



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

RANDY MICHAEL BRODNIK, D.O.,

Plaintiff,

v.

Civil Action No.: 1:11-0178

ROBERT LANHAM, DEBORAH BECK,
and UNITED STATES OF AMERICA,

Defendants.

COMPLAINT

Parties

1. Plaintiff, Randy Michael Brodник, D.O., is a citizen of the United States and a resident of the State of Virginia at the time of this filing.
2. Defendant, Robert Lanham, is a citizen of the United States and a resident of the State of West Virginia at the time of this filing.
3. Defendant, Deborah Beck, is a citizen of the United States and a resident of the State of West Virginia at the time of this filing.
4. Defendant United States is a proper party because 26 U.S.C.S. § 7431 confers upon a citizen a cause of action against defendant for a knowingly or negligent violation of 26 U.S.C.S. § 6103.

Jurisdiction/Venue

5. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, I.R.C. § 7431, and 28 U.S.C.A. § 1340.
6. This Court has venue pursuant to 28 U.S.C. § 1391 because the events that give rise to this complaint occurred in the Southern District of West Virginia.
7. Plaintiff's claims against the federal defendants Robert Lanham and Deborah Beck are brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of*

Narcotics, 403 U.S. 388 (1971), for violation of plaintiff's rights protected by the Constitution of the United States.

Operative Facts

8. Defendant Robert Lanham was employed as a special agent by the Internal Revenue Service.
9. Defendant Lanham contacted defendant Deborah Beck about an investigation into a potential case against plaintiff Brodnik for income tax evasion.
10. Defendant Lanham commenced a six-year investigation of plaintiff Brodnik and recommended his prosecution.
11. On March 18, 2009, a federal grand jury returned a seven count indictment against plaintiff Brodnik. The indictment alleged one count conspiracy and six counts income tax evasion.
12. On November 3, 2009, a federal grand jury returned an eight count superseding indictment alleging one count conspiracy, six counts of income tax evasion, and one count corruptly endeavoring to impede and obstruct the due administration of the Internal Revenue laws.
13. On June 2, 2010, a federal grand jury returned a seven count second superseding indictment alleging one count conspiracy, five counts income tax evasion, and one count corruptly endeavoring to impede and obstruct the due administration of the Internal Revenue laws.
14. A three week jury trial was held in the Southern District of West Virginia, beginning October 19, 2010.
15. Defendant Lanham and defendant Beck testified in the government's case in chief at the trial of this matter.
16. Defendant Lanham testified that it was "debatable" as to whether plaintiff Brodnik violated the law.

17. Defendant Beck testified that she illegally accessed plaintiff Brodnik's electronic mail.
18. Defendant Beck testified that she produced print outs of messages she obtained when she illegally accessed plaintiff Brodnik's electronic mail to defendant Lanham.
19. Defendants Lanham and Beck conversed frequently via electronic mail and other means. Some of defendants' conversations included defendant Beck's compensation if plaintiff Brodnik was convicted.
20. On November 5, 2010, a twelve person jury acquitted plaintiff Brodnik of all charges.
21. By the defendants' wrongful misconduct, plaintiff suffered a foreclosure of his primary residence, loss of personal income, attorney fees, failure of Dr. Brodnik's enterprise Mountain Haven Skin Center, additional cost for malpractice insurance, consultation fees, and other financial losses.

Count I (Constitutional Violation)

22. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 21 of this complaint.
23. At all times relevant herein, defendant Lanham was acting under color of federal law and by virtue of this authority and position as a special agent of the Internal Revenue Service.
24. This action is brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for violation of plaintiff's rights protected by the Constitution of the United States.
25. When defendant Lanham and defendant Beck, *de facto* agent of the Internal Revenue Service, took the foregoing acts against plaintiff Brodnik, which acts include deprivation of property rights and unlawful seizures of property without adequate justification or cause, plaintiff Brodnik was deprived of rights guaranteed under the Constitution of the United States.

26. At all times relevant herein, defendants acted according to official policies and practices with recklessness or callous indifference to plaintiff's constitutional rights and were responsible for the violations of plaintiff's rights set forth herein.
27. By the defendants' misconduct committed under color of federal law against plaintiff Brodnik, as described above, defendants have entitled plaintiff to an award of damages.
28. Wherefore, plaintiff Brodnik requests judgment against defendants as delineated *infra*.

Count II (Wrongful Disclosure)

29. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 28 of this complaint.
30. Special Agent Robert Lanham of the Internal Revenue Service during the course of an investigation, contacted numerous third parties and told rumors and accusations about plaintiff all of which constitute improper disclosures having substantially damaged plaintiff.
31. Upon information and belief, defendant Lanham has made illegal disclosures by unnecessarily disclosing suggestions of wrongdoing on the part of plaintiff in various third-party contacts including, but not limited to, the following:
 - a. Cori Brodnik (Post);
 - b. Any and all unindicted alleged co-conspirators of plaintiff Brodnik's trial for tax evasion;
 - c. Other persons which discovery may reveal.
32. The agent's unnecessary and unlawful disclosures during his contact of third-parties in the investigation, all of which were made willfully or in a grossly negligent manner, have caused plaintiff substantial harm, embarrassment, loss of reputation, mental anguish, emotional harm, humiliation, and frustration and will continue to cause such damages in the future.

33. In the Tax Reform Act of 1976, Pub. L. No. 94455, Congress significantly expanded the privacy rights of taxpayers undergoing any type of investigation.
34. Section 6103(a) of the Internal Revenue Code provides the general rule that strictly prohibits disclosure of all returns and return information except under strictly limited circumstances. *Church of Scientology of California v. I.R.S.*, 484 U.S. 9, 108 S. Ct. 271, 98 L. Ed. 2d 228 (1987).
35. I.R.C. § 6103(b)(2)(A) broadly defines return information to include:

A taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with the respect to the determination of the existence or possible existence, of liability (or amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
36. The disclosures of suggested wrongful conduct of plaintiff with regard to the transactions described above constitute return information as defined in § 6103(b)(2)(A).
37. Investigative disclosures are governed by I.R.C. § 6103(k)(6), which provides that "return information" may be disclosed only to the extent "necessary" to obtain information "not otherwise reasonably available." The disclosures described above, and any others like them, are not necessary to obtain any information that the agent may seek.
38. Further, the Internal Revenue Manual repeatedly instructs special agents not to make disclosures in violation of the confidentiality provisions of the Internal Revenue Code.
39. In particular, the Manual instructs as follows:
 1. Special agents will refrain from characterizing investigations as "criminal" except for the initial interview of the subject in an administrative investigation or in those instances where this disclosure is necessary to obtain the information sought.

2. Criminal Investigation has an interest in conducting its investigations discretely to avoid unnecessary embarrassment to the subject. Adhering to these procedures will help achieve this goal. Routine investigative inquiries often can be made with minimum disclosure of information.

Conduct During Interview. I.R. Manual § 9.4.5.6 (02-01-2005).

5. When interviewing witnesses, the special agent must remain objective and refrain from making comments regarding the subject that could be construed as derogatory.

Role of Special Agent. I.R. Manual § 9.4.5.6.4.3 (02-01-2005).

Investigations should be conducted impartially and thoroughly to obtain all pertinent information and evidence, including any evidence that could exonerate the subject.

Procedures in Financial Investigations. I.R. Manual § 9.5.1.2.1 (07-15-2002).

40. The disclosures made by the agent in this case were not made in good faith.
41. Section 7431(a)(1) provides taxpayers with a cause of action against the United States for civil damages in the event “any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103.”
42. Section 7431(c) provides for recovery by the taxpayer of minimum statutory damages “for each act of unauthorized disclosure of a return or return information” or, if greater, the sum of actual damages sustained by the taxpayer.
43. The statute also authorizes an award of punitive damages in the case of a “willful disclosure or a disclosure which is the result of gross negligence.”
44. Section 7213(a) provides that it is “unlawful” for any officer or employee to disclose “return information” as defined in § 6103(b) except as authorized and that any violation of the statute “shall be a felony punishable upon conviction by a fine in any amount not

exceeding \$5,000.00 or imprisonment of not more than 5 years, or both, together with the costs by the convicted officer or employee.”

45. Plaintiff is entitled to the actual damages he has sustained and suffered and will suffer in the future as described herein by reason of the illegal disclosures by the federal agent involved in this case.

46. Alternatively, plaintiff is entitled to at least minimum statutory damages for each disclosure, if the minimum statutory damages exceed actual damages under I.R.C. § 7431(c) because the disclosures were “willful or grossly negligent.”

47. I.R.C. § 7431(c)(2) entitles plaintiff to all costs, including attorney’s fees, for this action. Alternatively, I.R.C. § 7430 provides that plaintiff is entitled to all costs and attorney fees of this action.

Count III (State Law Claim of Civil Conspiracy)

48. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 47 of this complaint.

49. At all times relevant herein, defendant Lanham was acting under color of federal law and by virtue of this authority and position as a special agent of the Internal Revenue Service.

50. Plaintiff Brodnik has a constitutional right to enjoy life and liberty and to pursue and obtain happiness and safety, guaranteed by Article 3, § 1 of the Constitution of West Virginia.

51. When defendant Lanham and defendant Beck took the foregoing acts against plaintiff, which acts include deprivation of property rights, unlawful arrest, and false imprisonment, plaintiff Brodnik was deprived of rights guaranteed under the Fourth and Fourteenth Amendments to the Constitution of the United States.

52. When defendant Lanham and defendant Beck took the foregoing actions against plaintiff Brodnik, they conspired to deprive him from exercising his state constitutional right to

enjoy life and liberty and to pursue and obtain happiness and safety, thereby conspiring to violate Article 3 § 1 of the Constitution of West Virginia.

53. When defendant Lanham and defendant Beck took the foregoing acts against plaintiff, which acts include deprivation of property rights, unlawful arrest, and false imprisonment, they conspired to deprive him from exercising his United States Constitutional right to be free from deprivation of property rights, unlawful arrest, and false imprisonment, thereby conspiring to violate the United States Constitution.

54. Plaintiff Brodnik suffered severe emotional distress, pain and suffering, mental anguish, and loss of ability to enjoy life as a direct and proximate cause of defendants' conduct in prosecuting plaintiff Brodnik.

55. Wherefore, plaintiff Brodnik requests judgment against defendant Lanham and defendant Beck as delineated *infra*.

Count IV (State Law Claim of Invasion of Privacy)

56. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 55 of this complaint.

57. Defendant Beck unreasonably intruded upon the seclusion of plaintiff Brodnik when she unlawfully accessed his electronic mail.

58. Shortly before trial, plaintiff Brodnik discovered that defendant Beck unlawfully accessed his electronic mail.

59. Plaintiff Brodnik suffered severe emotional distress, pain and suffering, mental anguish, and loss of ability to enjoy life as a proximate cause of defendant Beck's unreasonable and unlawful intrusion upon the seclusion of plaintiff Brodnik.

60. Wherefore, plaintiff Brodnik requests judgment against defendant Lanham and defendant Beck as delineated *infra*.

Count V (State Law Claim of Outrage)

61. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 60 of this complaint.
62. At all times relevant herein, defendant Lanham was acting under color of federal law and by virtue of this authority and position as a special agent of the Internal Revenue Service.
63. The foregoing actions of defendant Lanham and defendant Beck were conducted in an extreme and outrageous manner.
64. Wherefore, plaintiff Brodnik requests judgment against defendant Lanham and defendant Beck as delineated *infra*.

Count VI (State Law Claim of Intentional Infliction of Emotional Distress)

65. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 64 of this complaint.
66. At all times relevant herein, defendant Lanham was acting under color of federal law and by virtue of this authority and position as a special agent of the Internal Revenue Service.
67. The foregoing conduct of defendant Lanham and defendant Beck involved intentional acts designed to cause plaintiff Brodnik severe emotional distress.
68. Plaintiff Brodnik has suffered extreme and severe emotional distress as a result of defendant Lanham and defendant Beck's intentional acts.
69. In addition to suffering extreme and severe emotional distress as a result of the defendants' acts, plaintiff Brodnik has incurred actual monetary damages, including medical expenses, lost wages, and damage to professional reputation.
70. Defendant Lanham and defendant Beck's conduct was extreme and outrageous as those terms are understood and defined by the laws of the State of West Virginia.

71. Defendant Lanham and defendant Beck's conduct toward plaintiff Brodnik was intentional and reckless.

72. Defendant Lanham and defendant Beck's conduct directly and proximately caused plaintiff Brodnik to suffer emotional distress.

73. Wherefore, plaintiff Brodnik requests judgment against defendant Lanham and defendant Beck as delineated *infra*.

Count VII (State Law Claim of Malicious Prosecution)

74. Plaintiff incorporates by reference the allegations contained in paragraphs numbered 1 through 73 of this complaint.

75. Defendants initiated a prosecution against plaintiff Brodnik maliciously and without reasonable or probable cause.

76. At the trial of the prosecution, plaintiff Brodnik was acquitted of all charges.

77. Wherefore, plaintiff Brodnik requests judgment against defendant Lanham and defendant Beck as delineated *infra*.

WHEREFORE, plaintiff, Randy Michael Brodnik, demands judgment against defendants for compensatory damages and punitive damages in an amount to be determined by the jury together with pre-judgment and post judgment interest, costs, and attorney fees and for such other and further relief as this Court deems just and proper.

A jury trial is demanded.

Plaintiff,
by counsel,



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