

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 10-2173

SAMUEL BARTLEY STEELE; BART STEELE PUBLISHING; STEELE RECORDZ
Plaintiffs – Appellants

V

VECTOR MANAGEMENT; MLB ADVANCED MEDIA, L.P.
Defendants – Appellees

TURNER BROADCASTING SYSTEM, INC.; TIME WARNER, INC.; JON BONGIOVI,
individually and d/b/a Bon Jovi Publishing; RICHARD SAMBORA, individually and d/b/a
Aggressive Music; WILLIAM FALCONE, individually and d/b/a Pretty Blue Songs; FOX
BROADCASTING COMPANY; MAJOR LEAGUE BASEBALL PROPERTIES, INC.; MLB
PRODUCTIONS, A & E; A & E/AETV; BON JOVI; AEG LIVE, LLC; MARK SHIMMEL
MUSIC; AGGRESSIVE MUSIC, a/k/a Sony ATV Tunes; BON JOVI PUBLISHING;
UNIVERSAL MUSIC PUBLISHING GROUP; UNIVERSAL POLYGRAM
INTERNATIONAL PUBLISHING, INC.; PRETTY BLUE SONGS; SONY ATV TUNES;
KOBALT MUSIC PUBLISHING AMERICA, INC.; BOSTON RED SOX; THE AMERICAN
SOCIETY OF COMPOSERS; FOX TELEVISION STATIONS, INC.; ISLAND RECORDS,
a/k/a Island Def Jam Records; THE BIGGER PICTURE CINEMA CO.
Defendants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

**APPELLANT STEELE’S RESPONSE TO MOTION TO WITHDRAW AND
MOTION FOR AFFIRMATIVE RELIEF**

Pursuant to Local Rule 12(b), Fed.R.App.P. 27(3)(B), and Fed.R.App.P. 10(e),
Appellant Samuel Bartley Steele (“Steele”) responds to the June 17, 2011 Motion to
Withdraw filed by counsel for Appellees, Scott D. Brown, of Skadden, Arps, Slate,
Meagher & Flom, LLP (“Skadden”). Steele further requests affirmative relief that this

Court's allowance of the Motion to Withdraw be conditioned upon Skadden taking corrective action as to the three distinct Attorney Brown filings in the District Court, and in this Court's Appendix, signed under oath by Attorney Brown, which all have now acknowledged as false – and were known to be false when filed.

1. Steele does not oppose – in fact applauds - Attorney Brown's request to withdraw as counsel for MLB Advanced Media, L.P. ("MLBAM"). Steele would welcome similar requests from the remaining Skadden attorneys representing Appellees.¹

2. Nonetheless, Skadden's Motion to Withdraw their own Attorney Brown – but to otherwise remain as counsel for MLBAM – raises a number of vexing issues, given Attorney Brown's unique role as swearing to the authenticity of the now-admittedly false evidence filed by Skadden in the underlying District Court case, *Steele v. TBS*, 08-11727:

- a. Mr. Brown personally signed, "under penalty of perjury," three "Transmittal Declarations" (on December 8, 2008, February 18, 2009,

¹ Steele respectively believes it incumbent upon Skadden to now withdraw from all Steele cases. Skadden's *undisputed fraud on the court* places them Skadden an extremely difficult situation with their obligations to their clients in direct conflict with their self-preservation interests.

and June 10, 2009), contained in the Appendix to Steele's Appeal No. 09-2571, at App-64, 221, 475.

b. In each of the above filings, Mr. Brown stated that the attached DVD contained a "true and correct copy" of the infringing audiovisual as alleged by Steele. *Id.*

c. Attorney Brown's three sworn statements were false, and knowingly so – as Steele has shown in his briefings and other filings in this Court. Steele Opening Brief at 18-19 (09-2571); Steele Reply at 8-19 (09-2571); Steele Motion for Sanctions at 7-8 (09-2571); Steele Opening Brief at 28-30 (10-2173); Steele Reply at 16-17, 27-28 (10-2173).

d. Skadden has not denied that Attorney Brown's sworn statements were false, that Skadden knew they were false, and that the audiovisual was *not* a "true and correct copy" of the infringing work. Steele Reply at 8-19 (09-2571); Steele Motion for Sanctions at 6-8 (09-2571); Steele Motion for Sanctions Reply at 1-5 (09-2571); Steele Opening Brief at 28-30 (10-2173); Steele Reply at 17-18, 27-28, 32-33 (10-2173).

e. To the contrary, Skadden Partner Kenneth A. Plevan, in a letter exchange last October, conceded that the audiovisual filed and sworn-to by Attorney Brown was *not* a “true and correct copy,” but rather an altered “version” thereof. *See* attached letters: October 11, 2010 Hunt Letter to Sloan (Exhibit 1); October 14, 2011 Plevan Letter to Hunt (Exhibit 2); October 20, 2011 Hunt Letter to Plevan (Exhibit 3); October 20, 2011 Plevan Letter to Hunt (Exhibit 4).

f. Skadden’s “true and correct copy,” as falsely sworn-to by Attorney Brown was actually a materially and intentionally altered *version* that was: (1) longer in duration, (2) missing the ownership and copyright management information (see 17 U.S.C. § 1202(b)), and (3) missing material visual and sound elements, while (4) adding others. *See* Steele Reply Brief at 8-19 (No. 09-2571). *See Dakota Industries, Inc. v. Dakota Sportswear, Inc.* 988 F.2d 61, 63 (8th Cir. 1993) (appellate record supplemented where defendants’ “misrepresentation, willful or otherwise, left the district court with an incomplete picture of the infringement alleged by [plaintiff]”).

g. In sum, Skadden has conceded fraud on the court as to the altered audiovisual and falsely sworn-to Brown Declarations.²

3. Accordingly, while Steele does not oppose Skadden's Motion to Withdraw *per se*, Steele requests affirmative relief in the form of an Order that Skadden's Motion to Withdraw be allowed only when Brown corrects the incorrect and falsely filed Appendix records in this Court's docket.

This Court may order the record supplemented, corrected, or modified. Fed.R.App.P. Rule 10(e). *Davila v. Corporacion De Puerto Rico Para La Difusion Publica*, 498 F.3d 9, 13 (1st Cir. 2007) (where evidence "used in the trial court but somehow w[as] not put into the record as [it] should have been, the parties may invoke Fed.R.App.P. 10 to correct the record."); *see also Ross v. Kemp*, 785 F.2d 1467, 1474-76 (11th Cir. 1986) (Federal Circuit Courts possess an "inherent equitable authority to supplement the record").

Significantly, Steele has requested an unadulterated copy of the infringing audiovisual numerous times - going all the way back to when he was a *pro se* litigant in the fall of 2008 - each time being rebuffed. *See* App-516, 555, 563 (No. 10-2173). Of note, Skadden's first denial of Steele's request for a correct copy of the audiovisual,

² That Skadden's and Appellees other fraudulent acts are not labeled "conceded" is purely semantic - they have never been disputed nor denied.

while Steele was *pro se*, came in the form of a letter signed by Attorney Brown. *See* June 25, 2009 Letter to Steele, attached as Exhibit 5.

Steele has, on appeal, repeatedly raised Skadden's fraud on the court, including, among other things, Attorney Brown's false Declarations, the altered audiovisual itself, and Skadden's ongoing failure to take any corrective action vis-à-vis the record.

Nonetheless, Skadden fails yet to take any corrective action. Steele Reply Brief. at 3-6, 16-18, 27-28, 32-33 (No. 10-2173); Steele Reply Brief at 8-19, 29 (No. 09-2571).

See Dakota Industries, 988 F.2d at 63-64 (“[Plaintiff] cannot be charged with neglect for failing to bring [defendants’ misrepresentations] to the attention of the district court. If an appellate court could never consider new evidence in such cases, parties would have a distinct incentive to deceive the district courts, and the appellate courts would be powerless to remedy such deceptions.”).

As Mr. Brown signed the sworn declaration accompanying the altered audiovisual “version,” he is likely in the best position to correct the now concededly incorrect filings and submit a “true and correct copy” of the audiovisual alleged by Steele to have infringed his work.

Of course, Steele's request herein may be too late, given Attorney Brown's abrupt departure from Skadden, with two hours' – rather than weeks' – notice (at least

to the Court), on a Friday afternoon, in a routine motion that First Circuit's clerks are "authorized to dispose of" as "routine, procedural motions." First Circuit Internal Operating Procedures, V.C. (Motion Procedures – Disposition by the Clerk).

Given Skadden's track record, it is not unreasonable to infer this is a tactic, a maneuver to: (1) make Attorney Brown unavailable or otherwise out of this Court's jurisdiction or (2) to distance Skadden *the firm* from Skadden *the former attorney*, in preparing for a "one bad apple" defense as to their sophisticated, well-planned, and nearly perfectly executed fraud on the courts in this Circuit; indeed, Skadden's fraud against Steele continues in the form of a nearly identical fraudulent scheme being employed in the Superior Court of Massachusetts.³

Accordingly – and mindful of Local Rule 12(b) ("No attorney who has entered an appearance in this court may withdraw without the consent of the court") – the undersigned spoke with Case Manager Linda Berry immediately upon receipt of the Motion to Withdraw, last Friday afternoon, June 17, 2011, and informed her that Steele planned to file a Response, given that Brown's notice came on his last day.⁴

³ Steele has served a Rule 11 Motion in his Massachusetts Superior Court case, *Steele v Boston Red Sox, et al.*, Superior Court C.A. No. 10-3418.

⁴ Despite Attorney Brown's June 27, 2011 departure, his profile remains active on Skadden's website as of 9:00 p.m., June 30, 2011, at <http://www.skadden.com/index.cfm?contentID=45&bioID=244>.

Steele respectfully requests that this Court order Mr. Brown – prior to his withdrawal as counsel – to correct the record and submit to this Court an unaltered copy of the allegedly infringing audiovisual. *See Davila*, 498 F.3d at 13; *also Ross*, 785 F.2d at 1474-76; *Dakota Industries*, 988 F.2d at 63-64.

Alternatively, Steele requests affirmative relief in the form of an Order that allowance of the Motion to Withdraw be conditioned on the First Circuit or, upon remand, the District Court, retaining jurisdiction over Attorney Brown to the extent necessary to require him to make himself available for deposition or hearing, as justice requires, or as to all discoverable, non-privileged, and privilege-waived matters. *See Holgate v. Baldwin*, 425 F.3d 671, 677-678 (9th Cir. 2005) (counsel’s withdrawal from case due to conflict of interest “does not protect him from sanctions based on a filing that he made before that withdrawal,” citing *Bader v. Itel Corp.*, 791 F.2d 672, 675, (9th Cir. 1986) (no support for idea that attorney may “escape sanctions for misconduct simply by withdrawing from a case before opposing counsel applies for sanctions”).

Significantly, Attorney Brown is conspicuously absent from the otherwise identical Skadden attorneys presently appearing for defendants in Steele’s pending Massachusetts Superior Court case, first appearing with Defendants’ Motion to

Dismiss filed December 6, 2010. Steele's recently Rule 11 Motion for Sanctions in that case is now pending.

WHEREFORE, Steele respectfully requests that this Honorable Court consider his Response and Allow his Request for Affirmative Relief as outlined above.

/s/Christopher A.D. Hunt
Christopher A.D. Hunt
MA BBO# 634808
Court of Appeals Bar #61166
THE HUNT LAW FIRM LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
cadhunt@earthlink.net

Dated: June 21, 2011

CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that on June 21, 2011, I caused this Appellants' Response to Motion to Withdraw and Motion for Affirmative Relief of Appellants Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz, filed through the ECF system, to be served electronically by the Notice of Docket Activity upon the ECF filers listed below.

Clifford M. Sloan
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
csloan@skadden.com

Kenneth A. Plevan
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
kplevan@skadden.com

Scott D. Brown
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Christopher G. Clark
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Matthew J. Matule
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Dated: June 21, 2011

/s/ Christopher A.D. Hunt
Christopher A.D. Hunt