United States Court of Appeals
For the First Circuit

No. 11-1675

SAMUEL BARTLEY STEELE

Plaintiff - Appellant

v.

ANTHONY RICIGLIANO; BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP; BRETT LANGEFELS; JOHN BONGIOVI, individually and, d/b/a Bon Jovi Publishing; JOHN W. HENRY; MAJOR LEAGUE BASEBALL PROPERTIES, INC., a/k/a Major League Baseball Productions; RICHARD SAMBORA, individually and, d/b/a Aggressive Music; TIME WARNER, INC.; TURNER SPORTS INC.; TURNER STUDIOS INC.; VECTOR MANAGEMENT LLC, a/k/a Successor in Interest to Vector Management; WILLIAM FALCON, individually and, d/b/a Pretty Blue Songs; BOB BOWMAN; CRAIG BARRY; DONATO MUSIC SERVICES, INC.; FENWAY SPORTS GROUP, a/k/a FSG, f/k/a New England Sports Enterprises LLC; JACK ROVNER; JAY ROURKE; LAWRENCE LUCCHINO; MAJOR LEAGUE BASEBALL ADVANCED MEDIA, L.P.; MARK SHIMMEL, individually and, d/b/a Mark Shimmel Music; MIKE DEE; NEW ENGLAND SPORTS ENTERPRISES, LLC, f/d/b/a Fenway Sports Group, a/k/a FSG; SAM KENNEDY; THOMAS C. WERNER; TURNER BROADCASTING SYSTEM, INC.

Defendants – Appellees

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

REPLY OF APPELLANT SAMUEL BARTLEY STEELE

Christopher A.D. Hunt
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
cadhunt@earthlink.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. APPELLEES CONCEDE *ALL* FACTS IN STEELE'S FAVOR

Appellees' Brief ("Response") fails to dispute *any* of Steele's well-documented and amply cited facts supporting each of the four related grounds for reversal set forth in Steele's Brief ("Brief"): (1) Fraud on the *Steele I*[1] Court; (2) Fraud during the *Steele III* proceedings (the case underlying this appeal); (3) Judicial Estoppel; and, (4) Misapplication of claim preclusion. *See,* generally, Response (specific citations to Response, where possible, to follow; because Appellees' Response omits several issues entirely, no specific citation exists).

Indeed, most of Appellees' brief was not even *written* by Appellees; rather, their Response extravagantly cites to – and quotes from – Steele's Opening Brief and the district court's opinions. *See, e.g.*, Response at 4-5, 10, 11, 12, 13, 14, 15. As Steele has pointed out in prior appellate briefing, *quoting* a district court decision falls far short of *defending* errors arising from it.[2] Appellees resort to a shopworn, if transparent, rhetorical device, i.e., gratuitously quoting one's adversary, repeating

---

[1] Steele maintains the case nomenclature defined in his Brief at 13-14.

[2] "Appellees' Brief – reportage rather than argument – fulsomely quotes the district court's [] Decision…This being an *appeal* of that decision, simply repeating the district court's language – without more – fails to refute Steele's arguments for *reversal* of that decision." Appeal II Steele Reply Brief at 6-7 (emphasis original).

unfavorable facts in hopes of desensitizing the Court to them. Response at 13, n.7, 15, n.8.

Appellees' failure to meaningfully respond is not without consequence: Their silence in response to Steele's well-documented facts supporting each issue raised in Steele's Brief represents their concession of those facts. *Blackwell* v. *Cole Taylor Bank*, 152 F.3d 666, 673 (7th Cir. 1998) (appellee failure to address appellant's argument not a "confession of error," however, appellee's "*silence about facts does constitute a waiver of the specific factual contentions* made by the opposing party in a brief filed earlier") (emphasis supplied) (citing *Hardy* v. *City Optical Inc.*, 39 F.3d 765, 771 (7th Cir. 1994)); *Beazer East, Inc.* v *Mead Corp.,* 412 F.3d 429, 437 n. 11 (3rd Cir. 2005) (appellee who fails to respond to an appellant's argument "waives, as a practical matter, anyway, any objections not obvious to the court to specific points urged by the [appellant]," quoting *Hardy,* 39 F.3d at 771. *See also Mironescu* v. *Costner,* 480 F.3d 664, 667 n. 15 (4th Cir. 2007) (court declined to address argument not raised by appellee, noting that Fed.R.App.P. 28(b) "requires that appellees state their contentions and the reasons for them at the risk of abandonment of an argument no

presented… Even appellees waive arguments by failing to brief them") (citations and internal quotation marks omitted).

Additionally, this appeal arises from a Rule 12(b)(6) dismissal, whereby the district court took as true the facts as alleged in Steele's Complaint and afforded Steele favorable inferences arising therefrom. *Ashcroft* v. *Iqbal*, 556 U.S. __, 129 S.Ct. 1937, 1949 (2009); *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). Accordingly – and given Appellees' failure to dispute those facts in any event - for purposes of this appeal the well-pleaded facts in Steele's Complaint are additionally taken as true. *Id*.

a. Appellees Additionally Have Failed to Challenge Steele's Facts in Each Prior and Concurrent Appeal

Appellees in all of Steele's four related appeals (including this appeal) – three in which appellees are represented by Skadden, Arps, Slate, Meagher & Flom and Affiliates LLP ("Skadden"), the fourth in which Skadden is an appellee – have failed to dispute *any* of Steele's facts as to any and all pertinent issues.

Steele's filings in the Court over the past 18 months have repeatedly noted Appellees' inability to dispute Steele's facts or meaningfully respond to the issues raised in Steele's three other appeals, including numerous facts and issues raised in this appeal. *See*, e.g., April 20, 2010 *Steele Appeal I Reply* at 8 ("[Appellees Response] fails

to rebut, explain, or more importantly, to correct its submission of the Altered Audiovisual") (emphasis original); December 6, 2010 *Steele Appeal II Brief* at 44-46, 53-54, 65-66 (referencing "unchallenged evidence" of willful defaults); January 27, 2011 *Steele Appeal II Reply* at 3 ("Appellees' Brief fails to refute their numerous, specific, and well-documented instances of fraud on the court and gross misconduct… [and have] conceded the underlying facts of their fraud and misconduct [making] their fraud and misconduct the overriding issue in this appeal"); August 14, 2011 *Steele Appeal III Brief* at 39 (Appellees' concede submission of false evidence supported by false sworn declaration) and 69, n.19 (citing numerous additional Appellee filings that fail to challenge Steele's facts).

b. Appellees' and the District Court's Failure to Address Undisputed Facts of Fraud on the Court– Goes Beyond Any Other Issue in This Appeal

This broad failure of Skadden and appellees, i.e., their universal silence as to all pertinent facts covering the broad swath of issues Steele has raised in four separate, though – to be sure - related, appeals has a voice of its own and has become an issue unto itself. The sheer number of undisputed record facts as to fraud on the court, or *courts* – increasing with each appeal – which Skadden and appellees have yet to dispute

is telling beyond the sum of its parts*;* what it says is, of course, for this Court to determine.

Nonetheless, with appellees' briefing now complete in all four appeals, certain undisputed facts speak louder than others. The one issue common to all proceedings in the nearly three years since *Steele I* was filed, in district court and on appeal; the single issue most thoroughly briefed (by Steele) and most comprehensively supported by the aggregate undisputed record facts – the majority of which come from *appellees'* own papers – is, of course, fraud on the court.

The significance of this cannot be understated because unlike many, if not most, appellate issues, fraud on the court is unique insofar as it is *transcends* the litigants and merits insofar: (1) it provides independent grounds for setting aside a judgment largely irrespective of the particular facts, law, or issues otherwise involved; and (2) it uniquely involves the court as an institution because the "issue" - the fraud - is *directed at* the court.[3] *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 244-245 (1944) ("where the occasion has demanded, where enforcement of the

[3] Even spoliation - which may *become* fraud on the court if spoliated evidence is presented as true and correct to the court and entered as such into the record - is primarily directed, at least initially, at the opposing party.

judgment is 'manifestly unconscionable [Courts] have wielded the power without hesitation… setting aside the judgment to permit a new trial, altering the terms of the judgment, or restraining the beneficiaries of the judgment from taking any benefit whatever from it"); *Chambers* v. *NASCO, Inc.,* 501 U.S. 32, 44 (1991) (discussion of courts' "historic power of equity to set aside fraudulently begotten judgments"); *George P. Reintjes Co, Inc.* v. *Riley Stoker Corp.*, 71 F.3d 44, 47 (1st Cir. 1995) ("after-discovered fraud" provides relief from judgments, "regardless of the term of their entry").

In sum, fraud on the court cannot be subservient to the more common – and more claim-specific – appellate issues. Simply put, *fraud on the court cannot be overlooked*. *Id*. Unfortunately, as the record makes clear, overlooking fraud is exactly what the district court did in *Steele III*.

II. APPELLEES' FAIL TO MEANINGFULLY ADDRESS THE ISSUES

Appellees concede more than the facts of record, the facts alleged in Steele's Complaint and all reasonable inferences therefrom. Appellees' Response essentially ignores the entire gamut of issues raised in Steele's Brief, either by their complete silence on an issue (e.g., judicial estoppel) or by merely quoting, without more, the

district court's decision (e.g., claim preclusion, fraud on the court). Moreover, the issues ignored by Appellees were also, in large part, first ignored by the district court.

To wit:

a. Fraud on the Court

Steele raised fraud on the court in two contexts on appeal: (1) prior fraud - during *Steele I* - as undermining its preclusive effect on *Steele III,* Brief at 31-34, 39-44, 48-52; and (2) fraud *during Steele III* as independent grounds for reversal. Brief at 21, 34-39, 40-41, 49, 53-54.

Appellees refute neither Steele's facts nor argument as to fraud in *Steele I* as well as to fraud during *Steele III*. Response at 6,14-15. No further argument is required: Appellees' failure in this regard is manifestly self-evident.

What may not be self-evident, however, in Appellees' *six sentences* purporting to address fraud on the court – *five* of which merely re-state the issue or quote the district court – is Appellees' explicit and direct misrepresentation of the district court's opinion. *Id.* Specifically, Appellees proclaim that the district court "rejected" Steele's fraud on the court argument, Response at 6; that it "considered Steele's" fraud on the

court arguments, "gave no weight" to them, Response at 14, and "summarily disposed of them." Response at 15.

In reality, the district court plainly stated – on the same pages Appellees cite, App-570-571, the only pages referencing fraud on the court – that Steele's allegations as to fraud on the court in *Steele I* "will not be addressed here," and as to fraud on the court in *Steele III,* "the Court declines to consider" the issue. App-570-571.

Appellees' intransigence is not merely unapologetic, it is prideful; their deceptions do not only exist in the record – as past events – but are happening here and now; they are *unrelenting*. At this point the question of 'when will it end?' is rhetorical - until this Court renders it otherwise.

b. Judicial Estoppel

Both the district court's decision and Appellees' Response ignore, *en toto*, Steele's facts and argument for application of judicial estoppel. Response, generally; App-563-573. Neither the district court nor Appellees have uttered the words 'judicial estoppel.'

Accordingly, this Court's review of judicial estoppel is *de novo*. *Indigo America, Inc.* v. *Big Impressions, LLC,* 597 F.3d 1, 3 (1st Cir. 2010) (district court's paucity of

findings requires *de novo* review of issue otherwise subject to abuse of discretion standard).

Steele's asserted his detailed, factually documented, and legally supported argument as to judicial estoppel in both the district court and in his Opening Brief to this Court, as detailed in his Brief at 29-31; 45-47; 54-66. Appellees ignored judicial estoppel in the district court; the district court ignored judicial estoppel in its decision; and Appellees once again ignore judicial estoppel in their Response. *Id*; Response, generally; App-563-573.

Accordingly, while this Court's review is *de novo*, such review must be done in the framework of *all* of Steele's facts as to judicial estoppel as conclusively true, either as undisputed by Appellees or otherwise taken as true at the motion to dismiss stage, or both.

Unless and until this Court reverses *Steele I* – which would necessarily require reversal of *Steele III* – the equitable principles of judicial estoppel (as well as those of fraud on the court and claim preclusion, which so overlap as applied to this case that they must be considered together) weigh heavily, and unopposed, in favor of reversal so that Steele finally, fully, and fairly have 'his day in court.' Brief at 65-66.

c. Claim Preclusion

Steele's Brief fully addressed the errors – legal, factual, and by omission - in the district court's claim preclusion analysis. Brief at 14-17; 40-45; 48-49; 50-52; 53-54; 66-69; 70-75. Appellees' Response fails to refute a single *fact* or *argument* set forth by Steele; it is, on the whole, no more than a quotation-heavy summary of the district court's decision. Response at 9-14.

Beyond that, Appellees proffer a single adverb in conclusory support of the district court's decision: that it "correctly reasoned" and "correctly concluded" preclusion applied. Response at 10, 13.

Appellees' recitation of the district court's discussion of claim preclusion – yet devoid of any argument defending it - is consistent with their every effort to take refuge in Judge Gorton's *Steele I* August 19, 2009 narrow decision on the discrete issue of substantial similarity vis-à-vis copyright infringement. Appellees have argued claim preclusion as a defense to *all* post-*Steele I* claims. This is to be expected, of course, and might otherwise be appropriate in circumstances where the judgment upon which appellees rely had not been so plainly and undisputedly procured by fraud.

Appellees made their bed, and given the only (and honorable) alternative – openly owning up to their fraud, which is nonetheless established by the record – Appellees apparently feel they have no choice but to continue sleeping in it.

The district court, on the other hand, was not tied to the past and was presented with a simpler issue in *Steele III* as opposed to *Steele I*. Specifically, in *Steele I* the district court remained ignorant of the well-concealed machinations of Appellees – Skadden-represented, then as now – throughout. By contrast, in *Steele III*, Steele's Complaint raised the *Steele I* fraud on the court issue front and center from the outset. App-46, 51, 54-55.

Additionally, the district court was on notice of the undisputed facts of fraud on the court, in great detail, as part of Steele's post-judgment motions, the first of which was filed – in the *Steele I* court - on June 18, 2010, for entry of default as to two defendants in *Steele I*. *See, e.g., Plaintiffs' Rule 55(a) Motion for Entry of Default as to Defendant MLB Advanced Media, L.P., for Failure to Plead or Otherwise Defend,* *Steele I* Docket # 118. *Steele III* was not filed for another two months. App-10.

Finally, very early in the *Steele III* proceedings, Steele repeatedly alerted the district court to still more fraud, but this time occurring *in and during the active Steele III proceedings themselves.* Brief at 35-39.

The district court's failure to correct, or even "address" – in the court's words – both Appellees' prior fraud as well as their immediate and ongoing fraud in *Steele III*, the facts of which had been conclusively established prior to and *during the Steele III proceedings*, provides this court with a basic legal question: Does a judgment procured through fraud offer the shelter of preclusion in subsequent proceedings to those responsible for the fraud?[4]

Longstanding and unambiguous precedent provides the answer, and emphatically so. *Hazel-Atlas Glass Co.* 322 U.S. at 244-245; *Chambers* 501 U.S. at 44; *George P. Reintjes Co,* 71 F.3d at 47.

III. APPELLEES' RESPONSE CONTINUES THEIR DELIBERATE MISREPRESENTATION OF PARTY IDENTITIES

This Court is aware of the tedium and wastefulness in addressing - over and over - Appellees' hash of names and identities proffered to the courts, especially where

[4] This same basic question has been raised, in one form or another, by Steele, in each of his appeals to this Court.

Appellees make *no effort* to clarify, and in fact work to conceal, party identity. Indeed, this Court witnessed MLBAM file *three* conflicting corporate disclosure statements in No. 10-2173 (in addition to MLBAM's *two* corporate disclosure statements in *Steele III* and *IV*[5]), after Skadden concealed their willful default with a false appearance on behalf in the district court court.[6]

Additionally, Appellee Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC ("FSG") – whose default and misconduct is addressed in this appeal (*though not in Appellees' Response*) – has filed *three* corporate disclosure statements in both *Steele III* and *IV*.[7] As for Appellee New England Sports Enterprises, Inc. f/d/b/a Fenway Sports Group f/a/k/a FSG ("NESE"), not to be outdone, they filed two notices of appearance, two corporate disclosure statements, and two motions to dismiss in *Steele III*,[8] while defaulting or, at a minimum, failing to

---

[5] *Steele III* Docket Nos. 31, 69, 69-1; *Steele IV* MLBAM First and Second Corporate Disclosure Statements of December 6, 2010, and March 28, 2011.

[6] *Steele* v. *Turner Broadcasting System, Inc.*, 746 F.Supp.2d 231, 236 (D.Mass. 2010).

[7] *Steele III* Docket Nos. 42, 67, 70; *Steele IV* FSG First, Second, and Third Corporate Disclosure Statements of December 6, 2010, March 25, 2011, and April 1, 2011.

[8] *Steele III* Docket Nos. 28 and 40; 33 and 66; 37 and 68, 68-1, respectively.

appear as named, without explanation, in *Steele IV*.[9] Moreover, these facts - like so many others - are unchallenged.

Additionally, this Court will recall, for example, (1) the shifting identities of Vector and Vector 2 (actually, Vector Two); (2) MLB Properties' false claim to have been "misidentified" as MLBAM; (3) the *sixteen* names used for *three* parties within the span of *two* pages of briefing; (4) Skadden Attorney Sloan's misrepresentation of the MLBAM-copyrighted work as "what we'll call the Turner promo;" and (5) the district court's recognition – albeit passive – of Appellees' muddled identities:

> It is unclear from the facts presented in the pleadings what the relationship is between MLB and MLBAM… Indeed it is worth noting that MLB filed the opposition to Steele's motion to default MLBAM and yet claims that MLBAM is a separate legal entity… MLBAM did technically default, although it remains unclear why MLB has (figuratively) picked up its banner.[10]

---

[9] Skadden Attorney Matule declared at a recent *Steele IV* hearing – with no explanation to the court, or response to Steele's subsequent written inquiry – that Skadden represents 20 "named" parties in the case (he did not mention NESE) - where Steele served – and the caption and complaint reflect – only 18. Steele IV Transcript of August 15, 2011 Hearing at 4.

[10] (1) Appeal II Steele Opening Brief at 15-16, n.2, 25-28, 63-73, Steele Reply Brief at 20-25; (2) Appeal II Steele Reply at 18-20, 27-31; (3) Appeal II Steele Reply Brief at 21; (4) Appeal I App-395; (5) *Steele* v. *Turner Broadcasting System, Inc.*, 746 F.Supp.2d 231, 236 (D.Mass. 2010), respectively.

With no good faith explanation for their *laissez-faire* approach to court disclosures, Appellees recently argued in *Steele IV* that their repeatedly misleading filings *for the court's benefit* were, essentially, none of Steele's business: "Steele has no standing or basis to request sanctions related to the filing of corporate disclosure statements…as there is a complete absence of any harm or prejudice to him." FSG's June 20, 2011 Opposition to Steele's Motion for Rule 11 Sanctions at 8 (*Steele IV*).

On the contrary, Appellees' pattern of willful inaccuracy in court filings – as detailed above and *presently* in this Court - is an integral part of their broader Skadden-lead scheme over the past three years to illegally conceal parties and/or their true identities, which has eroded the integrity of these and, indeed, all Steele-related proceedings. *Reyes-Garcia* v. *Rodriguez & Del Valle, Inc.*, 82 F.3d 11, 15 (1st Cir. 1996) ("rules are not mere annoyances, to be swatted aside like so many flies, but, rather…rules lie near the epicenter of the judicial process… patterns of repeated inattention warrant severe decrees").

a. The Evolving – and Devolving - Identities of MLBAM

In a now long-running sideshow, MLBAM has proved inventive, if careless, in crafting distinct yet inconsistent corporate disclosure statements.[11] Their latest filing in this regard, unfortunately, is no exception. In fact, three of four of MLBAM's appellate disclosures filed in this Court are contradictory.[12] Furthermore, MLBAM's disclosure here is inconsistent with MLBAM's third – and most recent – disclosure in Appeal No. 10-2173.[13]

Specifically, the title above the body of the instant disclosure reads "Major League Baseball Advanced Media, L.P." Such a corporate entity does not exist according to the Secretaries of State of Delaware (the state in which MLBAM was

---

[11] MLBAM appears to make sport of these false filings, committing what can only be viewed as gratuitous errors, given the sophistication and erstwhile professionalism of Skadden, Arps. What their motive is, Steele can only guess; however, that is not within Steele's purview, as corporate disclosure statements are, after all, primarily for the Court's benefit. Steele's duty, in this case, ends with diligent discovery and notification, leaving interpretation and – if warranted – sanctions, in the hands of the Court.

[12] MLBAM Second and Third Corporate Disclosure Statements (No. 10-2173) (1st Cir.); MLBAM Corporate Disclosure Statement (No.11-1675) (1st Cir.).

[13] MLBAM has yet to explain its contradictory positions regarding corporate parents/owners, insofar as the *Steele I* Orlinsky Declaration states MLBAM is "owned by" the same corporate entities which MLBAM now characterizes as "partners." Appeal II App-280.

incorporated in the year 2000) and New York (the state in which MLBAM is headquartered). When MLBAM introduced this cipher to the First Circuit in its second corporate disclosure in No. 10-2173, Steele notified MLBAM of their inconsistency, which prompted MLBAM's third disclosure in that appeal.[14]

Presently, that MLBAM has chosen to *revert* to its previously asserted incorrect nomenclature in its current disclosure – after it had previously corrected this error upon notification by Steele – is troubling; that MLBAM has failed, once again, to provide any justification or explanation, is indefensible.

b. FSG and NESE's Bizarre and Impossibly Misleading Corporate Disclosure Statements

Leaving no rule untested, FSG and NESE here explore the minutiae of misnomer, submitting to this Court shamelessly conflicted corporate disclosure

[14] "[Y]our alternating identification of MLBAM as 'Major League Baseball Advanced Media, L.P.' and 'MLB Advanced Media, L.P.' in the March 23, 2011 [corporate disclosure] 'update' has not gone unnoticed and Steele assumes - as the Court will - that this is a distinction without a difference, whether intentional or inadvertent." Steele Letter to Sloan of March 25, 2011 at 2, attached as Exhibit A to MLBAM March 28, 2011 Third Corporate Disclosure Statement (No. 10-2173) (1st Cir.).

statements which (1) directly contradict their most recent disclosures to the district court and (2) simultaneously co-opt the same acronym for two discrete parties.[15]

For its part, FSG willfully defaulted in district court and attempted to obscure its identity through any means possible, including, for example, default, false evidence, false appearances, and three corporate disclosure statements. Brief at 35-39, 52-54.

In FSG's latest conceit, its instant corporate disclosure has inexplicably abandoned the form and substance of its third district court corporate disclosure statement (Docket No. 70). App-476-477. A juxtaposition of the two disclosures gives the impression that they were filed by two distinct companies (which would be

[15] To illustrate and reinforce Steele's assertion that Appellees' misconduct in district court – raised but never addressed, hence never deterred - metastasized to infect other state and federal court proceedings, the following is a list of FSG-NESE-related party names which have materialized in Steele IV, pending in Massachusetts Superior Court, which were neither identified nor served by Steele: New England Sports Enterprises d/b/a Fenway Sports Group (December 6, 2010 Appearance and Motion to Dismiss); New England Sports Enterprises, LLC (December 6, 2010 Corporate Disclosure Statement); Fenway Sports Group (December 6, 2010 Corp. Disc. Stmt.); New England Sports Enterprises LLC d/b/a Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC (March 25, 2011 Corp. Disc. Stmt.); New England Sports Ventures I LLC d/b/a Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC (April 1, 2011 Corp. Disc. Stmt.); N.E.S.V. I LLC d/b/a "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC" (April 1, 2011 Corp. Disc. Stmt.); New England Sports Enterprises, LLC d/b/a Fenway Sports Management (June 20, 2011 Elaine W. Steward Affidavit); N.E.S.V. I LLC d/b/a Fenway Sports Group (Id.).

consistent with the default practices and misrepresentations of Skadden and Appellees in Steele-related cases, and Steele's assertion that FSG and Skadden have foisted fraud upon the *Steele III* district court). Brief at 35-39, 52-54. Absent any explanation, one can only speculate; of course, Steele's point is that one should not *have to* speculate.

Furthermore, in its instant disclosure, gone are FSG's unexplained quotation marks, variable party and parent names, rule citations, and the colloquial name of the party itself: Fenway Sports Group. App-476-477.

Finally, in a truly bizarre turn, FSG now adopts the acronym by which NESE has been known, i.e., "NESE" – *even while NESE still retains it* – creating the impression that the two parties are one, though their substantive names and corporate parents are different.

Thus, FSG has filed a corporate disclosure statement that is inconsistent with its three previously filed in district court, as well as the disclosure filed herein by its co-Appellee NESE - with whom FSG now apparently shares a name. App-307-310, 453-456, 476-477. Skadden and Appellees, by their reckless and disrespectful filings, appear to be toying with Steele and the Court; recall that Skadden's position is that corporate disclosures are beyond the reach and concern of Steele. *See* above ("Steele

has no standing or basis…"). While that may be true in a vacuum, or in a case where party identity and status – e.g., appeared, defaulted, falsely appeared, willfully defaulted – had not become central issues on appeal, it is well-off the mark here.

Whatever their intention – because it is not forthrightly disclosed – FSG, Skadden, and Appellees have, and are, making a mockery of the rules of civil and appellate procedure.

As to NESE – they filed two notices of appearance, two motions to dismiss, and two corporate disclosure statements in district court, in their role as 'running interference' to enable and conceal FSG's default.[16] Brief at 31, n.4, 35-39. NESE's corporate disclosure statement, moreover, does not conform to the two filed in district court. Also, NESE denotes the acronym "NESE" for "New England Sports Enterprises, LLC," whereas FSG's corporate disclosure statement denotes "NESE" as the shorthand for "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC." As a matter of common sense, two discrete parties cannot be the same party (as suggested by the identical shorthand acronym); unless, of course, they (surreptitiously) *are* the same party. Again, Steele and the Court can only speculate.

---

[16] In related proceedings, NESE has all but defaulted in *Steele IV*, and has yet to appear under the name by which they were served.

c. Forensic Musicologist Ricigliano Filed a False Appellate Corporate Disclosure Statement, and Misrepresented Himself and Filed an Intentionally Misleading and Bad Faith Declaration in in District Court

This Court is now quite familiar with Appellees' and Skadden's profusion of intentionally false corporate disclosure statements filed with the Courts of the First Circuit. Appellee Ricigliano – defendants' sole "expert" in *Steele I* and namesake to this appeal - now throws his hat in the ring with a false corporate disclosure statement of his own, on behalf of his musicology company, Donato Music, Inc.

Specifically, in district court, Ricigliano identified himself as "President, Donato Music Services, Inc." Appeal I App-556. Furthermore, Ricigliano prepared his *Steele I* "expert" forensic muicological analysis on letterhead bearing his name and the ostensible name of his company, "Donato Music Services, Inc." However, to the contrary, according to the Secretary of State of New York, "Donato Music Services, Inc." simply does not exist as a legal entity. On the other hand, "Donato Music, Inc." – whose "Chairman or Chief Executive Officer" is "D. Anthony Ricigliano" - was incorporated in 1990.

Accordingly, Ricigliano misrepresented himself and his expert analysis in *Steele I*, and has compounded his false appearances by foisting his fictional "Donato Music

Services, Inc." upon this Court in the form of a corporate disclosure statement. And although the distinction between the two "Donato" names may appear slight, precision and accuracy are to be reasonably expected from this "widely renowned" "expert," and indeed one would expect no less from one who "assist[s] in the preparation of court cases for numerous legal firms" on "numerous occasions" and who "testifie[s] in a variety of musical copyright cases." Appeal I App-460, 470, 556. To be sure, Ricigliano's misrepresentation is intentional, and in the absence of good faith explanation, should be afforded every adverse inference.

Furthermore, being a "widely renowned" expert forensic musicologist, Ricigliano is a member of an elite cottage industry whose unscrupulous practitioners – like himself – both *advise* copyright infringers in the unlawful use of "temp tracks," then *defend* those same infringers in court when they get caught.

Indeed, Mr. Ricigliano travels a well-worn path between the *back door* of the audiovisual editing suite and the *front door* of the courthouse. In his dual "professional capacity," Mr. Ricigliano "reviews hundreds of musical compositions created to accompany commercials," i.e., *sound recordings*, while at the same time "assist[ing] in the preparation of court cases for numerous legal firms" and

"testif[ying]…in a variety of musical copyright disputes." Appeal I App-460, 470, 556.

Being no spring chicken in the court of law, Ricigliano proffered, pursuant to 28 U.S.C. § 1746, an ostensible 'exculpatory' "Declaration of Anthony Ricigliano" in support of the moving defendants' motion to dismiss. As Ricigliano stated therein, "I take being sued here personally as a very serious matter." App-149.

Accordingly, Ricigliano made a series of statements under pains of perjury which, on first blush, appear to be exculpatory. However, a close reading reveals that Ricigliano – in a substantive context - *never even mentions the work of authorship at issue in this case*, that is, a *sound recording*. Instead, Ricigliano makes all manner of brave claims and denials as they pertain to Steele's *song*, which is not at issue in this case, and therefore are entirely irrelevant to his 'declaration' and have no bearing on this case. App-146, ¶¶ 7, 8; 147, ¶ 11.

In the end, beyond the din of sound and fury, Ricigliano's declaration does not deny the following claims: Ricigliano worked for MLBAM - with Bon Jovi - to develop and 'clear' Bon Jovi's "I Love This Town" soundtrack and the audiovisual

"Turner Promo" or "TBS Promo;" in the process Ricigliano and Donato unlawfully reproduced Steele's sound recording. App-487-489.

IV. RULE 11

Appellees correctly point out that I failed to raise the district court's Rule 11 admonishment of myself and my client. There is no argument to make here: I made a mistake. Cognizant of waiver principles, I will not attempt to undo my mistake here. Nonetheless, it is worth pointing out that part of Steele's Brief's "Relief Requested" was to reverse the district court's Rule 11 decision.

In any event, the merits have been briefed and my client awaits this Court's determination, confident that because the district court's ruling on the merits will not withstand this Court's scrutiny, neither will its Rule 11 ruling. Otherwise, the failure to further address the admonishment was my mistake alone and I can only request that any repercussions therefrom redound to me and me alone; my client has endured enough.

WHEREFORE, Steele respectfully requests that this Honorable Court reverse the District Court's Order dismissing this case and provide the relief sought by Steele in his Opening Brief.

/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: September 29, 2011

CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that on September 29, 2011, I caused this Reply of Appellant Samuel Bartley Steele, 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

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

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

Dated: September 29, 2011

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

United States Court of Appeals
For the First Circuit

No. 11-1675

SAMUEL BARTLEY STEELE

Plaintiff - Appellant

v.

ANTHONY RICIGLIANO; BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP; BRETT LANGEFELS; JOHN BONGIOVI, individually and, d/b/a Bon Jovi Publishing; JOHN W. HENRY; MAJOR LEAGUE BASEBALL PROPERTIES, INC., a/k/a Major League Baseball Productions; RICHARD SAMBORA, individually and, d/b/a Aggressive Music; TIME WARNER, INC.; TURNER SPORTS INC.; TURNER STUDIOS INC.; VECTOR MANAGEMENT LLC, a/k/a Successor in Interest to Vector Management; WILLIAM FALCON, individually and, d/b/a Pretty Blue Songs; BOB BOWMAN; CRAIG BARRY; DONATO MUSIC SERVICES, INC.; FENWAY SPORTS GROUP, a/k/a FSG, f/k/a New England Sports Enterprises LLC; JACK ROVNER; JAY ROURKE; LAWRENCE LUCCHINO; MAJOR LEAGUE BASEBALL ADVANCED MEDIA, L.P.; MARK SHIMMEL, individually and, d/b/a Mark Shimmel Music; MIKE DEE; NEW ENGLAND SPORTS ENTERPRISES, LLC, f/d/b/a Fenway Sports Group, a/k/a FSG; SAM KENNEDY; THOMAS C. WERNER; TURNER BROADCASTING SYSTEM, INC.

Defendants – Appellees

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

CERTIFICATE OF COMPLIANCE WITH RULE 32(a) FOR APPELLANT'S REPLY

Christopher A.D. Hunt
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
cadhunt@earthlink.net

This Brief complies with the type-volume limitations of Fed.R.App.32(a)(7)(B) because this brief contains 5,727 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii).

/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

CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on September 29, 2011.

Dated: September 29, 2011

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