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Before the
FEDERAL COMMUNICATIONS COMMISSION JUL 11 1996
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)
)
RAINBOW BROADCASTING COMPANY)
)
For an extension of time)
to construct)
)
and)
)
For an Assignment of its)
construction permit for)
Station WRBW(TV), Orlando, Florida)

GC Docket No. 95-172
File No. BMPCT-910625KP
File No. BMPCT-910125KE
File No. BTCCT-911129KT

TO: The Honorable Joseph Chachkin
Administrative Law Judge

PRESS BROADCASTING COMPANY, INC.
HEARING EXHIBIT

NO. _____

Trancript of Hearing
conducted in Rey v. Guy Gannett Publishing Co.,
Case No. 90-2554 Civ (SM) (U.S.D.C. S.D. Fl.)
November 27, 1990

<u>Federal Communications Commission</u>	
Docket No. <u>GC 95-172</u>	Exhibit No. <u>16</u>
Presented by <u>Press Broadcasting</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected _____
Reported <u>JS</u>	
Date <u>6-27-96</u>	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

1	1		
2			
3	JOSEPH REY, ET AL.,)	CASE NO. 90-2554-CIV-MARCUS
4	Plaintiffs,)	
5	vs.)	
6	GUY GANNETT PUBLISHING CO.,)	
7	et al.,)	
8	Defendants.)	

FILED by *[Signature]*
JUN 05 1996
 CARLOS J. JENKE
 CLERK U.S. DISTRICT COURT
 S.D. OF FLA. MIAMI

Miami, Florida
November 27, 1990
9:23 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE STANLEY MARCUS

APPEARANCES:

PLAINTIFFS: MALCOLM E. FROMBERG, ESQ.
ELSA ALVAREZ, ESQ.

DEFENDANTS: DONALD HARDEMAN, ESQ.

REPORTER: ROBERT A. RYCKOFF
301 North Miami Avenue
Fifth Floor
Miami, Florida 33123
305-374-7153

Certified to be a true and correct copy of the original.
 Carlos Juenke, Clerk
 U.S. District Court
 Southern District of Florida
 By *[Signature]*
 Deputy Clerk
 Date 6-25-96

85
[Signature]

1 (Call to order of the Court.)

2 THE COURT: Let me call Rey versus Gannett,
3 90-2554-Civil, and ask you folks if you would be kind enough
4 to state your appearances on the record.

5 For the plaintiff, Joseph Rey, et al.

6 MR. FROMBERG: For the plaintiff, Your Honor,
7 Malcolm H. Fromberg with the law firm Fromberg, Fromberg &
8 Lewis, and my associate, Elsa Alvarez.

9 THE COURT: Good morning to you folks and happy to
10 have you. Have a seat and make yourselves comfortable.

11 And for the defendants, Gannett Publishing, et al.

12 MR. HARDEMAN: My name is Don Hardeman with
13 Corlett, Killian, Ober, Hardeman & Levi on behalf of the all
14 the named defendants.

15 THE COURT: And good morning to you, sir.

16 I had set the matter down this morning for a status
17 conference so we could put our heads together and see what
18 kind of schedule made sense from everyone's perspective.

19 I have had a chance to review the file, the
20 application for a T.R.O., the Complaint that was initially
21 filed in Dade Circuit Court. The materials were moved here
22 to the Federal Court. And we have an application for a
23 T.R.O./preliminary injunction.

24 And my question really is twofold. It's a question
25 of timing. What time frame makes sense for us to bring the

1 issue to a head? How much under the gun are we to have to
 2 decide this thing quickly? Does it make sense here to
 3 combine an application for a T.R.O. with a preliminary
 4 injunction? In essence, it amounts to a preliminary
 5 injunction anyway. The motion is not made ex parte, but,
 6 rather, with notice to the defense. And, indeed, if we go
 7 forward with a preliminary injunction hearing, does it make
 8 sense to consolidate that with a permanent injunction
 9 hearing on the merits? And, again, we have parties taking a
 10 variety of different positions depending on what stage along
 11 the way we are at. We are pretty early on out in the case,
 12 but I really wanted to get your sense as to timing.

13 Assuming, arguendo, what we do is we combine the
 14 T.R.O. application with an application for a preliminary
 15 injunction, take it up at the same time, putting the
 16 permanent injunctive relief off for a later point, how much
 17 discovery, if any, need be completed before we bring the
 18 issue of a preliminary injunction to a head and what kind of
 19 timing makes sense?

20 What I am asking you in sort of a rambling way is
 21 how do you want want to proceed in terms of timing as to
 22 bringing these matters to a head? It makes little sense to
 23 conduct a hearing for a T.R.O., which is good for ten days
 24 and ten days alone or at most ten, plus ten, assuming,
 25 arguendo, the plaintiff can meet its burden, which -- or may

1 not be case -- I don't know -- only to come back at the end
2 of 20 days and to have to conduct a preliminary injunction
3 hearing anyway.

4 So my question really is: Is the wisest thought
5 for us to simply set a date for a preliminary injunction
6 hearing reasonably promptly and give both sides the
7 opportunity to accelerate discovery within that time frame
8 and then bring it to a head at a date mutually agreeable for
9 a preliminary injunction hearing on the merits of the issue?

10 Having said that, let's begin with plaintiff. Mr.
11 Fromberg, what's your pleasure?

12 MR. FROMBERG: Your Honor, do you want me to
13 address the Court from here?

14 THE COURT: Wherever you are comfortable. That's
15 fine.

16 MR. FROMBERG: Your Honor, at the time that this
17 lawsuit was filed, it was the understanding of the
18 plaintiffs that a lease had not been signed between the
19 defendants and a competitor who seeks this top slot on this
20 tower which we claim has been leased to us exclusively.

21 The recent pleadings seem to indicate that since
22 the lawsuit has been filed a lease may have been signed
23 between the tower, which is the defendants, and this other
24 T.V. station, which is currently in operation, but seeks to
25 relocate onto this antenna. If the plaintiff is successful

1 in the preliminary injunction and the permanent injunction,
2 they will --

3 THE COURT: The long and the short of what you want
4 in this case is to enjoin the defendant from leasing it out
5 to someone else?

6 MR. FROMBERG: Correct.

7 Now, we are prepared -- and that means, frankly --

8 THE COURT: Can the property be leased out to
9 multiple lessees at the same time for use by multiple
10 lessees?

11 MR. FROMBERG: No. Your Honor, according to --

12 THE COURT: I mean in a physical sense, can that
13 that done from your perspective? I understand there may be
14 competitive reasons why you don't think they ought to do it
15 and legal reasons why you think they ought to be barred from
16 doing it, but as a technical or practical matter, can that
17 be done?

18 MR. FROMBERG: Yes, sir.

19 We understand the last pleading to be that what the
20 defendants intend to do, if they have not already done so,
21 is to overlap the antennas.

22 What we claim is that we have exclusive position on
23 the tower and that the next antenna must be below us. There
24 physically can be located another antenna at the exact same
25 level as our antenna, but on a different strut. There are

1 three struts --

2 THE COURT: So the simple answer is it can be done?

3 MR. FROMBERG: It can be done physically.

4 Now, we are prepared to try this case on a 48-hour
5 notice. We have witnesses from out of state which we must
6 bring in, experts, but basically our case is prepared and
7 has been prepared for some time.

8 THE COURT: So you don't need any time other than
9 bringing your witnesses in for a preliminary injunction
10 hearing?

11 MR. FROMBERG: That's correct.

12 Now, we would estimate that, frankly, a preliminary
13 injunction hearing should take maybe four hours.

14 A final hearing -- addressing one of the other
15 inquiries that the Court made -- I would say would take two
16 to three days.

17 So we would, frankly, prefer to expedite the matter
18 and get a hearing on a preliminary injunction as soon as
19 possible and have a final hearing subsequent to that.

20 THE COURT: So what you want to do is combine the
21 T.R.O., turn it into a preliminary injunction hearing, and
22 do it as soon as practicable from the Court's perspective
23 and the defense?

24 MR. FROMBERG: Yes.

25 I guess that depends upon the Court's timetable.

1 We would request a hearing on T.R.O. if the preliminary
2 could not be heard for some significant time in the future.
3 Then we --

4 THE COURT: Let's see what kind of time frame makes
5 sense from the defendants' perspective.

6 Mr. Hardeman, what are your thoughts about all of
7 this?

8 MR. HARDEMAN Your Honor, we are interested in
9 expediting this matter as well. However, there is some
10 discovery that's necessary before we would be prepared to go
11 to a hearing on a preliminary injunction, probably two weeks
12 minimum to put that basic discovery together if the Court
13 will direct them to expedite the responses to our discovery.

14 THE COURT: So you think you need about two weeks,
15 roughly?

16 MR. HARDEMAN: I think we can put it together in
17 that time and be prepared to have a hearing, at least on a
18 limited basis on a preliminary injunction, and hopefully at
19 that time the Court will see its way clear to determine the
20 propriety of --

21 THE COURT: Let me ask you this question, Mr.
22 Hardeman: Where do we stand in terms of the status quo?
23 Have you already let it out to someone else?

24 MR. HARDEMAN: No, we have not. We have a
25 perspective tenant, Channel 13, who is prepared to sign a

1 lease and to go on this tower at a different slot than is
 2 - planned for this particular plaintiff. There are three
 3 television stations broadcasting from that antenna
 4 presently. Two of the major networks are broadcasting to
 5 the Orlando area from that same tower and Channel 18 is
 6 prepared to go on there as is Rainbow Broadcasting.

7 THE COURT: So from your perspective -- I
 8 understand they may disagree with that and I will ask them
 9 in a moment -- but from your perspective, then, the status
 10 quo basically can be preserved without any further order
 11 from this Court?

12 MR. HARDEMAN: (Unintelligible) Voluntarily. Not
 13 to sign a lease and prejudice their position in this case
 14 pending a preliminary injunction --

15 THE COURT: Signing a lease with?

16 MR. HARDEMAN: Channel 18.

17 THE COURT: With Channel 18, which is the relief,
 18 of course, that they are seeking in this case.

19 Let me ask you this question, Mr. Fromberg -- and
 20 it may take some of the heat off you in terms of timing --
 21 he is prepared for a period between now and the time we
 22 bring a preliminary injunction hearing to a head to preserve
 23 the status quo by not entering into any final lease with
 24 Channel 18, which is, of course, the relief that you are
 25 seeking from us anyway. So that gives you a little bit more

1 time and clarifies perhaps that issue for you a little bit.

2 MR. FROMBERG: Yes. If that could be done in terms
3 of a formal stipulation, we would feel --

4 THE COURT: I understand. We will take care of the
5 formality. But you have heard -- when Mr. Hardeman says my
6 client won't enter into it, you can take it to the bank and
7 they won't.

8 I mean, do I have that right, Mr. Hardeman, your
9 client is prepared to stipulate at this point --

10 MR. HARDEMAN: Yes, Your Honor.

11 COURT: -- as to -- thereby precluding any need for
12 any judicial remedy as to that matter?

13 They are prepared to stipulate -- if I hear it
14 right -- for a period running from now until we can bring
15 the preliminary injunction hearing to a head from entering
16 into a lease with Channel 18.

17 Do I have that right?

18 MR. HARDEMAN: Your Honor, I am not sure what time
19 parameters the Court is entertaining here, but --

20 THE COURT: I want to move with some speed. So I
21 don't -- you know, I am just looking to give you the time
22 you need to properly --

23 MR. HARDEMAN: Given the fact that we can resolve
24 it this calendar year, I have no problem making that
25 stipulation. We are losing money by not leasing to Channel

1 18 in the meantime and --

2 THE COURT: Let me -- yes, Mr. Fromberg.

3 MR. FROMBERG: Your Honor, that would certainly --
4 if that included the fact that they wouldn't allow any
5 construction to take place on the antenna prior to a lease,
6 we would certainly feel assured that the preliminary
7 injunction didn't have to take place immediately.

8 But let me correct --

9 THE COURT: But he is anxious to proceed with speed
10 every bit as much as you are for the obvious reasons here.
11 He wants to cut a deal and enter into a contract on behalf
12 of his client one way or the other either with you and them
13 or with them or with you or with somebody else or with all
14 three --

15 MR. FROMBERG: To clarify the record, there are no
16 other T.V. stations operating on this tower, other than the
17 lease that we have at the present time that we have had for
18 five years. There are some --

19 MR. HARDEMAN: I trust I am not misstating the
20 facts. I reviewed a stack of material about four inches
21 thick yesterday and that was the understanding I was
22 left with --

23 THE COURT: Either way it doesn't obviate his
24 willingness to stipulate as to this matter.

25 You need a couple of weeks, then, to just get

1 yourself ready for the hearing is what you are saying?

2 MR. HARDEMAN: Yes. There is some basic discovery
3 I would like to conduct, including the deposition of Mr.
4 Rey, the principal of the plaintiffs' partnership, and some
5 production items that need to be taken --

6 THE COURT: Let me make this suggestion in terms of
7 how to proceed: Today is the 27th. Will four hours give us
8 enough time to resolve this?

9 MR. HARDEMAN: I believe it should, Judge.

10 MR. FROMBERG: On a preliminary --

11 THE COURT: I am just talking about going to the
12 issue as to what you are seeking, preliminary injunctive
13 relief, that is to say, if I understand what's happening
14 here is you are saying, Judge, please enjoin the defendant
15 from entering into a deal and cutting a contract providing
16 some service to or leasing arrangement with Channel 18 and
17 the defendant?

18 MR. FROMBERG: Yes.

19 THE COURT: That's the beginning and the end of
20 what you are seeking by preliminary relief?

21 MR. FROMBERG: Yes.

22 THE COURT: You claim it amounts to a breach of
23 contract, et cetera, et cetera, and that the relief itself
24 is critical. Otherwise the irreparable harm would be said
25 to flow from the signing of such a contract. And you

1 believe they are barred from contract from doing so and you
2 - have stated the grounds in your application.

3 MR. FROMBERG: Right.

4 THE COURT: Why don't we set it down for a hearing,
5 Pat, the week of December 17th, perhaps the 20th or the 21st
6 of December. Can we set it down around 1:00 o'clock on the
7 20th of December, Pat?

8 - Is that a problem for you, Mr. Hardeman, and will
9 that give you enough time and we can talk about accelerating
10 discovery?

11 MR. HARDEMAN: I think that should be sufficient,
12 Judge.

13 THE COURT: Mr. Fromberg.

14 MR. FROMBERG: 1:00 o'clock on December 20th?

15 THE COURT: Right.

16 That's okay for you?

17 MR. FROMBERG: Yes, sir.

18 THE COURT: All right. Let's do this, then: We
19 are going to ask you to prepare a simple order, Mr.
20 Fromberg, reflecting the following: One, the cause had come
21 on for a status conference this morning. Pursuant to our
22 discussions we set the cause down for a preliminary
23 injunction on the 20th. We are basically converting the
24 T.R.O. application into an application for a preliminary
25 injunction. And we will hear it on the 20th at 1:00

1 o'clock.

2 Two, we are going to ask the parties to sit down
3 and work together to accelerate discovery so that you can
4 get access to what you need in a time frame to bring these
5 issues to a head.

6 I understand, Mr. Fromberg, from your perspective,
7 it's a matter that isn't very serious because you have got
8 what you need and all you need is a date to bring your
9 witnesses in, but the defendant says he has got to do some
10 things to be ready for that hearing.

11 Third, the order should reflect that the defendant
12 has agreed by stipulation to preserve the status quo, and
13 has represented that the defendant will not between now and
14 the date of the preliminary injunction hearing sign or
15 consummate any agreement with Channel 18 until the
16 resolution of the preliminary injunction.

17 Do I have that right, Mr. Hardeman, that's your
18 position?

19 MR. HARDEMAN: Yes, Your Honor.

20 THE COURT: All right.

21 Any other issues we ought to be taking up now?

22 MR. FROMBERG: Yes, Your Honor, just for
23 clarification. We may want to take a couple of
24 depositions --

25 THE COURT: Sure.

4
1 What I will ask you to do is just to sit down with
2 - Mr. Hardeman and work out a schedule that's mutually
3 agreeable to both sides.

4 MR. FROMBERG: Do I understand, then, that on the
5 20th of December, we will have four hours and --

6 THE COURT: We will go forward in the afternoon.
7 If it takes us into the evening, we will take whatever time
8 we need to do it. I just need your best sense as to how
9 long it will take simply because of the volume of criminal
10 cases, and you will find there will be criminal cases going
11 forward undoubtedly in the morning, and so on, and so I just
12 need your best estimate as to how long you think it will
13 take.

14 MR. FROMBERG: The Court has indicated already a
15 comprehension of the issues and I think that probably we
16 ought to be able to do it in three or four hours that
17 afternoon.

18 THE COURT: You think that we can finish it that
19 day, Mr. Hardeman?

20 MR. HARDEMAN: That afternoon, I think we could.

21 THE COURT: You think that's practical?

22 MR. HARDEMAN: Yes, Your Honor.

23 THE COURT: Fair enough.

24 MR. FROMBERG: Your Honor, you had issued an order
25 setting a pretrial conference for this cause on December

1 14th --

2 THE COURT: It's obviously not necessary in view of
3 what we have done here and so we will just go with the dates
4 that we have set now.

5 We will ask you to prepare that order, show it to
6 Mr. Hardeman for his review, and then just submit it to me
7 for my signature.

8 MR. FROMBERG: Thank you very much.

9 THE COURT: Other issues from your perspective?

10 MR. FROMBERG: The Complaint was filed 21 days ago.
11 I don't know whether an answer is due. There has been
12 nothing filed in this case by the defendant --

13 THE COURT: There has been a notice of removal
14 filed.

15 MR. FROMBERG: Yes.

16 Other than the notice of removal and a response,
17 but no answer.

18 THE COURT: What's your sense as to that?

19 MR. HARDEMAN: That brought me to my own question.
20 The plaintiffs filed a verified Complaint for specific
21 performance and other relief in the state court. It was
22 removed before a response was filed --

23 THE COURT: How much time do you need?

24 MR. HARDEMAN: I can get it filed this week.

25 We have filed a memorandum in opposition to the

1 motion for injunctive relief.

2 THE COURT: When did you file that?

3 MR. HARDEMAN: Yesterday.

4 THE COURT: That had not wound its way up to me. I
5 have not seen it yet.

6 MR. HARDEMAN: I do have an extra copy of it
7 here --

8 THE COURT: Sure. If you can just drop it off with
9 my clerk as soon as we are done.

10 Have you seen a copy of that, Mr. Fromberg?

11 MR. FROMBERG: The response, we got faxed last
12 night, Your Honor.

13 THE COURT: Let's proceed in this way: I will give
14 you until -- and you tell me if this does it for you -- the
15 end of -- we will ask you to file an answer to it by the 3rd
16 of December.

17 That gives you enough time, Mr. Hardeman?

18 MR. HARDEMAN: Yes.

19 THE COURT: That gives you plenty of time?

20 All right. You can put in the order that the
21 defendant has until the 3rd to file an answer to the
22 Complaint.

23 The other request that I would make -- and Mr.
24 Hardeman has already anticipated it -- but I would like to
25 have a couple of days before the hearing a brief on the

1 issues that you think are relevant in terms of injunctive
2 relief; why you think you are entitled to it; how you think
3 you have met the burden, the four-part test in the Eleventh
4 Circuit in terms of likelihood of success on the merits, the
5 issues of irreparable harm, the balancing of the equities,
6 the public interest, and so on, standard Eleventh Circuit
7 issue going to the four-part test; and if you can give me
8 something on that even a day or two before is fine. You can
9 wait as close to the date as convenient for both of you on
10 the issue because I am sure the discovery may bear very much
11 on that issue. But just so that I have something when we
12 get started on the 20th of December at 1:00 o'clock.

13 If there is nothing further, I thank you both for
14 coming on down here and we will see you folks back here on
15 the 20th.

16 MR. FROMBERG: Thank you very much, Your Honor.

17 THE COURT: Thank you both.

18 And you will show Mr. Hardeman that proposed order
19 before you submit it to us.

20 (Proceedings concluded at 9:42 a.m.)

21

22

23

24

25

CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS
IN THE ABOVE-ENTITLED MATTER.

DATED: 6-4-96

Robert Ryschhoff
OFFICIAL COURT REPORTER