

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

Case No:

JASON PIERRE-PAUL, an individual,

Plaintiff,

v.

ESPN, INC., a foreign
corporation; and ADAM SCHEFTER,
an individual;

Defendants.

COMPLAINT

Plaintiff, JASON PIERRE-PAUL, an individual (“Plaintiff”), by and through undersigned counsel, hereby sues defendants ESPN, Inc., a foreign corporation (“ESPN”); and ADAM SCHEFTER, an individual (“Schefter” and collectively with the Trust and ESPN, “Defendants”); to recover damages for violation of Florida Statute § 456.057 and invasion of privacy. In support thereof, Plaintiff states as follows:

1. This action arises out of ESPN reporter Schefter’s blatant disregard for the private and confidential nature of Plaintiff’s medical records, all so Schefter could show the world that he had “supporting proof” of a surgical procedure. Schefter improperly obtained Plaintiff’s medical records from a hospital and then, out of a selfish desire to “break news,” electronically blasted the records to his approximately 4 million Twitter followers and made it available to anyone worldwide with Internet access. After facing a

firestorm of public backlash for his intentional invasion of Plaintiff's privacy, Schefter then admitted to *Sports Illustrated* that he "could have and should have done even more" to protect Plaintiff's private medical records, and that the only reason why he publicized them was out of fear that his report of the surgery would be "questioned." Stated differently, to prove the accuracy of his report that a surgery occurred, which surgery would not and could not be denied, Schefter made Plaintiff's medical records available to the world.

GENERAL ALLEGATIONS
PARTIES

2. Plaintiff is an individual domiciled in Miami, FL and is *sui juris*. At all times material hereto, Plaintiff was a professional football player for the New York Giants of the National Football League (the "NFL").

3. ESPN is a foreign corporation whose principal address and place of business is ESPN Plaza, Bristol, CT 06010. At all material times hereto, ESPN conducted continuous and systematic business in the State of Florida.

4. ESPN's website touts itself as "The Worldwide Leader in Sports" and "the leading multinational, multimedia sports entertainment company featuring the broadest portfolio of multimedia sports assets with over 50 business entities."

5. Schefter is an individual and is *sui juris*. At all times material hereto, Schefter was an employee or agent of ESPN, and regularly appeared as a reporter/analyst on a variety of ESPN's television programs, including *NFL Insiders*, *NFL Live*, *Sunday*

NFL Countdown, Monday Night Countdown, and SportsCenter. At all material times hereto, Schefter conducted continuous and systematic business in the State of Florida.

6. ESPN's website claims that Schefter is "one of the top reporters in the industry, especially when it comes to breaking news" and that "Schefter was named 'the most influential New Yorker on Twitter,' according to data from social media company PeerIndex."

7. In addition to those persons and entities set forth as Defendants herein, there are likely other parties who may well be liable to Plaintiff, but respecting whom Plaintiff currently lacks specific facts to permit him to name such persons as parties defendant. By not naming such persons or entities at this time, Plaintiff is not waiving his right to amend this pleading to add such parties, should the facts warrant adding such parties.

JURISDICTION AND VENUE

8. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs, and attorneys' fees; and in all respects meets or exceeds the jurisdictional requirements of this Court pursuant to Florida Statute § 26.012.

9. This Court has personal jurisdiction over Defendants because: (a) Defendants are operating, present, and/or doing business within this jurisdiction and/or (b) Defendants' breaches and tortious activity occurred within this jurisdiction.

10. Venue of this action is proper in this Court pursuant to Florida Statutes §§ 47.011, *et seq.*, as the causes of action alleged herein arose in Miami-Dade County, FL.

11. All conditions precedent to bringing this action have been satisfied.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

12. On July 4, 2015, Plaintiff sustained a serious hand injury in a fireworks accident.

13. Thereafter, Plaintiff was admitted to Jackson Memorial Hospital in Miami, FL (the “Hospital”) for treatment of his injuries.

14. Non-party Public Health Trust of Miami-Dade County is a quasi-governmental agency established by the Board of County Commissioners of Miami-Dade County and under the authority of Florida Statutes, Sections 154.07 through 154.12, for the purpose of exercising supervisory control over the operation, maintenance and governance of the Jackson Health System, which includes, among other hospitals, the Hospital.

15. The Hospital created, maintained and stored Plaintiff’s medical records, which contained his treatment and diagnosis, and which are private and confidential.

16. The Hospital disclosed Plaintiff’s medical records, including a photograph/image of a chart reflecting the amputation of Plaintiff’s right index finger (the “Chart”), to Schefter and possibly other third parties, without Plaintiff’s written authorization.

17. On July 8, 2015, Schefter then distributed the Chart to his 3.86 million Twitter followers, which Tweet is now available to anyone with access to the Internet (the “Twitter Message”).¹

¹ According to its website, Twitter “is a service for friends, family, and coworkers to communicate and stay connected through the exchange of quick, frequent messages. People post Tweets, which may contain photos,

18. In the Twitter Message, and above the Chart, Schefter wrote: “ESPN obtained medical charts that show Giants DE Jason Pierre-Paul had right index finger amputated today.”

19. In a subsequent interview with *Sports Illustrated*, Schefter admitted “... in hindsight, I could have and should have done even more here due to the sensitivity of the situation.”

20. In that same interview, Schefter acknowledged the difference between (a) reporting on Plaintiff’s surgery and (b) disclosing Plaintiff’s medical records: “NFL reporters report on all kinds of medical information on a daily basis. That’s part of the job. The only difference here was that there was a photo.”

21. In that same interview, Schefter admitted that he disclosed Plaintiff’s medical records merely because he was concerned that people would doubt the accuracy of his report that the surgery had occurred: “[I]n a day and age in which pictures and videos tell stories and confirm facts, in which sources and their motives are routinely questioned, and in which reporters strive to be as accurate as possible, this was the ultimate supporting proof.”

videos, links and up to 140 characters of text. These messages are posted to your profile, sent to your followers, and are searchable on Twitter search.”

A “Tweet” is “any message posted to Twitter which may contain photos, videos, links and up to 140 characters of text.”

Twitter’s website explains that “following” someone “means you’ve chosen to subscribe to their Twitter updates. When you follow someone, every time they post a new message, it will appear on your Twitter home page.” “Your followers read your Tweets. If your Tweets are public, anyone who runs a search for a keyword in your Tweet may be able to see that message. Your Tweets are public by default...”

COUNT I
(Violation of Fla. Stat. 456.057 Against Schefter)

22. Plaintiff re-alleges, and adopts by reference herein, paragraphs 1 - 20 above, and further alleges:

23. Florida Statute § 456.057 creates a broad doctor-patient privilege of confidentiality.

24. The Hospital is a “records owner” as that term is defined by Florida Statute § 456.057(1).

25. The Chart, and the other reports and records of the Hospital’s examination and treatment of Plaintiff, are protected from disclosure by Florida Statute § 456.057.

26. Florida Statute § 456.057(7)(a) provides that “such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient’s legal representative, or other health care practitioners and providers involved in the patient’s care or treatment, except upon written authorization from the patient.”

27. The Hospital’s disclosure of Plaintiff’s medical records without his written authorization constitutes a violation of Florida Statute § 456.057.

28. Florida Statute § 456.057(11) states:

Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. *The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient’s legal representative.* (Emphasis added).

29. Because the Hospital disclosed the Chart to Schefter, he was prohibited from further disclosing it or any information therein without the expressed written consent of Plaintiff or Plaintiff's legal representative, which consent was never sought or obtained.

30. Schefter's disclosure of the Chart constitutes a violation of Florida Statute § 456.057.

31. As a result of the violation of the statute, Plaintiff has suffered damages.

WHEREFORE, Plaintiff, JASON PIERRE-PAUL, an individual demands judgment against defendant ADAM SCHEFTER, an individual, for an amount within the jurisdictional limits of this court, including an award of interests and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against the Trust and Schefter.

COUNT II
(Invasion of Privacy Against Schefter)

32. Plaintiff re-alleges, and adopts by reference herein, paragraphs 1 - 30 above, and further alleges:

33. Schefter disclosed the private Chart to the public by posting it on his Twitter account, which is publicly accessible by anyone who can connect to the Internet.

34. The Chart was private and not generally known.

35. The publication of the Chart was highly offensive to a reasonable person of ordinary sensibilities.

36. The Chart, as distinguished from the amputation of Plaintiff's right index finger, was not a matter of legitimate public concern.

37. Stated differently, while the amputation may have been of legitimate public concern, the Chart itself was not.

38. As a result of the invasion of privacy, Plaintiff has suffered damages.

WHEREFORE, Plaintiff, JASON PIERRE-PAUL, an individual, demands judgment against defendant ADAM SCHEFTER, an individual, for an amount within the jurisdictional limits of this court, including an award of interests and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against Schefter.

COUNT III
(Respondeat Superior Against ESPN)

39. Plaintiff re-alleges, and adopts by reference herein, paragraphs 1 - 37 above, and further alleges:

40. Schefter was an agent or employee of ESPN and was acting within the scope of such agency or employment when he improperly disclosed the Chart to his millions of Twitter follows and anyone else with access to the Internet.

41. Schefter's publication of the Chart was done with the purpose of benefiting ESPN's interests.

42. Being the first to report information pertaining to the NFL or its players is Schefter's primary role for ESPN.

43. ESPN benefitted from Schefter's violation of Florida Statute § 456.057 and invasion of privacy because being the first to report information pertaining to the NFL or

its players attracts viewers, which increases ESPN's ratings, which results in more advertising revenue for ESPN.

44. ESPN is liable for Schefter's violation of Florida Statute § 456.057 and invasion of privacy committed in the course and scope of his agency or employment under the doctrine of *respondeat superior*.

WHEREFORE, Plaintiff, JASON PIERRE-PAUL, an individual, demands judgment against defendant ESPN, a foreign corporation, for an amount within the jurisdictional limits of this court, including an award of interests and costs. Plaintiff reserves the right to seek leave of court to assess punitive damages against ESPN.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action of all issues so triable.

RESERVATION OF RIGHTS

Plaintiff reserves the right to further amend this Complaint, upon completion of his investigation and discovery, to assert any additional claims for relief against Defendants or other parties as may be warranted under the circumstances and as allowed by law.

Dated: February 24, 2016.

Respectfully submitted,

MEISTER SEELIG & FEIN LLP²

Mitchell Schuster, Esq.
ms@msf-law.com
Kevin Fritz, Esq.
kaf@msf-law.com
125 Park Avenue, 7th Floor
New York, NY 10017
Telephone: (212) 655-3570
Facsimile: (212) 655-3535
Attorneys for Plaintiff

and

HINSHAW & CULBERTSON LLP

By: *s/John C. Lukacs, Sr.*
John C. Lukacs, Sr., Esquire
jlukacs@hinshawlaw.com
FNB: 362727
2525 Ponce de Leon Boulevard
4th Floor
Coral Gables, Florida 33134
Telephone: (305) 358-7747
Facsimile: (305) 577-1063
Attorneys for Plaintiff

² Pursuant to Rule 2.510, Fla. R. Jud. Admin., a Verified Motion to Appear Pro Hac Vice has been filed contemporaneously herewith.