

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNA.
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09-3866

VS.

READING EAGLE COMPANY,
LORE E. GERHART, and
WILLIAM S. FLIPPIN,
Defendants

BERKS COUNTY, PA
 MARIANNE R. SUTTON
 PROthonotary

2009 APR -1 P 3:53

RECEIVED
PROTHONOTARY'S OFFICE

JURY TRIAL DEMANDED

COMPLAINT

The Plaintiff, W. THOMAS ANTHONY, JR., respectfully represents that:

1. The Plaintiff is an adult individual whose address is P. O. Box 1894, Bethlehem, Northampton County, Pennsylvania 18016.
2. Defendant, READING EAGLE COMPANY, is a Pennsylvania corporation that maintains an office for the conduct of business at 345 Penn Street, Reading, Berks County, PA 19603.
3. Defendant LORI E. GERHART is an adult individual who is the Sales Manager for the Reading Eagle, and whose mailing address is c/o the Reading Eagle, 345 Penn Street, Reading, Berks County, PA 19603. Lori E. Gerhart is being sued in both her official capacity and her personal capacity.

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4. Defendant WILLIAM S. FLIPPIN is an adult individual who is the Chairman, President, and Publisher of the Reading Eagle, and whose mailing address is c/o the Reading Eagle, 345 Penn Street, Reading, Berks County, PA 19603. William S. Flippin is being sued in both his official capacity and his personal capacity.

5. As chairman, president, and publisher of the Reading Eagle, Defendant Flippin is directly responsible for the creation and implementation of the policies of Defendant Reading Eagle Company.

6. Defendant Reading Eagle Company is the employer of Defendant Gerhart and Defendant Flippin, and as such is responsible for the actions of Gerhart and Flippin by virtue of respondeat superior.

7. Defendant Reading Eagle Company owns and publishes a daily newspaper in Reading, Pennsylvania, that is engaged in interstate commerce.

8. The Plaintiff manages and is a partner in a nightclub known as "Goodfellas" located in Allentown, Lehigh County, Pennsylvania, which regularly advertises for dancers in the Reading Eagle newspaper.

9. When the Plaintiff advertised for dancers in the Classified section of the Reading Eagle, Defendant Reading Eagle Company insisted on placing the ads under the heading "Entertainment", rather than listing the ad in the "Help Wanted - General" section.

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10. Very few people read the help wanted ads in the "Entertainment" section; in comparison, almost all readers looking for employment read the ads listed under "Help Wanted - General". By listing the ad under "Entertainment", the newspaper was insuring that the Plaintiff's advertisements would not reach the target audience, and would only be seen by a very small portion of the newspaper's readership. The category "Entertainment" is intended for musicians, actors, and such, and not dancers at a gentleman's club.

11. By restricting the Plaintiff's advertisements to the "Entertainment" section, the Plaintiff was not receiving the full service that he paid for.

12. The policy of the Reading Eagle was the Defendants' way of discriminating against gentleman's clubs, and insuring that those clubs could not attract new employees. When the Plaintiff searched the Reading Eagle's classified ads on its web site on March 29, 2009, the search produced absolutely no advertisements under "Entertainment".

13. Gentleman's clubs, and exotic dancing, are an industry that is protected under Pennsylvania law. Pennsylvania's own Supreme Court has ruled that exotic dancers and gentlemen's clubs are protected by Article I, Section 7 of the Pennsylvania Constitution. The Pennsylvania Supreme Court in Pap's A.M. v. City of Erie [812 A.2d 591 (Pa. 2002)] stated that exotic dancing is expressive conduct that is protected by Pennsylvania's own Constitution.

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14. The Defendants are trying to claim that their First Amendment rights as a newspaper have priority over the Plaintiff's First Amendment rights. Such a claim is absolutely wrong under the law. Furthermore, by placing such stringent standards on advertising for gentlemen's clubs, the Defendants appear to be irrationally restricting the protections of Article I, Section 7 of the Pennsylvania Constitution.

For example, if the Plaintiff wished to advertise for waitresses, barmaids, bouncers, or drivers for his gentlemen's club, he would still be forced to place his ad under "Entertainment". This clumping together of all jobs under "Entertainment" is a form of humiliation for the Plaintiff and for his prospective employees. This establishes that the Plaintiff is being treated differently by the Defendants from other types of businesses, which constitutes invidious discrimination.

15. The Defendants' practice and policy violates Article I, Section 7 of the Pennsylvania Constitution, and places a chilling effect upon the Plaintiff's right to free speech and freedom of expression.

16. The Pennsylvania Constitution provides greater protection for free speech than the U. S. Constitution. Pennsylvania's own Constitution states in part:

Article I, §7 is broader than the First Amendment in that it guarantees not only freedom of speech and the press, but specifically affirms the "invaluable right" to free communication of thoughts and opinions, and the right of "every citizen" to

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"speak freely" on "any subject" so long as that liberty is not abused.

Freedom of expression has a very robust constitutional history and place in Pennsylvania. The very first Article of the Pennsylvania Constitution consists of the Pennsylvania Declaration of Rights, and the first section of that Article affirms, among other things, that all citizens "have certain inherent and inalienable rights". Among those inherent rights are those delineated in §7, which addresses "Freedom of Press and Speech; Libels". That section provides, in the part relevant here, that:

The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

17. The Defendants' practice and policy appears to be designed for the targeted elimination of gentlemen's clubs. It appears to be intended to harass and discourage gentlemen's clubs from advertising in the Reading Eagle. Furthermore, the Reading Eagle is acting as though it is a religious newspaper, when in fact the Reading newspaper makes an earnest living on writing articles about rape, robbery, drug dealing, arson, assault, and murder. This is certainly not a family oriented newspaper, when these subject are the main sources for front page and local news articles.

18. It is scandalous, demeaning, and arrogant for the Reading Eagle to restrict, prohibit, or hinder a gentlemen's club from enjoying the same equal opportunity to reach the general public as it affords itself and other advertisers.

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19. On March 25, 2009, the Plaintiff went to the office of Defendant Reading Eagle Company in order to place a display advertisement in the Local section, seeking dancers for his nightclub.

20. Since prior advertisements placed in the Classified section of the Reading Eagle did not produce satisfactory results, the Plaintiff wished to place a display advertisement in the Local section instead.

21. The Plaintiff was told by a clerk in Defendant Reading Eagle Company's advertising department that the proposed advertisement would have to be cleared by her supervisor before the advertisement could be accepted for publication.

22. Defendant Reading Eagle Company's Sales Manager, Lori E. Gerhart, told the Plaintiff that the proposed advertisement could not be published in the Local section, and could only be published in the Classified section of the newspaper.

23. Gerhart stated that it was the practice and policy of Defendant Reading Eagle Company to restrict advertisements such as the Plaintiff's to the Classified section.

24. Defendant Gerhart insists that the Reading Eagle is a private newspaper company, and that it has a policy to reject any and all adult advertisements, even though such a position would violate the right to freedom of

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speech under the Pennsylvania Constitution. In effect, what Defendant Gerhart is proposing is a "separate but equal" doctrine. This concept was struck down under Brown v. Board of Education.

25. All newspaper companies are the first to claim their First Amendment rights; but in the instant case, the Defendants are destroying the Plaintiff's First Amendment rights. **Since this is the position of the Defendants, then the Court should restrict the Defendants' First Amendment right to freedom of speech when they are printing outrageous stories in their newspaper which are not family oriented.**

26. **No matter how incorrect or outrageous the articles may be, the reporters for the Reading Eagle insist that they are protected under the freedom of speech doctrine. The same speech that the Defendants claim protects them, they now claim does not apply to adult entertainment.**

27. **Nowhere in the Pennsylvania Constitution or the United States Constitution is any newspaper given the right to inflict invidious discrimination. This Court cannot stand by and allow these Defendants to rewrite Pennsylvania's Constitution.**

28. *The Defendants maintain that they are a family-run newspaper; yet the Plaintiff has not placed an ad with a picture that could be deemed offensive to the newspaper's family readers. Defendant Gerhart should know that*

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newspapers are a dying breed in America. Defendant Gerhart should know that computers and trillions of adult web sites attract just about every underage teenager around the world.

29. *Families do not need to pick up the Reading Eagle (which is becoming a dinosaur) to read or look at adult material. Just about every 12- to 90-year-old in America is a member of MySpace, Facebook, and Craig's List. Therefore, any argument along these lines by the Defendants would be soundly defeated by the existence of the Internet.*

30. *The Internet has taken over the world. Computers have taken over every business and every home around the world. It is a form of insanity for anyone to believe that a newspaper would be appealing to children. Newspapers today are outdated, and people like Defendant Gerhart are equally outdated. This policy is a personal vendetta, and that is why the Plaintiff is suing Defendant Gerhart in her professional and individual capacities. This means that she will have to hire her own attorney to defend her in this suit.*

31. Every school in America and around the world is connected to the Internet. Every child in Berks County knows that if you want to learn about sex, you don't look at the Reading Eagle. It is preposterous for these Defendants to believe that they are the only source of information in Berks County.

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32. Even though these Defendants are guilty of maintaining and operating a monopolized business, this does not give them the right to use invidious discrimination. Defendant Lori Gerhart is out of date, out of time, and out of touch with mainstream society.

33. The Reading Eagle does not maintain or possess the Holy Grail in its newspaper. Nor does it speak from the right hand of God, especially when it advertises and promotes whores for sale in the local Sports section (in the display ads for massage parlors). Every 10- to 75-year-old kid reads the sports section, and that section is inundated with nasty, filthy whores. But Defendant Gerhart doesn't have a category for these whores. In fact, what she does have is an invisible fence of protection for the whorehouses.

34. Defendant Gerhart cannot say that she did not know about this, especially since the only newspaper in town prints full-page articles each time a massage parlor get busted for prostitution. Defendant Gerhart is a wet seal; she makes a lot of noise, but fears the great white shark in the untamed waters.

35. Defendant Gerhart is a lady for the ages. It is apparent to the Plaintiff that time has passed her by, and that her job has caused her to take leave of her senses. It is hard to imagine that the employer of these Defendants would allow them to stray so very far from reality and lose touch with the common person.

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36. Perhaps these Defendants would like to shell out some money to open up another newspaper company, which would take away the Defendants' monopoly on the newsprint market for minorities.

37. Defendant Reading Eagle Company maintains a practice and policy which is indifferent to the Plaintiff's civil rights under Pennsylvania law.

38. Defendant Reading Eagle Company's policy interferes with and restricts the Plaintiff's right to freedom of speech.

39. Defendant Reading Eagle Company's practice and policy is in direct violation of the Plaintiff's freedom of speech, guaranteed by Article I, Section 7 of the Pennsylvania Constitution.

40. The policy of Defendant Reading Eagle Company violates the free speech rights of the Plaintiff by preventing his advertisements from reaching their target audience; i.e., the general public.

41. Defendant Reading Eagle Company has engaged in segregation by restricting the Plaintiff's advertising to the Classified section while other advertisers are permitted to advertise throughout the entire newspaper.

42. There is no rational basis for restricting the Plaintiff's advertising to the Classified section of the Reading Eagle newspaper.

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43. By agreeing between themselves to implement and enforce the aforesaid policy, the Defendants have conspired to deny and restrict the Plaintiff's free speech rights.

44. The Defendants have engaged in discrimination based upon the type of business and the content of the advertising being presented for publication. Discrimination of this sort is forbidden by the Pennsylvania Constitution.

45. The practice and policy of the Defendants have severely injured the Plaintiff, by forcing him to spend thousands of dollars for advertising that the Defendants knew would not reach the proper readership.

46. The practice and policy of the Defendants have prevented the Plaintiff from operating the gentlemen's club in a profitable manner, and have caused him to suffer an untold amount of lost profits.

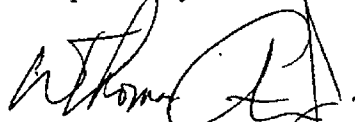
47. As a direct result of the Defendants' unlawful conduct, the Defendants should be forced to refund to the Plaintiff all of the money he has spent on advertising with the reading Eagle.

48. The actions of the Defendants, in violating the Plaintiff's right to freedom of speech, are outrageous, willful, wanton, knowing, intelligent, and is gross disregard to the civil rights and liberties of the Plaintiff. As such, the Plaintiff is entitled to an award of punitive damages against the Defendants.

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WHEREFORE, the Plaintiff demands actual and punitive damages against each Defendant in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus interest, costs, reasonable attorney's fees, and such other relief as is deemed appropriate by the Court.

Respectfully submitted,



W. THOMAS ANTHONY, JR.
Plaintiff (pro se)
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