IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JEMAL AHMED,	:	
	:	
Plaintiff,	:	
	:	**CIVIL ACTION NO.**
v.	:	**1:12-CV-2697-SCJ**
	:	
ELIAS KIFLE; ETHIOPIAN REVIEW, INC.	:	
	:	
Defendants.	:	

ORDER

This case appears before the Court on remand from the Eleventh Circuit for the limited purpose of adjudicating Plaintiff Jemal Ahmed's Motion to Sever Defendant Elias Kifle. Doc. No. [157].

I. BACKGROUND

In August 2012, Plaintiff filed suit against Defendant Kifle and Defendant Ethiopian Review, Inc. ("Ethiopian Review") alleging that "Kifle and Ethiopian Review" published false and defamatory statements about Plaintiff in an article "on the Ethiopian Review's website." See Doc. No. [1], pp. 6–7, 10, ¶¶19–23, 37. The complaint identifies Defendant Ethiopian Review as "an English/Amharic language on-line 'news and opinion journal' available at www.ehtiopianreview.com." Id. p. 3, ¶7. Both Defendants were properly served, but failed to file a timely answer, and thus

an entry of default was entered against them. See Doc. Nos. [8], [9], [10]. Two weeks after default was entered against him, Defendant Kifle moved to set aside the entry of default, noting that both he and Plaintiff are Ethiopian citizens and that, thus, "there is no diversity of citizenship." Doc. No. [11], p. 4, ¶14.

Judge Julie E. Carnes, the presiding judge at the time, granted Defendant Kifle's motion to set aside the default and ordered him to respond to the complaint by August 9, 2013. Doc. No. [15]. Four days before the deadline, Defendant Kifle requested an extension of time of over four months "because of travel." Doc. No. [17]. Although the Judge Carnes granted Defendant Kifle an extension of more than a month, he failed to file a timely answer and default was again entered against him. See Doc. Nos. [21], [23]. Defendant Kifle eventually filed an answer, however, due to his repeated and willful violations of the Court's discovery orders, Magistrate Judge E. Clayton Scofield, III, recommended granting Plaintiff's motion for default judgment. See Doc. No. [68], p. 18.

Receiving no objections, the Court adopted the Magistrate Judge's report and recommendation, granted the motion for default judgment, and scheduled the matter for a hearing on damages. Doc. No. [70]. In the order awarding Plaintiff damages and attorneys' fees, the Court also granted an unopposed motion for default judgment

against Ethiopian Review and ordered that a retraction of the defamatory article be posed "in a conspicuous location on Defendant Ethiopian Review's website." Doc. No. [92], p. 21. While Defendant Kifle was held in contempt for posting the "retraction" as part of an article attacking Plaintiff and criticizing the Court, he eventually complied with the Court's order requiring him to post the retraction message, without any of his additional commentary, "on the home page of the Ethiopian Review website located at http://ethiopianreview.com." See Doc. No. [116], p. 7.

Over the course of nearly three years of litigation, Defendant Kifle filed no fewer than 18 *pro se* motions, including at least 2 motions to dismiss, but only mentioned his contention that the parties were not completely diverse in his first motion to set aside the entry of default. See Doc. Nos. [11], [17], [26], [31], [40], [50], [55], [56], [57], [58], [59], [81], [88], [90], [91], [99], [100], [102]. After appeal had been taken in this case, Defendant Kifle's appellate counsel filed a motion to dismiss for lack of subject-matter jurisdiction, which the Court granted. See Doc. No. [160]. The matter is presently before the Court on Plaintiff's Motion to Sever Defendant Kifle in order to preserve jurisdiction. Doc. No. [157].

II. LEGAL STANDARD

Courts "may at any time, on just terms, . . . drop a party" who is improperly joined. Fed. R. Civ. P. 21. In order to determine whether the nondiverse party can be dismissed in order to preserve jurisdiction, the Court must decide if the "party is indispensable under [Fed. R. Civ. P.] 19." Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1343 (11th Cir. 2011). If the party is indispensable, then the case must be dismissed. Id. Rule 19 is a two-step inquiry. First, the Court must determine whether Defendant Kifle is a "required" party within the meaning of 19(a). Id. at 1344. A party is required if the Court cannot accord complete relief in that person's absence. Fed. R. Civ. P. 19(a)(1)(A). A party is also required if the person has an interest in the subject matter of the action, and disposing of the action in that person's absence may impair the person's ability to protect the interest or "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." Id. 19(a)(1)(B).

If Defendant Kifle is a required party, Rule 19(b) provides a list of factors "to determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). The factors to be considered include:(1) the extent to which a judgment rendered in the person's

absence might prejudice that person or the existing parties;(2) the extent to which any prejudice could be lessened or avoide;(3) whether a judgment rendered in the person's absence would be adequate; and(4) whether the plaintiff would have an adequate remedy if the action were dismissed. Id.

These factors are "not intended to exclude other considerations," and "pragmatic considerations" play a key role in the determination. Molinos, 633 F.3d at 1344. The Supreme Court has cautioned that the power "to dismiss a dispensable nondiverse party" in order to preserve jurisdiction "should be exercised sparingly," and that courts should consider whether "the presence of the nondiverse party produced a tactical advantage" to the other side. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 837–38, 109 S. Ct. 2218, 2225, 104 L. Ed. 2d 893 (1989). However, the Supreme Court has also noted that once a case has been fully adjudicated "considerations of finality, efficiency, and economy become overwhelming." Caterpillar Inc. v. Lewis, 519 U.S. 61, 75, 117 S. Ct. 467, 476, 136 L. Ed. 2d 437 (1996).

III. ANALYSIS

The complaint in this case clearly identified Defendant Ethiopian Review as "an English/Amharic language on-line 'news and opinion journal' available at www.ehtiopianreview.com." Doc. No. [1], p. 3, ¶7. The complaint further laid out the

precise circumstances behind the false and defamatory statements about Plaintiff allegedly published by Defendant Ethiopian Review in an article "on the Ethiopian Review's website." See id. pp. 6–7, 10, ¶¶19–23, 37. Because default judgment has been entered, Defendants are deemed to have admitted these well-pleaded allegations of the complaint and are barred from contesting them. See Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1307 (11th Cir. 2009). Nevertheless, they argue that the Court should consider extrinsic evidence submitted by Defendant Kifle because subject-matter jurisdiction is dependent on his dispensability. Doc. No. [177-2], p. 16. Accepting, *arguendo*, that the Court can "consider extrinsic evidence" in deciding this issue, the Court must "free to weigh the facts" presented in making its determination. See Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1336 (11th Cir. 2013). Even considering the evidence, the Court finds that Defendant Kifle is dispensable because his affidavit is contradicted by the record.

Since the very first document he filed in this Court in October 2012, Defendant Kifle himself has treated Defendant Ethiopian Review as synonymous with "[his] blog, EthiopianReview.com, . . . an Ethiopian blog that is read by Ethiopians mostly in the Diaspora." Doc. No. [11], p. 4, ¶14. He specifically averred that"Ethiopian Review [was not] a 501(c)(3) corporation," although he later made the self-serving

assertion that Ethiopian Review "is a charitable organization that . . . has nothing to do with the article in question." Id. ¶15; Doc. No. [22], p. 4. Over nearly three years of litigation, Defendant Kifle did not mention his contention that Defendant Ethiopian Review "has nothing to do with the article in question" again. Now that Plaintiff has filed a motion to sever Defendant Kifle, however, he has filed an affidavit with the bald contention that "Ethiopian Review, Inc., does not own the ethiopianreview.com domain name and lacks authority or control over what is posted on the website." Doc. No. [158-1], p. 1, ¶4. In support of this assertion, the affidavit also states that Defendant Kifle has paid the "domain name fees for the ethiopianreview.com domain name" and other related expenses "out of [his] own personal bank account." Id. p. 2, ¶8.

Although Defendant Kifle baldly asserts that Defendant Ethiopian review "has nothing to do" with the website or the libelous article that is the subject of this lawsuit, the website itself tells a different story. See Doc. No. [22], p. 4; Doc. No. [147-1]. In fact, a page on www.ethiopianreview.com entitled "Sponsor Ethiopian Review for 16 cents a day" states that funds should be sent to "Ethiopian Review, Inc." Doc. No. [147-1]. The page says absolutely nothing about the funds sent to Ethiopian Review Inc. being "used to support families of journalists who are jailed by the Ethiopian regime," which is how, in his affidavit, Defendant Kifle claims the

funds were used. See id.; Doc. No. [158-1], p. 3, ¶11. Instead, the website states that the money sent to Ethiopian Review, Inc. "will be used for: 1) funding information units inside Ethiopia; 2) maximizing the web site's technical capacity to make it faster and fight off hacking; and 3) to defend ourselves from . . . lawyers who are constantly making threats of lawsuit against Ethiopian Review." Doc. No. [147-1], p. 1.

This piece of evidence was submitted by Plaintiff and has been a part of the docket for more than a year. See id. In that time, Defendants have filed three briefs in which they have repeatedly argued that Defendant Ethiopian Review used donations to support the families of imprisoned journalists and had no authority or control over the website. See Doc. No. [158], p. 5; see also Doc. No. [148], pp. 7–15; Doc. No. [177-2]. Nowhere, however, have Defendants ever addressed the direct evidence that funds sent to Defendant Ethiopian Review were used to support media operations, pay for web services, and fight libel lawsuits. Conspicuously, the www.ethiopianreview.com website has been altered—presumably by Defendant Kifle, who asserts that he controls the website—so that the page about sponsorship is no longer accessible from the homepage. See http://www.ethiopianreview.com (last accessed Oct. 3, 2016); see also http://www.ethiopianreview.com/main/(last accessed Oct. 3, 2016). Yet, as of the date of this Order, the sponsorship page can still

be accessed directly. See http://www.ethiopianreview.com/80405 (last accessed Oct. 3, 2016).

Defendants have also raised the argument that the Court cannot afford complete relief without Defendant Kifle because Plaintiff wanted a retraction posted on the website and Defendant Ethiopian Review allegedly has no control over the site. Doc. No. [177-2], p. 15. However, the Court's orders directing Defendants to publish a retraction are telling. The Court initially ordered that a retraction of the defamatory article be posed "in a conspicuous location on Defendant Ethiopian Review's website." Doc. No. [92], p. 21. Defendants instead posted a "retraction" that mainly focused on criticizing Plaintiff and the Court on the website at issue, but never asserted that the website was not "Defendant Ethiopian Review's website."

The Court held Defendant Kifle in contempt and again ordered that a proper retraction be posted "on the home page of the Ethiopian Review website located at http://ethiopianreview.com." See Doc. No. [116], p. 7. Defendants finally complied with this order, and again did not raise any contention that the website did not belong to Defendant Ethiopian Review. See Doc. No. [123]. Thus, Defendant Kifle is not a required party under Rule 19(a)(1)(A) because the Court can afford complete relief in his absence. See Fed. R. Civ. P. 19(a)(1)(A); see also Temple v. Synthes Corp., 498 U.S. 5, 7, 111 S. Ct. 315, 316, 112 L. Ed. 2d 263 (1990) (noting that a party is not

required under Rule 19(a) if, as here, he is jointly and severally liable with another defendant).

Defendant Kifle is also not a required party under Rule 19(a)(1)(B). Defendant Kifle dissolved Ethiopian Review, Inc. after learning of this lawsuit, and thus argues that the only way for Plaintiff to collect a judgment against Defendant Ethiopian Review would be to collect from him. Doc. No. [158], p. 7. However, the Court finds that Defendant Ethiopian Review was the corporate vehicle through which the website was funded and operated. The mere fact that Defendant Kifle paid web-hosting costs for the website out of his personal bank account is not dispositive. Defendant Ethiopian Review is not absolved of liability for the articles published on its website simply because Defendant Kifle failed to maintain every corporate formality in operating Ethiopian Review.

No bank records have been submitted demonstrating how funds given to Defendant Ethiopian Review were actually used. and Defendant Kifle's affidavit about how those funds were used contradicts the scant facts the Court has. Defendant Kifle argues that he is required because Plaintiff will attempt to pierce the corporate veil or assert "alter ego" liability and he would be unable to protect his interests if he is not a party to this suit. See Doc. No. [158], pp. 7, 9–10. However, his argument that the Court would, in effect, be imputing his conduct to Defendant Ethiopian Review

rests largely on his contention that he is solely responsible for the content of the website. The Court has considered and rejected this argument. Defendant Kifle's argument that Plaintiff may attempt to pierce the corporate veil misses the point that Defendant Ethiopian Review is liable for its own conduct. Defendant Kifle is not required because interest will not be prejudiced. He maintains that Plaintiff should not be allowed to pierce the corporate veil or assert "alter ego" liability, and he can fully litigate his position if Plaintiff ever attempts to make those arguments. Doc. No. [158], p. 10. At this point, however, Plaintiff has not argued that the Court should allow him to pierce the corporate veil.

Even if Defendant Kifle were a required party, the Court still finds that, "in equity and good conscience, the action should proceed" because the 19(b) factors weigh in favor of Plaintiff. Defendant Kifle notes that part of the damages awarded are based on his own repeated misconduct over the course of the litigation. See Doc. No. [177-2], p. 21. The Court agrees that Defendant Ethiopian Review is not liable for Defendant Kifle's misconduct during the litigation. But neither he nor Defendant Ethiopian Review will be prejudiced because the Court can amend the award of damages so that it only reflects Defendant Ethiopian Review's own liability. Likewise, the fact that Defendant Kifle is jointly and severally liable with Defendant Ethiopian Review for other the damages does not make him indispensable. As the Supreme

Court has noted, a party who is jointly and severally liable is not indispensable. Newman-Green, 490 U.S. at 838 (holding that because the defendants were "jointly and severally liable, it [could not] be argued that [the severed defendant] was indispensable to the suit"). Damages can be apportioned to "shape the relief" and avoid any prejudice. See Fed. R. Civ. P. 19(b)(2)(B).

Additionally, both the third and fourth factors listed in Rule 19(b) weigh in Plaintiff's favor. For the reasons discussed in greater detail above, Defendant Kifle's argument that the judgment would be inadequate because Plaintiff may pursue "a 'corporate veil piercing' theory," is unpersuasive. The Court can afford Plaintiff complete relief by ordering that a retraction of the defamatory article be posed "in a conspicuous location on Defendant Ethiopian Review's website," which the Court has already done, and issuing an award of damages against Defendant Ethiopian Review. See Doc. No. [92], p. 21. Dismissing the suit at this point would leave Plaintiff without an adequate remedy, as the statute of limitations for libel actions in Georgia is one year. See O.C.G.A. § 9-3-33.

Finally, the other "pragmatic considerations" not listed in Rule 19(b) also weigh in favor of a finding that Defendant Kifle is dispensable. See Molinos, 633 F.3d at 1344. Defendant Kifle's presence in this suit has not "produced a tactical advantage" to Plaintiff because Plaintiff did not receive any discovery to which he was not

already entitled. See Newman-Green, 490 U.S. at 837–38. Crucially, the "considerations of finality, efficiency, and economy" are "overwhelming" because this case was been adjudicated to judgment over the course of nearly three years of litigation. See Caterpillar, 519 U.S. at 75. Defendants' argument that enforcing the judgment "will necessarily reignite the entire lawsuit" is baseless. See Doc. No. [177-2], p. 26.[1] The Court will not allow Defendant Ethiopian Review to relitigate the merits of Plaintiff's claim because it is barred from contesting the well-pleaded allegations of the complaint due to the default judgment. See Eagle Hosp. Physicians, 561 F.3d at 1307. The only possible issue remaining is how much of the damages Defendant Ethiopian Review will ultimately be required to pay.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Defendant Kifle is not a required party and that, even if he were, he is dispensable. See Fed. R. Civ. P. 19. Thus, the Court's previous order dismissing this case (Doc. No. [160]) is hereby **VACATED**. Plaintiff's Motion to Sever Defendant Kifle (Doc. No. [157]) is

[1] Defendants grossly mischaracterize the default judgments in this case as being "entered as a result of a journalist's attempt to protect his sources from harassment." See Doc. No. [177-2], p. 26. Default was entered against Defendant Ethiopian Review because it never filed any kind of responsive pleading. The Magistrate Judge recommended entering default against Defendant Kifle because he willfully refused to comply with discovery orders, in spite of the protective order entered to ensure the confidentiality of any information he provided. See Doc. Nos. [48], [68]. Defendant Kifle never made any objection to the Magistrate Judge's recommendation. See Doc. No. [70], p. 1.

GRANTED. Defendant Kifle is **DISMISSED** from the lawsuit, and the default judgment (Doc. No. [93]) is **REINSTATED** with respect to Defendant Ethiopian Review.

IT IS SO ORDERED, this 5th day of October, 2016.

HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE