No. 19-279

In the

Supreme Court of the United States

SHIRLEY JN JOHNSON
Petitioner,

v.

NEW DESTINY CHRISTIAN CENTER CHURCH, INC.
a/k/a Paula White Ministries
a/k/a City of Destiny

PAULA MICHELLE MINISTRIES, INC.,
a/k/a Paula White Ministries

PAULA MICHELLE WHITE
a/k/a Paula Michelle Cain
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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PARTIES

The caption of the case contains all parties to the proceedings.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6

New Destiny Christian Center Church, Inc. is a not for profit corporation. Upon information and belief, it has no parent corporation.

Paula Michelle Ministries, Inc. is a dissolved not for profit corporation, whose assets were transferred to New Destiny Christian Center Church, Inc. upon dissolution.

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REPLY BRIEF FOR PETITIONER

Respondents filed their brief in opposition on October 17, 2019, after being granted an extension of time to respond. Respondents' argument is only a denial of the facts set forth in the petition, and an attempt to re-argue the case. Respondents did not cite *any* caselaw to support their argument. Respondents denial, and re-argument should not prevent this Court from granting certiorari.

Petitioner respectfully files this Reply to rebut Respondents' arguments, and to correct misstatements presented in their Brief in Opposition to Petition for Writ of Certiorari.

I. Respondents Argue There Is No Evidence In The Underlying Record To Suggest The Allegations In The Copyright Infringement Complaint Were False.

Contrary to Respondents' assertions, the "smoking gun" evidence (although not limited to) is:

1. Petitioner's First Request For Admissions were admitted at trial as Joint Exhibits Nos. 55, 63, 73, in which Respondents admitted under oath that their allegations were false (Pet. App. E, F, G, and Appellant's Appx. Exh. J, K, L – Vol. II - appellate court). Importantly, even now, Respondents are admitting in their Response that their allegations of financial gain by Petitioner were false, and were "*proved* not to be true". [emphasis added] (Response at 7).

2. There is trial testimony of Respondents' own witnesses admitting that Petitioner's "websites" were not monetized or commercialized, and Respondents admitted that they did not see their copyrighted

videos and photographs, or any other material offered for sale on Petitioner's "websites" (Record Transcript Doc. 257 pp. 29:13-23; 39:13-16; 59:9-20; 64:4-5 – Pet. at 8); therefore, Respondents could not have had *any* – much less substantial – monetary loss due to Petitioner selling their videos and photographs as falsely alleged in their copyright infringement complaint. The allegations of financial loss (over $16M) due to Petitioner allegedly selling their videos was the basis for their Copyright Infringement Complaint. Respondents' allegations of substantial loss were known to be false from the beginning, because Respondents admitted that they read a draft of their Complaint before it was filed. (Pet. App. E, p.71a; App. F, p. 79a).

Willfully, knowingly, and intentionally accusing someone falsely is not a "minor exception". (Response at 7). It equates to malice.

The Florida Supreme Court in *Burns v. GCC Beverages, Inc.* 502 So. 2d 1217, *1221 (Fla. 1986) stated that, "...those who falsely or recklessly accuse innocent persons should be held financially liable. The injured person is thus financially compensated for the damages inflicted and others are deterred from similar conduct."

The *de minimis* compensatory award did not compensate Petitioner for her injuries, nor will it deter the multimillion-dollar Respondents from future misconduct. Instead, it suggests respect of persons, and sends a negative message that multimillion-dollar corporations and individuals are above the law.

3. Trial testimony of Mr. Knight, general manager vice president of Paula White Ministries admitting that Respondents intentionally laid-in-wait to file a

fabricated lawsuit.

At trial Mr. Knight explained that "one of the primary reasons" for the time-lapse between the initial action with Petitioner (2012 DMCA copyright infringement takedown notifications to You Tube) and the copyright infringement lawsuit (filed 2014), is that Respondents were purposefully waiting for You Tube to approve Paula White Ministries for monetization; once approved they immediately ("pedal to the metal") filed their SLAPP copyright infringement lawsuit.

> Q. Now, you talked about monetizing the YouTube channel. And around the time - - before the lawsuit was filed in 2014, was Paula White Ministries beginning to monetize Paula White Ministries' YouTube channel?
>
> A. Yes. There is a lapse between the initial action with Shirley and the lawsuit. And one of the primary reasons is that we were waiting for YouTube to approve us for monetization. Back then, it wasn't an automated thing. It was you had to go through an approval process.
>
> We continued to file DMCA claims to increase our viewership. But once they approved us for ad revenue, we wanted to move forward, pedal to the metal. So we got approved for ad revenue, and our goal was to generate as many views as possible for obvious reasons.
>
> Q. What was the ultimate goal of the copyright infringement lawsuit that was filed against Shirley Johnson?

> A. The removal of the videos from YouTube.
>
> **Record Transcript May 10, 2018—Doc. 257 Pg. 25:20—26:13.**

Mr. Knight testified under oath that Respondents did not feel that copyright infringement was relevant until they monetized their channel in 2014, even though Petitioner's videos were restored in 2012, and Respondents sent Petitioner a Cease and Desist Letter threatening a lawsuit on October 7, 2013 (Jnt. Exh. 8); to which Petitioner responded on October 21, 2013 refusing to remove the videos.

> Q When did the YouTube monetization begin?
>
> A That would have been in 2014, I believe, when we got approval.
>
> Q And it's your testimony that only at that point did you feel comfortable instigating a lawsuit against Ms. Johnson, correct?
>
> A Only at that point -- not comfortable. Only at that point did I feel it was relevant to the extent that we were approved for monetization.
>
> **Record Transcript May 10, 2018, Doc. 257, Pg. 34:18 – 35:1.**

The lower Courts ignored this direct evidence which was cited in Petitioner's Proposed Findings of Fact and Conclusions of Law (Doc. 260). Respondents plotted, planned, schemed, and laid-in-wait for at least 2 years for the precise moment to file the SLAPP copyright infringement lawsuit. This equates to actual premeditated malice.

Black's Law Dictionary, 6th Ed. (citing *Sparf v. US*, 156 U.S. 51, 15 S. Ct 273, 39, L. Ed. 343 (1895), defines express malice as follows: Actual malice; malice in fact; *ill will or wrongful motive; a deliberate intention to commit an injury;* evidenced by external circumstances. [emphasis added]. Also in *Sparf* at *60, this Court, quoting the Judge in the lower court, stated: "'Express malice exists when one, by *deliberate premeditation and design, formed in advance,* to kill or to do bodily harm, the *premeditation and design* being implied form (sic) external circumstances capable of proof, such as *lying in wait, antecedent threats and concerted schemes against a victim.*'" [emphasis added].

4) Video evidence (Pla. Ex. 9F, received, Doc. 256, p. 53:22-54:5) of Ms. White vowing to inflict damage to, and become a menace to Petitioner. Ms. White vowed that she would takedown Petitioner or get somebody (Mr. Sadaka) to do it. (Pet. App. D, p. 57a).

5) The copyright infringement complaint from which Respondents copied their false allegations verbatim. Case No. 6:14-cv-00337-Orl-GAP-KRS – *BWP Media USA, Inc. dba Pacific Coast News v. All Access Fans, Inc.* (Pla. Ex. 3, received, Doc. 256, p.141:22-25 (Pet. App. I).

II. Advice Of Counsel Affirmative Defense Was Stricken And Fails As A Matter Of Law.

Respondents' Answer and Affirmative Defenses were stricken as part of the Rule 37 sanction, and therefore cannot be used by Respondents. (Pet. at 4).

"An affirmative defense is a defense which admits the cause of action, but avoids liability, in whole or in part, by alleging an excuse, justification, or other

matter negating or limiting liability". *State Farm Mut. Auto. Ins. Co. v. Curran,* 135 So. 3d 1071 (Fla. 2014) (quoting *St. Paul Mercury Ins. Co. v. Coucher*, 837 So. 2d 483, 487 (Fla. 5th DCA 2002). "[T]he plaintiff is not bound to prove that the affirmative defense does not exist." *Custer*, 62 So. 3d at 1096.

Respondents have admitted their wrong doing, but are attempting to justify their malicious acts by claiming they relied on the advice of counsel. (Response at 2, 7, 11). The Florida Supreme Court in *Duval Jewelry Co. v. Smith*, 136 So. 878,*880 (Fla. 1931) stated that, "[t]he advice of counsel cannot be sought or secured as a shield from a feigned action for malicious prosecution or as a cloak to hide malice, but it must be sought in good faith, with the sole purpose of being advised as to the law. The advice of counsel must be predicated on a full, correct, and fair statement of all material facts bearing on the guilt of the accused, the specific proceeding complained of must have been advised by counsel, and the advice must have been acted upon in good faith under the belief that the charge was true. 18 R.C.L 48". *See* Pet. at 10.

Respondents also admitted under oath that they knew the allegations were false before they filed the complaint, therefore they could not have had a good faith belief that their charges were true.

As the Florida Supreme Court stated in *Dodd v. The Florida Bar,* 118 So. 2d 17, *19 (Fla. 1960), "All persons are charged with equal regard for the truth. An honest layman will seldom if ever perform a dishonest act at the urging of his lawyer and even *if he does he must be held accountable therefor.* If all responsibility for the false acts of the witness or client is allowed to be shifted to the attorney the result will be

to encourage, not discourage, false testimony. Further it is likely to increase the number of situations in which a witness or litigant, when charged with having given false testimony, seeks to shift the responsibility for his acts to his attorney by claiming that the attorney advised him to testify falsely." (Pet. at 11).

Respondents knowingly, willfully, and intentionally hired Mr. Sadaka to assist them in fabricating a Copyright Infringement Complaint in order to frame Petitioner for a crime that she did not commit, and to "inflict damage" to Petitioner, attempt to extort millions of dollars from Petitioner, and to have Petitioner incarcerated – by making *criminal* allegations of copyright infringement, falsely claiming substantial monetary loss. Respondents admitted that Mr. Sadaka drafted the allegations for them. (Pet. App. G, p. 85a).

III. Respondents Misstated That Judge Dalton's Misconduct Was First Introduced In Appellant's Reply Brief. (Pet. App. D).

For the first time, Respondents argue that, "[t]here is no evidence of any kind that Judge Dalton engaged in any wrongdoing at any point during the course of the underlying litigation. Judge Dalton did not obstruct justice, he did not alter or ignore evidence, and he did not reflect any bias in favor of NDCC." (Response at 4). That is not true.

In Appellate Case No. 19-11070, Respondents did not address the issue of Judge Dalton's misconduct, but rather stated in a footnote that Petitioner's "accusations" of Judge Dalton's misconduct was "baseless" and "not worthy of response". (Appellees' Principal Brief at 16).

Remarkably, in denying misconduct, Respondents

did not deny that there is a personal connection between Ms. White and Judge Dalton, nor did they deny that Judge Dalton manifested bias and prejudice in favor of Ms. White, Paula White Ministries, and Paula Michelle Ministries, Inc. (Response at 4). Ms. White was sued as president of the corporations, and in her individual capacity.

Respondents also argue that "a party to an appeal is not permitted to introduce any legal argument for the first time in a Reply Brief. Therefore, this contention must be rejected." (Response at 5).

Respondents misstated that the legal argument of Judge Dalton's misconduct was introduced for the first time in Appellant's Reply Brief. In Appellees' Principal Brief, at 23, Respondents themselves even stated: "Although Ms. Johnson has asserted that the District Court was biased and prejudiced in her *Principal Brief,* there *is absolutely no record evidence to support this assertion*". [emphasis added].

In Appellant's Reply Brief, Petitioner stated, "[t]o the contrary, there is sufficient, and very disturbing, record evidence which proves that the District Court's decision was biased and prejudiced." (Appellant's Reply Brief at 2). Petitioner did not introduce legal argument for the first time in her Reply, but rather provided record evidence in rebuttal to Respondents' false claims of *"absolutely" no record evidence* of bias and prejudice.

Court-Appointed Standby Counsel

Simply because Judge Dalton provided counsel does not negate the fact that he is biased or prejudiced against Petitioner. Petitioner did not request counsel – as a matter of fact Petitioner declined the offer, but

Judge Dalton appointed counsel anyway. It is well known that when *pro se* litigants have successfully litigated a case near to completion, a "pro se alert" is sent to young attorneys (in years of practice – not age) offering them an opportunity to further develop their skills. The Court pays them for their services, and sometimes they are allowed to collect the attorney fees that *pro se* litigants are not entitled to, as well.

CONCLUSION

For the reasons stated herein, and in the Petition, *certiorari* should be granted to restore the public confidence that the American Judicial System has no respect of persons, and places no one above the law.

Respectfully submitted:

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