

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SPX CORP.,)	CASE NO. 1:02CV919
)	
Plaintiff,)	
)	
vs.)	Judge John M. Manos
)	
JOHN DOE,)	
)	
Defendant.)	<u>MEMORANDUM OF OPINION</u>

On May 21, 2002, John Doe, defendant, filed a Motion To Quash a subpoena issued against non-party Yahoo!, Inc. (Docket No. 7). The Court reserves ruling on the motion for the reasons set forth below.

I. FACTS

On May 15, 2002, the Defendant removed this action from the Court of Common Pleas of Cuyahoga County, Ohio. In its Complaint, SPX Corp., plaintiff, alleges that the Defendant made defamatory comments regarding the Plaintiff's business and stock value. The Defendant denies that the alleged statements meet the legal definition of defamation.

The statements were made on an Internet message board maintained by Yahoo!, an Internet service provider. Generally, an Internet message board is an electronic forum through which anyone with Internet access can post messages about a given topic. Then, anyone with Internet

access can read them, and even respond if desired. Yahoo! maintains numerous message boards, including some in which the discussion topic is a particular publicly traded company. In fact, according to the parties, Yahoo! maintains a separate message board devoted to each and every publicly traded company. One such message board pertains to the Plaintiff. Although Yahoo! provides the forum, it does not control the content of the messages. In addition, the Plaintiff has no affiliation with the message board.

The statements at issue were posted on the SPX message board in two separate postings, both occurring on February 22, 2002. As is common in sending messages over the Internet, the Defendant did not use his real name. Rather, he used the screen name “neutronb”.¹ From the postings, it is impossible to determine the true identity of neutronb. Yahoo!, however, maintains identifying information about its users, including their real names, addresses, and telephone numbers.

On May 1, 2002, this action was filed in state court against “John Doe”, but the Complaint could not be served because the Plaintiff did not know the identity of neutronb. On May 6, 2002, the Plaintiff initiated a subpoena against Yahoo! essentially seeking all documents that refer or relate to the user going by the screen name neutronb. Such documents would contain personal information revealing the Defendant’s identity.

On May 7, 2002, Yahoo! refused to turn over the information citing a federal criminal statute that generally prohibits disclosure of personal information by an Internet service provider, except under limited circumstances. See 18 U.S.C. § 2702. Yahoo! indicated, however, that it would turn over the information requested if “neutronb” did not object to the subpoena. Yahoo!

¹ For convenience, the Court refers to the Defendant using male pronouns. Neutronb might be female.

forwarded the complaint and the subpoena to the Defendant, who hired counsel. Counsel removed the action on diversity grounds and has waived service of the Complaint on behalf of their client. Although the Defendant has appeared through his counsel, the Court has not yet required him to disclose his identity.

On May 22, 2002, the Defendant filed the current Motion To Quash. As a result of his objection to the subpoena, Yahoo! has not turned over the information relating to his Internet account.

On June 14, 2002, the Court held a status conference. The Defendant's position essentially is that the statements at issue do not meet the legal definition of defamation. Accordingly, his counsel indicated a desire to file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Counsel urged the Court at least to entertain a motion to dismiss before requiring disclosure of their client's identity. The Plaintiff disagrees and argues that it is entitled to commence discovery, including discovery that necessarily would reveal the Defendant's identity. The Court attempted to negotiate an agreed manner by which the Defendant could be deposed with limitations on disclosing his identity. Such an agreement would obviate the need to rule on the propriety of the subpoena against Yahoo!. The parties, however, ultimately were unable to agree.

II. LAW AND ANALYSIS

The Defendant argues that the subpoena should be quashed pursuant to the First Amendment right to speak anonymously. See, e.g., Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 199-200 (1999); McIntyre v. Ohio Elections Commission, 514 U.S. 334, 341-43 (1995). This right extends to anonymous speech over the Internet. Reno v. American Civil Liberties Union, 521 U.S. 844, 871 (1997) (speech over the Internet is entitled to the same protection as speech in other forums); American Civil Liberties Union v. Johnson, 4 F. Supp. 2d

1029, 1033 (D.N.M. 1998), aff'd, 194 F.3d 1149 (10th Cir. 1999); American Civil Liberties Union v. Miller, 977 F. Supp. 1228, 1230, 1232 (N.D. Ga. 1997).

The Plaintiff argues that the First Amendment does not protect the Defendant if the statements are defamatory. This is correct. The parties dispute, however, whether the allegations in the Complaint meet the basic pleading requirements for a defamation claim pursuant to Rule 12(b)(6). The Defendant is concerned that First Amendment rights will be diminished if an anonymous speaker can be forced to disclose his or her identity solely upon the filing of a Complaint. If disclosure could be achieved so readily, then the mere filing of a lawsuit can be used as a means to intimidate or dissuade people from making negative comments about publicly traded companies.

Cases addressing this precise issue are few. In such cases, courts have attempted to balance the First Amendment right to speak anonymously with the rights of a litigant to obtain relevant discovery and prove its claims or defenses. In Columbia Insurance Co. v. Seescandy.com, 185 F.R.D. 573, 579 (N.D. Cal. 1999), the court required the plaintiff to demonstrate that the claims against anonymous parties could withstand a motion to dismiss. The court indicated that conclusory pleadings are insufficient. Id. In Doe v. 2TheMart.com, 140 F. Supp. 2d 1088 (W.D. Wash. 2001), the Court applied a similar analysis in determining whether to order discovery against *non-party* anonymous Internet users. Applying Columbia Insurance, the court held that the standards for ordering discovery against anonymous *non-parties* must be stricter than if the discovery is sought from a party. Id. at 1095. In America Online, Inc. v. Anonymous Publicly Traded Company, 542 S.E.2d 377, 385 (Va. 2001), the court held that a party wishing to remain anonymous must show “special circumstances” demonstrating that the party’s First Amendment interest in remaining anonymous outweighs any potential prejudice to opposing parties

and the societal interest in public trials. All these cases represent attempts to balance the various competing interests.

Here, the Defendant's position is that the Complaint is subject to dismissal under Fed. R. Civ. P. 12(b)(6). At the status conference, Defendant's counsel expressed their intent to file such a motion. A determination of dismissal under Rule 12(b)(6) is based solely on the pleadings without any discovery. Therefore, if the Defendant is correct, then the case can be dismissed without disclosing his identity, thereby protecting his First Amendment right to remain anonymous. If he is incorrect, then the Court can order discovery identifying him upon denial of the motion to dismiss. Accordingly, the Court concludes that the parties' interests are best balanced by entertaining a motion to dismiss prior to engaging in discovery.

III. CONCLUSION

For the foregoing reasons, the Court reserves ruling on the Defendant's Motion To Quash (Docket No. 7). The Defendant has ten (10) days within which to file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), and the Plaintiff has ten (10) days thereafter to respond. Discovery shall be stayed until after the Court rules on the motion to dismiss.

IT IS SO ORDERED.

Issued: July 1, 2002

s/ John M. Manos
UNITED STATES DISTRICT JUDGE