kimmie Jo Christianson, Plaintiff,

RONALD HANNA,
Lead Counsel

By: 

Ronald L. Hanna, One of plaintiff's attorneys

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