

[Letterhead Fleischfresser & Associated Lawyers]

Most Excellent Doctor Judge of Law of the ___th Civil Courtroom of the Central Court of the Court District of the Metropolitan Region of Curitiba, Paraná

ROSANE GUTJHAR, Brazilian, widow, holder of Identity Card n.º 407.123.340-9/RS, with tax number CPF/MF 935.423.050-49, resident in Curitiba, Paraná, at Rual Leão Sallum, n.º 462, apt. 103, through her lawyers (power of attorney included), with their professional office in this city, at Rua Valdívnia, 572, 2º floor, comes before Your Excellency, presenting a request for **Indemnification** against **Joseph M. Sharkey**, North American, journalist, passport n.º -214458756, resident at New Jersey, USA, 130 Essex Ave, Glen Ridge, Zip Code: 07028-2409, telephone (973) 748-8378, for the reasons set forth below.

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1. FACTS

The author lost her husband in the Gol Airlines aviation accident with the Legacy business jet, which occurred on September 29, 2006, widely divulged by the media.

In the investigation of the facts to discover the cause of the accident, the Legacy pilots were detained in Brazil for a certain period, in the face of the finding of human error.

The pilots are defendants in the criminal trial underway in the legal district of Sinop/MT, in virtue of flying with the transponder – a device to which

is connected the anti-collision equipment and which monitored the plane's altitude -, besides remaining at the altitude of 37,000 feet, while the flight plan foresaw a descent to 36,000 feet on that part of the route.

The pilots were freed to return to the United States of America, under the pledge to return to personally testify on the appropriate occasion, in conformance with the treaty between Brazil and that county, so long as the requirements established in the same were respected.

These same pilots were received in the USA as heroes by the North American Vice-President, in virtue of having saved the lives of six North Americans, forgetting the fact that they caused the death of 154 Brazilians, because, naturally, for them, these six lives were much more valuable than those.

With that desideratum, the defendant, as one of the Legacy's passengers and possessing great influence in the media, launched a subliminal campaign in his Internet blog in favor of the pilots, in order to win the sympathy of his country to impede the return of the pilots to Brazil.

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That fact by itself would not merit reproof, if it were not for the personal attacks on the President of the Republic, air traffic controllers and others of the country's personalities.

In a reiterated and incisive manner, the defendant began to proffer insults to every and any Brazilian, in an indiscriminate fashion.

The plaintiff, besides losing the "love of her life", in a sudden and tragic manner, and not obtain satisfaction about the real causes of the accident, feels discriminated against by the treatment given to the alien defendants in the criminal trial in detriment to the domestic defendants, merely because they are North Americans, and further is publicly attacked by the defendant, along with other Brazilians.

There is a rumor that the defendant made the ill-fated journey with the intent of writing an article about the Amazon, intending to demonstrate that the air space belongs to no one, the reason for this he asked the pilots to turn off the device that would allow them to be detected in that space, and this is why he feels such a responsibility to clear the pilots of all blame for the accident.

Independent of whether or not that hypothesis is true, nothing justifies the words divulged against all Brazilians, comparing them to the "Three Stooges" painting them (us) as "the most idiot of idiots", "archaic country", "land of Tupiniquins and bananas", that "Brazil is a country of Carnival, soccer, bananas, thieves and prostitutes", among other attacks.

Even Santos Dumont was used to wound Brazilian spirits, with the affirmation by the defendant that the Father of Aviation only managed his achievements because he didn't live in Brazil.

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The Courts were attacked for being slow, of the jungle, Kafkaesque, in which judges and lawyers don't know the law, and don't respect those under judgement.

In this way there is no way for the plaintiff to remain silent, remain inert feeling herself the subject of "banana", "idiot", "archaic", "prostitute", without demanding a reparation.

The author hopes that justice will be done in relation to all those responsible: pilots, authorities and even in relation to the humble air traffic controllers.

This to demonstrate to her daughter that mistakes are punished, that people have dignity, the country is good, and justice prevails.

But for that, the duty to not resign herself to any kind of offense or injury, whether moral or physical, to take initiative, to silence those who verbally and unjustifiably offend the Brazilian people, as is the case of the defendant.

She hopes that in this way, the defendant will know that there exist in Brazil people who are intelligent, active, strong, determined, thinking and, above all, the Courts.

Not every Brazilian can be called "banana", "idiot", "archaic", "ignorant" and part of "the gang of Lula and his 40,000 thieves".

And to defend oneself, an attack can be dispensed with, especially an ill-directed one.

If the defendant intended to free his "Yankee heroes" from the four-star hotel in Copacabana with all the luxuries, it was completely unnecessary to accuse ALL Brazilians so strongly and vehemently.

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Only reparations will restore the plaintiff's dignity, not through the monetary value, but to prove to the defendant that in Brazil too errors are punished, there is justice.

Merely the fact that the defendant will need to defend himself and justify himself, and worry about the outcome or even disdain the present request and see himself obliged to act without it being through the media is a way to inhibit the conduct of the defendant and of all others who so behave.

II. THE LAW

II.1. Jurisdiction

Consonant with what is established by Article 94 of the CPC [Code of Civil Trial Procedure], lawsuits based on personal right will be, as a rule, filed in the defendant's place of residence, except as in the foreseen exceptions, one of

those being found in Section 3, by which the court of the plaintiff's residence has jurisdiction when the defendant has neither domicile nor residence in Brazil.

In the same sense, the only section of Article 100 of the CPC prescribes jurisdiction as lying with the plaintiff when the defendant in actions for the reparation of damages suffered because of a crime, as in the present case.

In this way, as the defendant does not reside in Brazil, and nor does he possess a domicile in this country and the request for reparation is in reason of a crime, the present court of the plaintiff's domicile has jurisdiction.

II. 2. Active Legitimacy and interest in the case

Although this deals with a collective interest, as all Brazilians can consider themselves offended with the offenses perpetrated by the defendant, the plaintiff, as a Brazilian, has interest in the reparation, being, therefore, a legitimate part to appear as plaintiff in the present case.

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The law specifies no requirement beyond the author's own interest to bring the present suit, being dispensable the legal notification of any others interested.

II. 3. Damage

As explained above, the defendant's illicit conduct carried with it offense to the honor, the dignity, and the spirit of the plaintiff, besides harming the criminal trial underway against the North American pilots.

The Federal Constitution establishes in items V and X of Article 5, the right to indemnification for the violation of non-property damage (sic).

Article 1 of the Great Charter establishes as a fundamental principle of citizenship, among others, the dignity of the human person, as well as that international relations are conducted by the principle of national independence, human rights and the repudiation of racism prevailing.

Article 186 of the Civil Code clarified that the violation of right is illicit, even if exclusively a non-property right, or if resulting from harm caused by voluntary action, as occurs in the present case.

Such illicit acts are understood in the same way in the United States of America, a country in which people take the greatest care in causing offense to others, due to the reprimands imposed by the courts and the rebukes of the offended.

Because of this, that county is not considered a country of "bananas", in the face of the severe protection of the rights of citizens.

The damage to the plaintiff is amply documented, justifying an indemnity in the most ample way possible.

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11.4. Indemnification for non-property and property damages

For all the injuries suffered by the plaintiff, she deserves and should be indemnified by the defendant.

It is suggested as a parameter for indemnity for the non-property damages values similar to those for which the defendant would be sentenced in his own country.

This is a way to inhibit, effectively, the illicit and damaging conduct of the same, in detriment to the plaintiff and the other citizens.

It is emphasized that the question of indemnities for non-property damages has two desiderata to be reached: compensation for the injury suffered, and inhibiting the repetition of the harmful act by the defendant.

In the present case, the defendant being a journalist for the New York Times and a free-lance professional of international renown, a verdict below North American levels would not produce the desired effects: end the abusive practice by the defendant, and showing that Brazil is not an “archaic” country of “bananas, Carnival and prostitutes”.

The tendency of the Brazilian judiciary to set indemnities at tiny sums to discourage those harmed from filing lawsuits of this nature, with all due respect, does not correspond to the law’s purpose.

Only once offenders begin to “feel in their pocket” the result of their harmful practices through the disobedience of the law, will this kind of action stop being done, because they will be less harmed or even seek out-of-court settlements to avoid heavy damages.

An explicit example of this logic is the defendant’s country.

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In the USA the defendant would never have the courage to attack any citizen with the words he has divulged, because there is mutual respect and the fear of elevated verdicts.

Further, the plaintiff will only feel compensated for the offenses against her dignity when she knows that the defendant admits his error as to the generality of Brazilians and the effectiveness of this country’s Courts, ceasing to belittle them, and coming to respect Brazil and its citizens.

Therefore, only a substantial verdict will be capable not only of compensating the plaintiff but of avoided the reiterated practice of the conduct by the defendant.

That is the request.

III. REQUEST

In the face of the ample exposition set out of the facts and the law, added to the proofs included in the case documents and those to be yet produced, to the legal knowledge and sense of justice nurtured by this judge, it is requested:

- 1) The citation of the defendant, by AR [?] at the address given in the preamble, so that if he wants he may present a defense, in the time and under the penalties of law, emphasizing the possibility of adding a copy translated into the defendant's idiom, in order to make the citation valid.
- 2) The determination by the judge that the defendant apologize to all Brazilians, in the same means of communication used by him (New York Times, interviews and his "blog"), under penalty of fine, as well as removing the injurious terms from his blog.
- 3) The fixing of an indemnity for the non-material damages suffered by the author because of the facts narrated.

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- 4) The production of all the means of proof admitted at law, especially the defendant's personal testimony, under penalty of confession, the hearing of witnesses, and the addition of documents as permitted in law.
- 5) The allowing of time for adding translations of the offensive words by a certified translator, because while they are already in the hands of this author, they have still not been made available.
- 6) The defendant's condemnation in all the corollaries of the law.

The present cause is, for fiscal effects, given the value of R\$500,000.00 (five hundred thousand reais).

It awaits approval.

Curitiba, September 25, 2008

(signed)

Oscar Fleischfresser
OAB/PR 21.505

(signed)

Carla Fleischfresser
OAB/PR n.º 15687