

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

REZA GANJAVI,)	Case No. 06 C 4189
Plaintiff,)	
v.)	Plaintiff's Motion for Leave to File Sur-
JEREMY C. SMITH, CINDY SMITH,)	response to Defendant Cindy Smith's Motion
)	for Summary Judgment
TODD TIPTON, WILLIAM D.)	
JENNINGS, DOES 1-3)	Honorable Judge Gettleman
Defendants.)	Honorable Magistrate Judge Denlow

PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-RESPONSE

NOW COMES Plaintiff, REZA GANJAVI ("Plaintiff") by and through his attorneys, Law Offices of Khoi Dang-Vu, P.C. And Khoi Dang-Vu, and kindly requests this Honorable Court leave to file a Sur-response to Defendant Cindy Smith's ("Defendant") Motion for Summary Judgment on the grounds that Defendant raises certain new, material, facts and arguments.

BACKGROUND

Defendant's home computers have been explicitly linked to over twenty (20) instances of violations against Plaintiff as described in the Complaint. Defendant requested Summary Judgment based on certain declarations made in her sworn affidavit. In his Response dated 29 December 2006, Plaintiff presented six (6) reasons to believe Defendant has had a role in the offenses against Plaintiff in collaboration with her husband and/or individually. Plaintiff furthermore provided proof that two declarations of the Defendant were untruthful.

In her Reply dated 18 January 2006, Defendant withdrew certain declarations and substituted them with new material facts, and raised new arguments which may have a bearing on the decision of

whether or not to grant Summary Judgment. Plaintiff contends these new facts and arguments strengthen his case as described herein, and would like to have the opportunity to respond accordingly via a Sur-response.

DEFENDANT'S NEW MATERIAL DECLARATIONS AND ARGUMENTS

Defendant newly admits to having made a false declaration, discarding her previous declaration that she never used the living-room computer.

Defendant's motion for Summary Judgment relied on certain "facts", one of which being, that Defendant never used the living-room computer from which some of the offenses against Plaintiff occurred. Plaintiff proved the fallacy of this statement in his Response by presenting, as an example, a case where the living room computer was indeed used by Defendant in one of the messages that she admitted to having authored (not one of several which her husband has declared to have authored using her name without her consent).

In her Reply, contrary to her previous sworn declaration, Defendant admitted to having used the living-room computer. This new material fact has an important implication on Plaintiff's argument that Defendant, at various times, and not only on one occasion, used the living room computer from which some of the offenses against Plaintiff originated. She would not have had a reason to lie about the matter otherwise, and the excuse that she had forgotten is not valid especially since her affidavit was ambiguous to begin with, referring to the present tense, "*I do not use*" (Cindy Smith's 21 November 2006 affidavit Paragraph 6), vs. "I have never used", and, subsequently interpreting that statement in her Memorandum to imply she had never used the living room computer, which turned out to be false as per her own supplemental affidavit. Therefore, this new material admission has an important implication on Plaintiff's argument that Summary Judgment is not warranted.

Defendant newly admits to having shared the bedroom computer with her husband, discarding her previous declaration of "Exclusive use". Third item in her affidavit is discredited.

Defendant's motion for Summary Judgment also relied on the "fact", however ambiguous, that Defendant used the bedroom computer "exclusively". Exclusive use of a computer usually means that no other person uses that computer – usage which excludes other users. In her attempt to make yet another vague declaration, Defendant implied that she was the only person who used the bedroom

computer, although she did not explicitly state that. In her Memorandum dated 21 November 2006, she stated: “*Cindy exclusively uses the computer running the Windows XP operating system, which is different from the computer that Jeremy uses*“, further implying “exclusive” use of the bedroom computer by her, in order to distance herself from her husband and his actions against Plaintiff.

In his Response, Plaintiff pointed out one of possibly several instances of a case which negated that implication and demonstrated that Defendant Jeremy Smith shared the bedroom computer with Defendant Cindy Smith. Defendant admitted to this fact in her Reply, a new material fact which she had not admitted before. Her argument that she never stated that her husband does not use the bedroom computer has no merit since on numerous occasions, as exemplified in the previous paragraph, she implied, fairly consistently, that Jeremy does not use the bedroom computer which she claimed to exclusively use. This new admission is material to Plaintiff’s argument that Defendant and her husband shared more than each other’s email address and the network; they shared both computers in their residence despite Defendant’s attempts to portray the bedroom computer as being exclusively hers, and the living room computer being Jeremy’s.

Further proof of the material implication of this new fact is, as Plaintiff presented in his Response (“Exhibit E” of Plaintiff’s Response to Cindy Smith’s Memorandum for Summary Judgment), not only there was an obsessive access to his website from Defendant’s network but there was an instance when an access was originated from a locally saved copy of a Plaintiff’s web page on a folder called “*Jeremy and Cindy Smith*”. This revelation led to Defendant’s admission that her husband too, used the bedroom computer and its use was after all not so exclusive.¹

Another reason this new fact is material to Plaintiff’s case is that it discredits yet another item on Defendant’s affidavit, namely, that she had no knowledge of Plaintiff’s until after the filing of the original Complaint. It turns out that Plaintiff’s website was visited over two hundred (200) times prior to the filing of the original Complaint, from a combination of the living room and bedroom computers. Even if a fraction of those visits were from the bedroom computer which she declares to have mostly

¹ After filing the Response, Plaintiff received information from Statcounter, the company which produces the website statistics report, to the effect that the visitor activity report has a limitation that it only lists the last browser on a visitor log from the same IP address. Therefore, the report was not a reliable indication of which machine the folder, “*Jeremy and Cindy Smith*” was on. Defendant removed this doubt by declaring the folder to be on the bedroom computer, further strengthening Plaintiff’s case that the use of the bedroom computer was not exclusively Cindy’s.

used, her declaration about no prior knowledge of Plaintiff's existence has no merit.

Additional new assertions in Defendant's reply

In her Reply, Defendant made a new assertion that Plaintiff's evidence linking Defendant's internet account to violations against Plaintiff was not authentic (as provided by reference to Paragraph "53" of the Second Amended Complaint which was correctly referenced in the Memorandum but erroneously referenced as "23" in the Local Rule 56.1(b)(3) Response due to a typographic error). As an exhibit to the Sur-response, Plaintiff will submit a document which explicitly and unambiguously affirms Defendant's residence internet account as the source of numerous violations against Plaintiff.

Furthermore, in her Reply Defendant asserted that Plaintiff's descriptions and exhibits supporting the notion of conspired attacks against Plaintiff were confusing. These assertions are misleading and as the subject challenged is material to Plaintiff's case, i.e., that Defendant and her husband acted against Plaintiff in a conspired, concerted fashion, Plaintiff would like to address the matter in the Sur-response.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests leave to file Sur-response to Defendant Cindy Smith's Motion for Summary Judgment immediately, within seven (7) days of leave.

DATED this 20th day of February 2007.

RESPECTFULLY SUBMITTED BY:

/s/ Khoi Dang-Vu

Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18th Street, Chicago, Illinois 60608

Tel. (312) 492-1477 Fax (312) 455-9372