

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARTHA HART, in her personal)	
capacity and as personal representative)	
of THE ESTATE OF OWEN JAMES HART,)	
)	
Plaintiff)	C.A. No. 3:10-cv-975-SRU
)	
v.)	
)	
WORLD WRESTLING ENTERTAINMENT, INC.)	
VINCE McMAHON and LINDA McMAHON,)	
)	
Defendants.)	SEPTEMBER 20, 2010

DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE

Defendants, World Wrestling Entertainment, Inc. (“WWE”), Vincent McMahon and Linda McMahon, respectfully submit this Memorandum of Law In Support of Motion to Strike. The Defendants jointly file this Motion to Strike solely in the event the entirety of this suit is not dismissed for the reasons argued in the Motions to Dismiss filed by the Defendants.

I. INTRODUCTION

This is **not** a case about the death of Owen Hart (“Owen”). That case was litigated and unquestionably settled almost ten years ago by a full and complete release of all claims arising out of Owen’s death. *See* Exh. 1. This case **is** about Martha Hart’s newly-minted claim, asserted for the first time in the eleven years since Owen died, that WWE must obtain her consent to use Owen’s name and likeness in connection with the sale of its copyrighted works containing the recorded performances of Owen. Specifically, the gravamen of all the claims now made by Martha Hart in her capacity as representative of Owen’s estate (“the Estate”) is that “Original

Intellectual Property,” a defined term under Owen’s contract with WWE, reverted to the Estate on Owen’s death on May 23, 1999.¹ Notwithstanding the narrowness of the stale claims actually made here, both the original Complaint and the First Amended Complaint (“FAC”) are replete with false, immaterial and scandalous allegations about WWE, the McMahons and Owen’s tragic death, all in direct violation of the terms of the General Release and Settlement Agreement (“the 2000 Release”) executed by Martha Hart in November 2000. *See* FAC (Doc. 27), ¶¶ 1, 3, 22, 24-26. Specifically, Mrs. Hart makes false allegations about WWE and the McMahons regarding that tragic accident, the conduct of the wrongful death litigation which followed, and her conduct during that case, asserting these allegations as if they were facts already proven.

As is evident from the 2000 Release executed a decade ago by Mrs. Hart, she executed a broad release of WWE and the McMahons “of and from all claims . . . and demands of every kind and nature whatsoever, whether known or unknown . . . that [Mrs. Hart, individually and as Executrix] had or may now have against [the Released parties], as may have arisen or has arisen, in connection with any and all matters arising out of or relating to the death of Owen Hart . . .” *See* Exh. 1, ¶ 1 (emphasis added). She further agreed to accept a substantial amount in “full and final settlement of all claims” that she had or may subsequently have against WWE, the McMahons and various other defendants. *Id.*, ¶ 2. Mrs. Hart expressly acknowledged that the settlement was a compromise and settlement not only of all claims for damages on account of Owen’s death, but was also done “for the express purpose of precluding forever any further or additional claims . . . against any person, entity or corporation arising out of the death of Owen Hart.” *Id.*, ¶ 4 (emphasis added). Finally, Mrs. Hart acknowledged that she had been fully

¹ For the reasons stated in WWE’s Memorandum in Support of its Motion to Dismiss (“WWE’s MTD Brief”), this claim is based entirely on a highly deceptive editing of a single provision of Owen’s contract and is meritless. Mrs. Hart also asserts a copyright claim in her personal capacity, but this claim too has nothing to do with events of 11 years ago.

advised by her legal counsel as to the legal and binding effect of the releases and, having been so advised by her legal counsel, freely and voluntarily executed the 2000 Release. *Id.*, ¶ 14.

Despite the broad nature of the 2000 Release, and in plain violation of its terms, Mrs. Hart has made numerous allegations about Owen's death in the original complaint and FAC. Moreover, the allegations are so far removed from the merits of the stale intellectual property and contract claims in this case that the only possible reason for doing so was to taint WWE and the McMahons and disparage them in a public forum. Indeed, this improper purpose is further evidenced by the promotional tour Mrs. Hart undertook in connection with filing the original Complaint that included issuing a press release, establishing a website at www.marthahartsueswwe.com to publicize the lawsuit, holding a press conference in Connecticut to demonize the defendants, and using the platform afforded to her by this lawsuit to inject herself into an ongoing Senate race by personal attacks on Linda McMahon.²

The false and immaterial allegations, if not stricken, would require the parties and the Court to waste time and resources on issues that have no factual relevance to the disposition of the actual claims made here. The Defendants should not be forced to relitigate the fully settled wrongful death claims in order to prevent Mrs. Hart from making prejudicial and false statements about that matter here. Mrs. Hart should not be permitted to lodge legal pleadings full of prejudicial, false and inflammatory "facts" of no conceivable materiality to the claims actually presented. That is especially true here, as Mrs. Hart has already demonstrated her willingness to make wild and false allegations against WWE and the McMahons, as are outlined in the Memorandum in Support of the Motion to Dismiss filed by the McMahons. These scandalous mischaracterizations, disguised as allegations, detract from the dignity of this Court and its truth-

² A fuller description of the improper actions incidental to the filing of this case is contained in the Memorandum in Support of the Motion to Dismiss filed by the McMahons.

finding function. Accordingly, if and to the extent that any of Plaintiff's claims otherwise survive Defendants' motions to dismiss, Defendants respectfully request that the Court grant this Motion and strike all allegations regarding the death of Owen or the circumstances surrounding his death. The only such fact relevant to the claims actually presented is the undisputed fact that he died on May 23, 1999.

II. FACTUAL BACKGROUND

On or around June 22, 2010, Mrs. Hart instituted this action by filing a Complaint with nine causes of action, all concerning the purported contractual and intellectual property rights of the Estate. After counsel for Defendants challenged numerous false allegations in the original Complaint, Mrs. Hart filed the FAC which is now the operative pleading in this action.

Although abandoning many of the prior false allegations against Vincent and Linda McMahon regarding their alleged role in Owen's death, the FAC continues to make highly polemical allegations about that event which are replete with incorrect and at times outright false statements.

- "Owen Hart died on May 23, 1999 when he fell from an apparatus approximately 80 feet high into a wrestling ring before a crowd of 16,500 in a reckless and dangerous stunt that was negligently planned, orchestrated and directed by the WWE." *See* FAC (Doc. 27), ¶ 1.
- "The WWE insisted that Owen perform the stunt despite knowing he was uncomfortable with such extreme heights and the manner he was to descend, hired grossly inadequate personnel and used equipment with no redundancy to enhance the stunt's theatrical effect." *Id.*
- "Defendants have engaged in a host of blatantly disrespectful acts in regards to Owen since his death and have never once apologized to Martha or Owen's and her children for their role in causing Owen's death." *Id.*
- "Their use of Owen's name and likeness draws attention to WWE's ongoing violent and highly questionable theatrical activities that caused Owen's death." *Id.*, ¶ 3.

- “On May 23, 1999, Owen fell to his death at the Kemper Arena in Kansas City, Missouri, while performing a dangerous and reckless stunt planned, orchestrated and directed by the WWE as part of a pay-per-view wrestling event organized by the WWE.” *Id.*, ¶ 22.
- “The lawsuit alleged that the stunt was dangerous and poorly-planned and that the apparatus chosen for the stunt by the WWE acting on behalf of, or to further the interests of, the McMahons was defective and completely inappropriate.” *Id.*, ¶ 24.
- “In response to Martha’s suit, and in an attempt to intimidate and deter her from pressing her claim, Titan, at Vincent and Linda McMahon’s direction, counter-sued Martha in Connecticut, claiming that she had breached the Booking Agreement by bringing a wrongful death action against them. This ‘hardball’ tactic was consistent with Martha’s experience – she knew that Titan and the McMahons ruled their wrestlers with intimidation and high pressure.” *Id.*, ¶ 25.
- “[D]efendants have never acknowledged their culpability in Owen’s death or so much as apologized to Martha and Owen’s children.” *Id.*, ¶ 26.

Clearly, Mrs. Hart has injected into this case matters which were fully resolved over a decade ago and which have nothing to do with the claims asserted here. Mrs. Hart evidently desires to relitigate the circumstances of Owen’s death so as to create a prejudice against the Defendants—a tactic which she enhances by her highly personal attacks. All of the allegations regarding Owen’s death (hereinafter referred to as the “Rule 12(f) Allegations”) are immaterial to the claims at issue in this case and improperly attack the character of WWE and the McMahons.

III. ARGUMENT

Rule 12(f) of the Federal Rules of Civil Procedure provides that the court may strike from a pleading any immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Because the Rule 12(f) allegations are immaterial, impertinent and scandalous, they should all be stricken from the FAC.

A. The Rule 12(f) Allegations are Immaterial and Impertinent and Should be Stricken.

An allegation is immaterial under Rule 12(f) if it “has no essential or important relationship to the claim for relief or the defenses being pleaded, or [is] a statement of unnecessary particulars in connection with and descriptive of that which is material.” 5C Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE § 1382 (3d ed. 2004). Similarly, “‘impertinent’ matter consists of statements that do not pertain, and are not necessary, to the issues in question.” *Id.* “[A] court should strike the disputed matter if it is ‘irrelevant under any state of facts which could be proved in support of the claims being advanced.’” *United States v. New Hill Homes Assocs., Ltd. P’ship*, No. 3:99cv611, 2000 WL 306623, at *6 (D. Conn. Feb. 29, 2000) (Underhill, J.) (citations omitted).

1. The Rule 12(f) Allegations Have No Relationship to Mrs. Hart’s Causes of Action or Claims for Relief

The Rule 12(f) Allegations are immaterial and impertinent to this case because they have no relationship to the Plaintiff’s causes of action or claims for relief. The Estate’s causes of action boil down to two simple legal issues. Based on the deceptive editing of a single provision of Owen’s contract contained in the FAC, can Mrs. Hart foreclose WWE from (1) selling DVDs containing copyrighted footage of its programs that WWE owns and which contain Owen’s performances and (2) using Owen’s name and copyrighted photographs of Owen owned by WWE to fairly and accurately describe the contents of those DVDs.³ Instead of alleging facts supporting these discrete legal issues, Mrs. Hart’s pleadings repeatedly veer off course into diatribes on WWE and the McMahons relating to Owen’s death. In violation of the 2000

³ Mrs. Hart also asserts, in her personal capacity, a copyright infringement claim based on her alleged ownership of copyrights in two Christmas photographs of Owen, Martha and their two children which were included in the DVD released by WWE this year titled “Hart & Soul: The Hart Family Anthology.” Mrs. Hart now claims to have acquired copyrights in those two photographs after the release of that DVD and after the initial filing of this lawsuit.

Release signed a decade ago, Mrs. Hart uses the Rule 12(f) Allegations to mischaracterize the events that led to Owen's tragic death and imply that WWE and the McMahons were the "cause" of Owen's death. *See* FAC (Doc. 27), ¶¶ 1, 22, 24-26. These allegations clearly do not concern or pertain to whether Mrs. Hart, as representative of the Estate, has any contractual or intellectual property rights that can be enforced in this case. Indeed, it is inconceivable that these allegations and others contained in the Rule 12(f) Allegations could be relevant to resolving the issue of whether Mrs. Hart can now challenge WWE's right to exploit its undisputed intellectual property rights or recover money from WWE because it exercised those rights.

The Rule 12(f) Allegations also have no relevance to the damages claimed by Mrs. Hart in this case. Mrs. Hart's damages claims in this case consist of a stale claim for purported royalties due under the contract at issue, damages for alleged violation of intellectual property rights and punitive and/or enhanced damages. *See generally* FAC (Doc. 27), "Wherefore" clauses. The Rule 12(f) Allegations are immaterial to Mrs. Hart's claim for royalties because such damages, if recoverable, are based on the language of the contract at issue. *Id.*, ¶¶ 97-99. Similarly, the Rule 12(f) Allegations are immaterial to any damages claims resulting from the alleged violation of intellectual property rights. As a matter of law, the Rule 12(f) Allegations also are immaterial to Mrs. Hart's claim for punitive and/or enhanced damages because any actions that could form the basis for those damages would have to relate to the use of Owen's name and likeness, not any alleged actions relating to Owen's death. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003) (holding that "dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages" and

therefore, lower court erred in awarding punitive damages “to punish and deter conduct that bore no relation to [plaintiff’s] harm”).⁴

Accordingly, the Rule 12(f) Allegations are immaterial and impertinent to the claims in this case and should be stricken from the FAC. *See Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893-94 (2d Cir. 1976) (affirming district court’s order granting motion to strike allegations regarding prior consent judgment because it was immaterial to the action before the court); *In re U.S. Foodservice Inc. Pricing Litig.*, Nos. 3:07 MD 1894, 3:06 CV 1657, 3:08 CV 4, 3:08 CV 5, 2009 WL 5064468, at *27 (D. Conn. Dec. 15, 2009) (granting motion to strike allegations that were irrelevant to the case); *Mil-Hall Textile Co., Inc. v. Dun & Bradstreet, Inc.*, 160 F. Supp. 778, 781 (S.D.N.Y. 1958) (striking allegations of negligence because the allegations “cannot be relevant under any state of facts which could be proved in support of the claim.”); *Velez v. Lisi*, 164 F.R.D. 165, 166 (S.D.N.Y. 1995) (instructing that a court may strike allegations “where the materiality of the alleged matter is highly unlikely”).

2. Striking the Rule 12(f) Allegations Will Save the Court and the Parties Time and Expense

The Rule 12(f) Allegations should be stricken to avoid wasting the Court’s and the parties’ time and resources that otherwise would be expended if Defendants are required to respond to and defend against the immaterial allegations. If the Court does not dismiss the FAC and the Rule 12(f) Allegations remain in the case, WWE and the McMahons will deny the allegations and then have to engage in massive discovery essentially relitigating the fully settled wrongful death case. Dozens of depositions were taken in that case, and many of those people would have to be located and deposed again. Additionally, the whereabouts of the physical

⁴ It is worth noting that Section 12.4 of the Contract that the Estate sues upon specifically provides that neither party would be liable to the other for punitive damages and all such punitive damage claims, whether arising out of breach or otherwise, were waived. *See* FAC (Doc. 27), Exh. A, p. 17.

evidence would need to be ascertained. If it still exists, there would be extensive discovery regarding the physical evidence. WWE, the McMahons and the Court should not be forced to waste time and resources defending against fully settled allegations that will have absolutely no bearing on the outcome of this case. Accordingly, the Rule 12(f) Allegations should be stricken. *Simon v. Mfrs. Hanover Trust Co.*, 849 F. Supp. 880, 882 (S.D.N.Y. 1994) (citation omitted) (court should also strike irrelevant allegations when doing so would save the court and the parties “the time and expense which would otherwise be spent in litigating issues that would not affect the outcome of the case.”); *Oneida Indian Nation of N.Y. v. N.Y.*, 194 F. Supp. 2d 104, 117 (N.D.N.Y. 2002) (*quoting Simon*, 489 F. Supp. 880); *In re Montagne*, Bankr. No. 08-10916, 2009 WL 32394, at *3 (Bankr. D. Vt. Jan. 5, 2009) (“[i]ncreased time and expense of trial may constitute sufficient prejudice to warrant granting [a motion to strike].”); *Bristol-Myers Squibb Co. v. IVAX Corp.*, 77 F. Supp. 2d 606, 619 (D.N.J. 2000) (“[t]he purpose of a motion to strike is to save time and expense through the excision of matter from the pleadings that will not affect the outcome of the case”).

B. The Rule 12(f) Allegations Are also Scandalous and Should be Stricken for That Reason As Well

The Rule 12(f) Allegations should be stricken because they are offensive statements meant to disparage WWE and the McMahons and attack their moral character. *See Burger v. Health Ins. Plan of Greater N.Y.*, 684 F. Supp. 46, 52 (S.D.N.Y. 1988) (holding that statements that “‘reflect cruelly’ on defendants’ moral characters” were scandalous); *Cable v. Rollieson*, No. 04CIV9413, 2006 WL 464078, at *11 (S.D.N.Y. Feb. 27, 2006) (“[a] scandalous allegation is one that reflects unnecessarily on the defendant’s moral character, or uses repulsive language that detracts from the dignity of the court.”); 5C Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE § 1382 (scandalous allegations under Rule 12(f) consist of those

“which improperly cast[] a derogatory light on someone, most typically on a party to the action.”). While all of the Rule 12(f) Allegations improperly attempt to cast a derogatory light on WWE and the McMahons, the more egregious allegations made by Mrs. Hart which remain in the FAC include the following:

- WWE “insisted” and “required” Owen Hart to perform the stunt “despite knowing he disapproved of it.” *See* FAC (Doc. 27), ¶¶ 1, 22.
- WWE and the McMahons have engaged in “blatantly disrespectful acts in regards to Owen since his death [.]”⁵ *Id.*, ¶ 1.
- WWE and the McMahons had a “role in causing Owen’s death” and were “culpab[le]” for his death. *Id.*, ¶¶ 1, 26.
- WWE and the McMahons tried to “intimidate” Mrs. Hart in the wrongful death lawsuit and “rule[] their wrestlers with intimidation and high pressure.” *Id.*, ¶ 25.

These descriptions and the others contained in the Rule 12(f) Allegations are without any legal significance in this case for the reasons set forth previously. Mrs. Hart also uses these gross mischaracterizations about Owen’s death to paint WWE and the McMahons as callous, ruthless and unethical. Indeed, on their face, the Rule 12(f) Allegations only serve to promote Mrs. Hart’s improper attempt to (1) cast WWE and the McMahons as callous villains who were unsympathetic about Owen’s death; (2) attack their moral and ethical character; and (3) detract from the truth-finding function of this Court.

This Court should strike the “scandalous” allegations to avoid additional unwarranted prejudice to WWE and the McMahons beyond that which has occurred to date and to stop Mrs.

⁵ Significantly, nowhere in the prolix Complaint or FAC does Martha Hart offer one fact to support this incendiary allegation. She does not allege a single specific act evidencing any disrespect for Owen by WWE or the McMahons because that has not happened. Indeed, as is evident from the actual content of the DVD, WWE has always been respectful to Owen and his historical contributions to the profession to which he devoted his life.

Hart from “giving the allegations any other unnecessary notoriety inasmuch as, once filed, pleadings generally are public documents and become generally available.” *See* 5C Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE § 1382; *see also* *Bangkok Crafts Corp. v. Capitolo Di San Pietro In Vaticano*, No. 03 Civ. 15(RWS), 2007 WL 1687044, at *3 (S.D.N.Y. June 11, 2007) (striking allegation that defendants had an “improper” relationship because the allegation was without legal significance, implied, without factual support, conduct that was scandalous and the nature of the relationship was not relevant to the litigation); *Burger*, 684 F. Supp. at 52-53 (striking allegations as scandalous and immaterial that “‘reflect cruelly’ on the defendants’ moral characters” and if presented to the jury would engender sympathy for plaintiff for reasons having no connection to the claims in the action); *Budget Dress Corp. v. Int’l Ladies Garment Workers’ Union*, 25 F.R.D. 506, 508 (S.D.N.Y. 1959) (striking “scandalous” defenses that characterized individuals as “strong arm men” and “racketeers”); *Smith v. Ky. Fried Chicken*, Civ. Act. No. 06-426-JBC, 2007 WL 162831, at *3 (E.D. Ky. Jan. 18, 2007) (striking offensive allegations characterizing defendants as “cruel” and “lazy” as being scandalous and irrelevant under Rule 12(f)).

Here, these scandalous allegations already received widespread publicity, no doubt due to the fact that Linda McMahon is in the midst of the campaign for the United States Senate ongoing in Connecticut. Permitting those allegations to remain in the case will serve only to produce additional unnecessary notoriety and prejudice to the Defendants.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion to Strike the Rule 12(f) Allegations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2010, the foregoing **DEFENDANTS'**
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE was served on the
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