

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:	)	Chapter 11
PEGASUS SATELLITE TELEVISION, INC., et al.,	)	Case No. 04-20878
Debtors.	)	(Jointly Administered)

**REPLY OF DEBTORS TO RESPONSE OF ROBERT RUSSELL TO  
DEBTORS' MOTION FOR SUMMARY JUDGMENT**

Pegasus Satellite Television, Inc. and its subsidiaries and certain of its affiliates, each a debtor and debtor-in-possession herein (collectively, the "Debtors"),<sup>1</sup> by and through their undersigned counsel, hereby file this Reply of Debtors to Response of Robert Russell to Debtors' Motion for Summary Judgment (the "Reply") and respectfully request that the Court enter an order granting the Debtors' Motion for Summary Judgment (the "Motion") with respect to Claim Number 734 ("Claim No. 734") filed by Robert R. Russell (the "Claimant" or "Mr. Russell," and together with the Debtors, the "Parties"). In support of the Motion the Debtors respectfully state as follows:

**REPLY**

1. In his Response to the Motion (the "Response"), Mr. Russell makes three arguments for why the Underlying Action<sup>2</sup> was filed within the applicable statute of limitations. Specifically, Mr. Russell argues that (i) an entirely separate proceeding to determine whether he

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<sup>1</sup> The Debtors are: Argos Support Services Company, Bride Communications, Inc., B.T. Satellite, Inc., Carr Rural TV, Inc., DBS Tele-Venture, Inc., Digital Television Services of Indiana, LLC, DTS Management, LLC, Golden Sky DBS, Inc., Golden Sky Holdings, Inc., Golden Sky Systems, Inc., Henry County MRTV, Inc., HMW, Inc., Pegasus Broadcast Associates, L.P., Pegasus Broadcast Television, Inc., Pegasus Broadcast Towers, Inc., Pegasus Media & Communications, Inc., Pegasus Satellite Communications, Inc., Pegasus Satellite Television of Illinois, Inc., Pegasus Satellite Television, Inc., Portland Broadcasting, Inc., Primewatch, Inc., PST Holdings, Inc., South Plains DBS, LP., Telecast of Florida, Inc., WDSI License Corp., WILF, Inc., WOLF License Corp., and WTLH License Corp.

<sup>2</sup> Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to

was entitled to unemployment benefits somehow tolled the running of the statute of limitations with respect to the Underlying Action, (ii) a different statute of limitations is applicable, and (iii) the Debtors incorrectly determined the date upon which the statute of limitations period began to run. All three arguments are fatally flawed and each is addressed individually below. As the arguments in the Response are without merit, the Debtors respectfully request that the court grant the Motion.

**The Claimant's unemployment benefits proceeding did nothing to toll the applicable statute of limitations with respect to the Underlying Action**

2. As set forth in the Statement of Undisputed Facts, the Claimant was terminated from his employment with Golden Sky Systems, Inc. ("Golden Sky") (a debtor herein and the defendant in the Underlying Action) on or about October 7, 1998.

3. The Claimant applied for unemployment benefits following his termination from Golden Sky (the "Unemployment Proceeding"). Although a claims examiner initially determined that the Claimant was not eligible for benefits, after numerous appeals the Claimant was ultimately awarded benefits when a Golden Sky representative failed to appear at a hearing before the Appeals Tribunal of the Georgia Department of Labor.

4. The Claimant appears to assert in his Response that the Unemployment Proceeding somehow tolled the running of the statute of limitations with respect to the Underlying Action, which was an entirely separate defamation/damage to reputation action that the Claimant filed in the Magistrate Court of Chatham County, Georgia well after the final adjudication of the Unemployment Proceeding. This assertion simply does not comport with the facts. Not only are the two actions entirely separate, an action for unemployment benefits such

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such terms in the Motion.

as the Unemployment Proceeding would in no way have put Golden Sky on notice that the Claimant might be intending to commence a future action for defamation or injury to his reputation. There is simply no way that the Claimant's initiation of the Unemployment Proceeding in any way lengthened the statutory time period for asserting an unrelated state law tort claim.

**The Underlying Action was in fact filed well outside of the applicable statute of limitations period set forth in O.C.G.A. § 9-3-33**

5. As the Claimant admits in the Statement of Undisputed Facts, the “conduct that is the subject of the Underlying Action is the same conduct that was described in the September 29, 1999 Letter.” Statement of Undisputed Facts, ¶5. The September 29, 1999 Letter, attached hereto as Exhibit A, asks Golden Sky to retract purportedly “slanderous and libelous” allegations concerning the Claimant’s alleged “mis-appropriations of GSS funds, improper billing of customers and diverting of GSS equipment,” the reasons given for his termination. In sum, the September 29, 1999 Letter requests retraction of purportedly defamatory statements allegedly made by the Claimant’s former superior at Golden Sky, and the Claimant admits in the Statement of Undisputed Facts that this exact conduct is the subject of the Underlying Action.

6. As set forth in the Motion, the statute of limitations applicable to defamation/damage to reputation actions under Georgia law is O.C.G.A. § 9-3-33, which provides that “actions for injuries to the person shall be brought within two (2) years after the right of action accrues, except for injuries to the reputation, which shall be brought within one (1) year after the right of action accrues...” Accordingly, as the Underlying Action clearly seeks to recover solely for damage to the Claimant’s reputation, under Georgia law the Claimant was required to commence the action within one year of the date upon which it arose.

7. In fact, this very same issue was already heard and decided by the Magistrate Court of Chatham County. In an order dated January 10, 2003, attached hereto as Exhibit B, the Magistrate Court held that the Underlying Action was filed outside of the applicable one year statute of limitations set forth in O.C.G.A. § 9-3-33 and dismissed the action. The only reason that the parties are spending time on this matter today is that the Claimant appealed the Magistrate Court's decision, which appeal had not been finally adjudicated as of the date upon which the Debtors filed for bankruptcy.

8. In a transparent attempt to get around the untimeliness of the Underlying Action, the Claimant attempts to recharacterize the Underlying Action as somehow being an action for the loss of personalty. This is simply not the case, and as set forth below, even if the Claimant was correct, the Underlying Action would still be untimely.

9. As set forth above, the Claimant freely admits that the "subject of the Underlying Action is the same conduct that was described in the September 29, 1999 Letter." As the September 29, 1999 Letter simply demands retraction of allegedly defamatory statements, it is disingenuous for the Claimant to now attempt to recharacterize his claim as an action for the loss of personalty in a last ditch effort to make it appear timely.

10. Claimant's assertion that the Underlying Action should now be recharacterized as an action for the loss of personalty (thus bringing it within the statute of limitations period applicable to either "injuries to personalty" or "actions for the recovery of personal property or for damages from the conversion or destruction of the same") appears to be based on the unsupported allegation in the Statement of Claim that "the Defendant stole [the Claimant's] customer base and referrals by falsifying customer physical addresses." To

understand why the Claimant could never have had standing to even assert such a claim, it is important to have a brief understanding of how Golden Sky's business operated.

11. Essentially, Golden Sky and the other Debtors had member agreements with the National Rural Telecommunications Cooperative (the "NRTC") whereby they had the exclusive right to market DirecTV programming within specified geographic areas. While Golden Sky was barred from marketing such services to customers in DirecTV territories and in the exclusive territories of other NRTC members, they were in no way obligated not to compete with the Claimant.

12. By asserting that Golden Sky was stealing customers by "falsifying customer physical addresses" (a charge that the Debtors unequivocally deny), the Claimant is essentially alleging that Golden Sky breached its obligations to the NRTC and/or DirecTV by signing up customers who lived in DirecTV territories or in the exclusive territories of other NRTC members. Even if such allegations were true, the Claimant could never have standing to assert them. Simply put, the only parties that could possibly have standing to claim that Golden Sky was stealing customers outside of its exclusive territories would be DirecTV and/or another member or members of the NRTC. There was no restriction whatsoever on Golden Sky's ability to compete with the Claimant in any geographic area, and as such, the Claimant could never have had standing to assert that Golden Sky was "stealing" customers.<sup>3</sup>

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<sup>3</sup> The Claimant cites to several cases for the proposition that a person can have a valuable property right in his employment, trade or profession, and that such actions are subject to a four year statute of limitations. However, even if the Claimant somehow had standing to assert such a claim, a brief examination of the cases cited shows that as a matter of law the Claimant could never have established the elements required to prove such a claim. In Lee v. Gore, 221 Ga. App. 632 (Ga. Ct. App. 1996) for example, the first case cited by the claimant, the court stated the general rule that "[t]he elements of a claim for tortious interference with employment include the existence of an employment relationship, interference by one who is a stranger to the relationship, and resulting damage to the employment

**The Debtors correctly calculated the date upon which the statute of limitations period began to run**

13. The Claimant asserts in his Response that under applicable Georgia law a statute of limitations period begins to run when a cause of action accrues. The Debtors agree with this characterization of the law,<sup>4</sup> but disagree with the Claimant's conclusion as to when the cause of action in the Underlying Action accrued.

14. Specifically, it is well established under Georgia law that where a party asserts a cause of action for injury to reputation, the cause of action accrues when the allegedly harmful act occurs. See, e.g., Jones v. Hudgins, 163 Ga. App. 793, 796 (Ga. Ct. App. 1982) ("As to the allegation of public disclosure resulting in injury to reputation, the right of action for injury to reputation accrues when the act by which reputation is injured occurs."); Daniel v. Georgia R. Bank & Trust Co., 255 Ga. 29, 30 (Ga. 1985) ("Plaintiff concedes that any action she may have had for injury to her reputation (libel) arose when the checks were returned by the bank so marked as to indicate that plaintiff had insufficient funds in her account to cover such checks, or showing that plaintiff had cashed checks after closing her account."). The reasoning behind this rule is that in actions based on alleged damage to a claimant's reputation, the damage occurs as soon as the defamatory conduct takes place – as opposed to when it is discovered or should have been discovered by the claimant. See, e.g., Edwards v. Associated Press, 512 F.2d 258, 263 (5th Cir. 1975) ("the court concludes that, since the gravamen of the offense is not the

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relationship." In the present case, the Claimant could clearly never have asserted such a claim because the party who is alleged to have made defamatory remarks was the claimant's superior at Golden Sky – clearly not a "stranger" to the employment relationship.

<sup>4</sup> While the Claimant cites to several cases for this proposition, he needs to look no further than the language of the applicable statute. As set forth above, O.C.G.A. § 9-3-33 provides that "actions for injuries to the person shall be brought within two (2) years *after the right of action accrues*, except for injuries to the reputation, which shall be brought within one (1) year *after the right of action accrues...*" (emphasis added).

knowledge of the plaintiff or the injury to his feelings but is rather the damage to his reputation, the right accrues as soon as the article is exhibited to third persons...”).

15. Claimant admits in the Russell Deposition that the Alleged Conduct (among other things, allegedly contacting customers and informing them that the Claimant was overcharging them) occurred “one or two weeks prior” to his October 7, 1998 termination from Golden Sky. Russell Deposition, page 92, lines 4-12. Accordingly, even interpreting the facts in the light most favorable to the Claimant and assuming that the Alleged Conduct occurred only one week prior to October 7, 1998, the latest date upon which such conduct could have occurred (and the latest date upon which the cause of action could possibly have accrued for statute of limitations purposes) is October 1, 1998.

16. As set forth in the Motion, even though the Claimant admits in the Russell Deposition that the Alleged Conduct occurred on or before October 1, 1998, the Claimant did not file the Statement of Claim in the Underlying Action until October 4, 2002. Statement of Undisputed Facts, ¶5; Russell Deposition, page 50, line 22. Accordingly, Claimant filed the Statement of Claim more than four (4) years after the latest date on which the cause of action could possibly have accrued, which was over three (3) years after the expiration of the applicable one (1) year statute of limitations period set forth in O.C.G.A. § 9-3-33. Thus, even if the Claimant was correct and a four year statute of limitations applied, his claim would still be barred as untimely.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested in the Motion and disallowing and expunging Claim No. 734 in full.

Dated: Portland, Maine  
May 13, 2005

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Attorneys for Debtors and Debtors  
in Possession



**Exhibit A**

DATE: 9-29-99

TO GOLDEN SKY SYSTEMS, INC.

YOU ARE HEREBY NOTIFIED TO RECALL AND RETRACT EVERY STATEMENT WITH RESPECT TO ROBERT RUSSELL, JR. REGARDING TO ALLEGATIONS OF MIS-APPROPRIATIONS OF GSS FUNDS, IMPROPER BILLING OF GSS CUSTOMERS AND DIVERTING GSS EQUIPMENT; ALL OF WHICH IS SLANDEROUS AND LIBELIOUS. THIS TO BE ACCOMPLISHED IN LIKE FASHION AS THE SLANDER AND LIBEL I COMPLAIN, BY GOING TO EACH AND EVERY CUSTOMER IN THE SAME MANNER THAT THE GENERAL MANAGER OF THE HINGOON, GEORGIA OFFICE MADE SUCH ALLEGATIONS IN BRYAN, CHATHAM AND KEEFINGHAM COUNTIES OF GEORGIA. YOU SHALL PROVIDE ME WITH A REGISTERED LETTER INFORMING ME THAT THIS PERFORMANCE HAS BEEN COMPLETED AS WELL AS A PERSONAL STATEMENT FROM THE OFFICERS OF GOLDEN SKY SYSTEMS, INC. RETRACTING IN FULL SAID ALLEGATIONS: THIS TO BE COMPLETED IN TEN DAYS OF RECEIVING THIS DEMAND. IN DEFAULT OF SUCH RECALLATION AND RETRACTION, IN MY ACTION AGAINST YOU I SHALL CLAIM BOTH ACTUAL AND PUNITIVE DAMAGES.

SIGNATURE: *Robert Russell*

227 E DeRENNE DRIVE

SAVANNAH, GA 31405-6721

*Dennis*

EXHIBIT

*A*

**Exhibit B**

ENTERED IN THE  
CLERK'S OFFICE  
MAGISTRATE

IN THE MAGISTRATE COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

2003 JAN 10 AM 11:22

ROBERT RUSSELL,  
Plaintiff,  
  
vs.  
  
GOLDEN SKY SYSTEMS, INC.,  
Defendant.

CHATHAM COUNTY, GA.  
BY LHP

Civil Action No.: M02K095

**ORDER**

The Plaintiff in the above-styled matter brought suit for defamation and other damages to the person. In its Answer, the Defendant raised the statute of limitations as a defense, and moved this Court to dismiss the case based on those grounds. The Defendant's Motion having come before this Court for argument, it is hereby ORDERED that this case be dismissed as untimely filed outside the applicable statute of limitations of O.C.G.A. § 9-3-33.

This 10 day of JANUARY, 2003.

*Larry B. Proctor*  
Judge, Magistrate Court of Chatham County

Prepared By:  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

_____	)	
In re:	)	Chapter 11
	)	
PEGASUS SATELLITE TELEVISION, INC., et al.,	)	Case No. 04-20878 (Lead Case)
	)	
Debtors.	)	Jointly Administered
_____	)	

**CERTIFICATE OF SERVICE**

I, Sheila R. Dilios, being over the age of eighteen and an employee of Bernstein, Shur, Sawyer & Nelson, hereby certify that on May 13, 2005 I caused the Reply of Debtors to Response of Robert Russell to Debtors' Motion for Summary Judgment to be served on the parties on the attached service list by either (i) electronic service; (ii) U.S. First Class Mail, Postage Prepaid; (iii) Federal Express or (iv) by verifying that such persons(s) are listed on the Electronic Mail Notice List kept by the Clerk's office and therefore will be served as part of the Electronic Case Filing ("ECF") system pursuant to the Standing Order Regarding Administrative Procedures for Electronically Filed Cases dated August 12, 2002, and entered in the U.S. Bankruptcy Court for the District of Maine.

Dated: May 13, 2005

/s/ Sheila R. Dilios

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