

10 CV 000149

NORTH CAROLINA

ORANGE COUNTY

RIELLE HUNTER,

Plaintiff,

v.

ANDREW YOUNG and CHERI
YOUNG,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

10 CVS _____

JAN 29 AM 11:09

ORANGE COUNTY, N.C.

BY _____

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff Rielle Hunter ("Hunter"), through counsel and pursuant to N.C. Gen. Stat. § 1-485 and Rule 65 of the North Carolina Rules of Civil Procedure, respectfully requests that the Court issue a temporary restraining order prohibiting Defendants Andrew Young and Cheri Young (collectively the "Youngs") and their agents, attorneys, and those persons who are in active concert or participation with them, who receive actual notice of the temporary restraining order and/or preliminary injunction by personal service or otherwise, from taking any action to publish, disseminate, sell, copy, or otherwise distribute certain video recording and photographs described herein, and directing them to return all copies of the video recordings and photographs to Hunter or provide the same to the Court. In support of this Motion, Hunter shows the Court the following:

BACKGROUND

1. During the 2008 campaign, and specifically for a period of time from July/August 2006 through December 2006, Hunter worked with the presidential campaign of John Edwards ("Edwards") as a videographer.

2. In or about September 2006, Hunter authored a personal video recording depicting matters of a very private and personal nature (the "Video").

3. Hunter maintained the only known copy of the Video. The Video was stored in a box at Hunter's residence that also contained her passport and two other video recordings authored by Hunter during the campaign.

4. The other two videos were also authored by Hunter. One video contained footage of campaign activities, and the other video contained footage of an interview conducted by Hunter.

5. Hunter also maintained, on a computer in her residence, a series of photographs that included her daughter (the "Photographs").

6. Edwards is the father of Hunter's daughter. However, prior to Edwards's acknowledgment of paternity of the child, Andrew Young had declared himself to be the father of Hunter's daughter.

7. For a period of time, Hunter, Andrew Young, Cheri Young, and the Youngs' children lived in the same house in Santa Barbara, California. During another period of time, Hunter lived in the Governor's Club community in Chatham County, North Carolina. The Youngs had access to Hunter's residences in Santa Barbara and Governor's Club.

8. During the time that Hunter lived in the Governor's Court community, Young and his family also lived in that community, and Young had access to Hunter's residence.

9. In or about August 2008, the Youngs were asked to retrieve Hunter's passport from the Governor's Court residence. She directed them to the location of the box in which Young stored her passport and the three video recordings.

10. It is believed that the Youngs, or either of them, also surreptitiously took possession of the three video recordings.

11. Andrew Young has publicly claimed to have possession of the Video. It is also believed that the Youngs, or either of them, obtained copies of the Photographs.

12. Hunter has never authorized Andrew Young or Cheri Young to possess the three video recordings or copies of the Photographs.

13. Hunter no longer has possession of the three video recordings, and she is not aware of anyone other than the Youngs who had access to and in fact did access the box containing Hunter's passport and the three video recordings during the time in which the video recordings were removed from Hunter's possession.

14. The Youngs have not returned or offered to return the video recordings or the copies of the Photographs.

15. On information and belief, Andrew Young is now attempting to sell or otherwise distribute the Video to one or more third-parties.

16. Andrew Young has authored a book titled "The Politician" that discusses, among other things, Hunter's relationship with Edwards. The book is scheduled to be released on or about 30 January 2010. Andrew Young is presently engaging in publicity efforts related to the book, including a scheduled interview on the ABC television program "20/20" on Friday, 29 January 2010. Media reports indicate that one topic of the interview will be the Video or its contents.

17. Under North Carolina law, as a general rule, a preliminary injunction "will be issued (1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of

the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (citations omitted); *see also* N.C. Gen. Stat. § 1-485.

IRREPARABLE HARM

18. Hunter will suffer immediate and irreparable injury unless the Youngs and their agents, attorneys, and those persons who are in active concert or participation with them are enjoined from taking any action to publish, disseminate, sell, copy, or otherwise distribute the Video. If such an event were to occur, it would represent further intrusion upon the solitude and seclusion of Hunter in her private concerns, in addition to the intrusion that has already occurred through the Youngs' possession of the Video. It would also be a further conversion of Hunter's property to the Young's personal property and to the exclusion of Hunter's rights. It would represent an effort by the Youngs, or either of them, to misappropriate Hunter's likeness for commercial use, by selling the Video or otherwise using it to generate publicity for "The Politician," to increase sales of the book. This conduct would also represent an unfair and deceptive trade practice, with respect to the Youngs' efforts to capitalize financially on the unauthorized possession of the Video.

19. Additionally, the Youngs' unauthorized possession of the three video recordings prevents Hunter from registering her copyright in them, and otherwise securing and enforcing her copyright in them. Hunter is unable to register and protect her copyright in the video recordings so long as she does not possess a copy of the video recordings.

20. Hunter will also suffer immediate and irreparable injury unless the Youngs and their agents, attorneys, and those persons who are in active concert or participation with them are enjoined from taking any action to publish, disseminate, sell, copy, or otherwise distribute the

Photographs. The Photographs show Hunter's daughter, and their unauthorized viewing by the Youngs or others would represent further intrusion upon the solitude and seclusion of Hunter in her private concerns. It would also represent an effort by the Youngs to misappropriate Hunter's daughter's likenesses for commercial use, and also would represent an unfair and deceptive trade practice.

LIKELIHOOD OF SUCCESS ON THE MERITS

21. Hunter is likely to succeed on the merits of the claims set forth in the Complaint, for conversion, invasion of privacy by way of intrusion upon solitude and seclusion in her private concerns, invasion of privacy by way of misappropriation of her likeness for commercial use, and unfair and deceptive trade practices.

22. Andrew Young has publicly admitted that the video was Hunter's property and that he took possession of the Video. Hunter's affidavit establishes she did not authorize his possession. Andrew Young is using the Video as if it were his property, and depriving Hunter of possession of, dominion over and rights in the Video.

23. North Carolina courts have recognized that a person depicted in a video recording that contains matters of a personal nature has a strong privacy interest in such recording. See *Miller v. Brooks*, 123 N.C. App. 20, 26, 472 S.E.2d 350, 354 (1996) (analyzing the plaintiff's interests in "recorded pictures of him undressing, showering, and going to bed," in the context of a claim of invasion of privacy by way of intrusion upon solitude and seclusion in one's private concerns), *disc. rev. denied*, 345 N.C. 344, 483 S.E.2d 172 (1997).

24. Media articles already in circulation tend to suggest that Young or those associated with him have discussed the existence of the Video and its contents with various third parties. One story indicates that Young's book includes references to the Video. Such stories

appeared on the websites of the New York Daily News, the Wall Street Journal and Gawker. Another story on the Politics Daily website strongly suggests the Video will be a topic of discussion during Young's interview with "20/20" on 29 January 2010.

25. A claim for conversion also gives rise to a claim for unfair and deceptive trade practices in the present circumstances. See *Love v. Pressley*, 34 N.C. App. 503, 516-17, 239 S.E.2d 574, 583 (1977) (holding landlord's trespass and conversion of tenants' property constituted unfair and deceptive trade practice). The highly personal nature of the material that the Youngs, or either of them, obtained without authorization, and the fact that Andrew Young is attempting to sell or otherwise distribute the Video, or to use it to generate publicity for his soon-to-be-released book, indicate that the Youngs' conduct was sufficiently egregious to state a claim under Chapter 75.

26. No petition for the same relief has been presented to, and refused by, any court or judge or justice.

27. In further support of this motion, Hunter submits the Affidavit of Rielle Hunter, attached as Exhibit A.

28. In accordance with Rule 65(b) of the North Carolina Rules of Civil Procedure, Plaintiff's counsel provides the following certification with respect to the issue of giving notice of these proceedings to the Youngs. Plaintiff's counsel are not serving a copy of this Motion or the Summons and Complaint in this matter upon the Youngs prior to the Court considering and ruling on the Motion, or undertaking any other effort to give notice to the Youngs prior to the Court considering and ruling on the Motion, because of the ease and rapidity with which the three video recordings and the Photographs could be published or otherwise disseminated via electronic or other means. If the Youngs were provided notice of these proceedings, they could

publish or otherwise disseminate the three video recordings and the Photographs prior to the time that the Court could consider and rule upon the Motion. Such transfer would constitute irreparable harm to Hunter and would frustrate the purpose of the Motion prior to the Court's consideration and ruling.

WHEREFORE, Plaintiff Rielle Hunter respectfully requests that her motion for a temporary restraining order and/or preliminary injunction be granted and that the Court:

1. Issue a temporary restraining order prohibiting Defendants Andrew Young and Cheri Young and their agents, attorneys, and those persons who are in active concert or participation with them, who receive actual notice of the temporary restraining order and/or preliminary injunction by personal service or otherwise, from taking any action to publish, disseminate, sell, copy, or otherwise distribute certain video recording and photographs described herein or the contents thereof, in whole or in part, until further order of the Court.

2. Issue an order directing Defendants Andrew Young and Cheri Young and their agents, attorneys, and those persons who are in active concert or participation with them, who receive actual notice of the temporary restraining order and/or preliminary injunction by personal service or otherwise to return and relinquish all copies of the video recordings and photographs, whether in actual or electronic copy, to Hunter or, in the alternative, to her attorneys as officers of the Court and to retain no copies or versions of any such items, in whole or in part, and in any medium, including electronic storage;

3. Issue an order directing that the Sheriff of Orange County execute the Court's Order for return and relinquishment of the video recordings and photographs, in whatever form, located at Defendants' residence or elsewhere in Orange County, to provide such items to Hunter's attorneys and to confirm that all such items have been retrieved and that a copy has

been made and retrieved of any electronically stored items and that such material stored in electronic form on any medium in either Defendant's or both Defendants' possession or within their or either of their custody or control or in the possession, custody and control of their or either of their attorneys, agents or others acting in concert with them or either of them no longer exists in such electronically stored format.

4. Grant such relief *ex parte* if the Court determines that Defendants Andrew Young and/or Cheri Young have not received notice of these proceedings and this motion at the time the matter comes on for hearing;

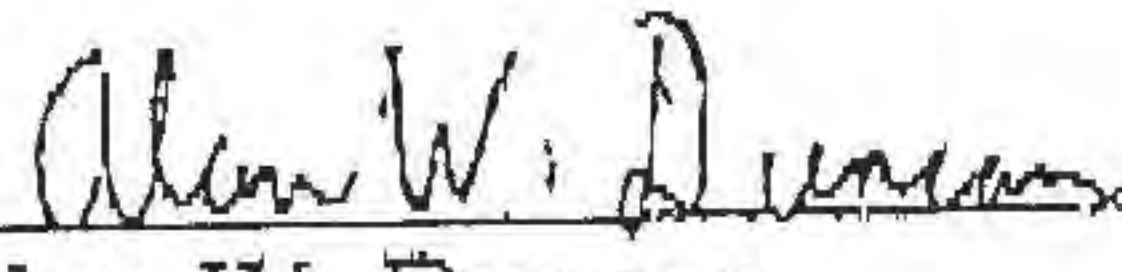
5. Accept a nominal amount such as one dollar as security for any injunction the Court may enter;

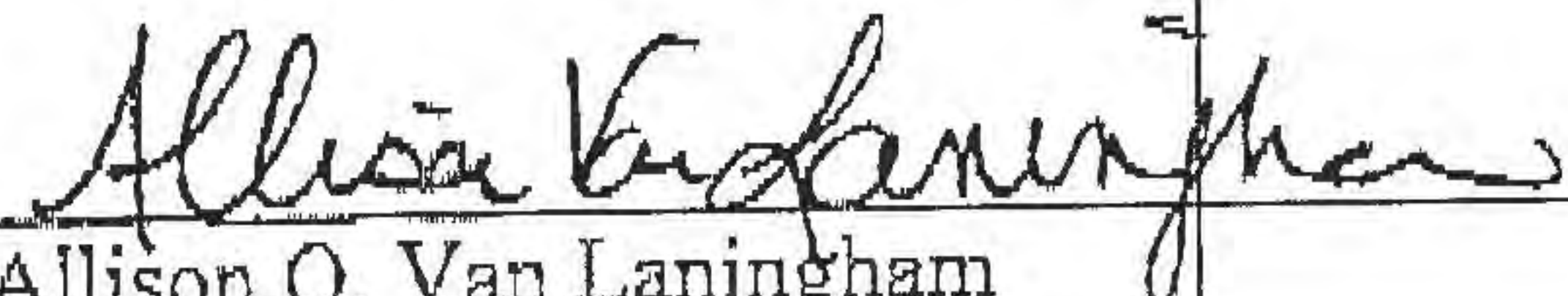
6. Set this matter for further hearing on motion for entry of a preliminary injunction, if necessary; and

7. Grant such other and further relief as the Court may deem just and proper.

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This the 28th day of January, 2010.


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