

in the State of North Carolina.

5. On or about December 2007, Defendants Eastburn, Da Capo and Perseus (collectively referred to as “Defendants”) researched, wrote, published and marketed a book entitled *Simon Says: A True Story of Boys, Guns and Murder* (“the book”).

6. Defendants published the book as a work of non-fiction that states on its cover the words “true story.” Defendant Eastburn purports to be a newspaper reporter and “freelance journalist.”

7. The book recounts the brutal and unprovoked murders of Carl, Joanna and Tony Dutcher. Carl and Joanna Dutcher were Plaintiff’s parents, and Tony Dutcher was Plaintiff’s nephew. The murders were perpetrated by Isaac Grimes, Jon Matheny and Simon Sue on New Year’s Day in 2001. Grimes, Matheny and Sue were all convicted. Plaintiff, who was then living in Georgia, was never a suspect or a person of interest in the murders.

8. Carl Dutcher, Plaintiff’s deceased father, was retired from United States Air Force. Plaintiff had served eight years in the United States Army as a military police officer. Plaintiff received an honorable discharge from his service to the United States.

9. Plaintiff was unaware of the writing or publishing of this book until January 2008. Eastburn never contacted Plaintiff to interview him or to verify any of the allegations contained in the book.

10. Upon information and belief, Da Capo and Perseus never contacted Plaintiff to verify if any of the allegations contained in the book were true or performed any due diligence to fact-check the allegations made by Eastburn regarding Plaintiff.

11. The book contains a number of false, libelous statements which impugned and damaged Plaintiff's reputation and earnings. The book also contains a number of false statements, which are not libelous but illustrate the general disregard for the truth by the Defendants.

12. The book contained the following defamatory false statements:

a. "Youngest son Ty, who lived in Georgia now, had racked up convictions for drugs, robbery and uncounted numbers of traffic offenses." p. 7.

b. "He'd [Ty Dutcher] spent enough time in jail to make law enforcement officials like [Sheriff] Wegener well aware of his presence whenever he came west for a visit." p. 7.

c. "Ty called the sheriff's office to complain and register his voice. He introduced himself as a reformed drug addict." p. 8.

13. Plaintiff has not been convicted of the infamous crimes of "drugs" and "robbery". Robbery and most drug offenses are felonies under North Carolina law. While Plaintiff has had traffic violations, they are not "uncounted numbers."

14. Plaintiff has never been imprisoned.

15. Plaintiff never introduced himself to the Sheriff as a "reformed drug addict."

16. Eastburn's statements, which were published by Da Capo and Perseus, are patently false, libelous per se, and without factual basis.

17. Defendants' published these statements with malice and/or with a reckless disregard for the truth. Public records, obviously researched by Defendants only after publication, clearly reveal Defendant's reckless disregard for the truth.

18. Defendants' published and marketed the book containing false statements about Plaintiff in bookstores such as Barnes and Nobles in Wake County, North Carolina.

19. Since the publishing of the book, Plaintiff has lost his employment as a surveyor because of false allegations contained in the book and read by his employer and coworkers.

20. Plaintiff and his family have also felt ostracized in their neighborhood because their neighbors and friends have read the false statements in the book.

21. On February 25, 2008, Plaintiff notified Defendants of the errors in the book. Defendants continue to publish, to market and to sell the book throughout the State of North Carolina as well as throughout the United States without correcting the defamatory statements contained in the book.

22. Plaintiff, personally and through counsel, has contacted the Defendants and informed them of the gross factual errors in the book; yet, Defendants refuse to correct the errors. Instead, Defendants, with full knowledge of the books falsities have continued to publish, to market and to sell the book.

23. Since first contacted by Plaintiff on February 25, 2008, Defendants have continued to publish libelous statements about Plaintiff, with knowledge of their falsity and intent to defame further Plaintiff's character and good name.

24. Defendants have refused to remove the books from the marketplace and replace them with corrected versions.

25. Defendants have refused to inform buyers of the book or the public at large of the false statements contained in the book.

26. Each day, Plaintiff's character and reputation is irreparably harmed by the continued, malicious defamatory statements published by Defendants.

27. In a letter to Plaintiff's counsel dated September 5, 2008, Defendants have admitted there are false statements in the book: "We concede that we have not located convictions for robbery and drugs in the jurisdictions we have searched." Consequently, Plaintiff stands a highly probably chance of prevailing on the merits of the case.

28. Plaintiff has suffered damages to his reputation, has suffered damages due to loss of earning capacity and loss of income, has suffered damages for pain and suffering, and has suffered other damages to shown at trial.

29. Plaintiff has been injured in an amount in excess of \$10,000 due to the false statements contained in the book.

WHEREFORE, Plaintiff prays the Court that:

1. Defendants be preliminarily enjoined from publishing, printing, marketing or selling the book until all matters involved in this suit have been resolved.
2. Plaintiff recover judgment against Defendants, jointly and severally, actual and special damages in excess of \$10,000.00.
3. Plaintiff recover judgment against Defendants, jointly and severally, punitive damages in excess of \$10,000.
4. Plaintiff recover costs and reasonable attorney fees, if applicable under Chapter 1D of the General Statutes; and
5. Plaintiff recover any further relief that the Court deems appropriate.

This the 13th day of November, 2008.

LEWIS & ROBERTS, P.L.L.C.

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