

## Web site argues for free speech protections

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By TOM FAHEY State House Bureau Chief

CONCORD -- Lawyers for a Web site that specializes in mortgage industry news asked the New Hampshire Supreme Court yesterday to reverse a lower court order that it reveal sources of confidential information.

Implode-Explode Heavy Industries argued that it is entitled to the same protections as newspapers and other journalism outlets. It asked the court to reverse the order by Rockingham County Superior Court Justice Kenneth McHugh that it never again post a confidential report on Mortgage Specialists Inc. of Plaistow, and that it turn over the name of a blogger whom MSI claims defamed the company.

MSI attorney **Alex Walker** asked the court to leave the order in place, saying the company is not trying to infringe on free speech or the First Amendment.

He said the Web site should not benefit from the same protections the conventional media enjoy. Implode-Explode is a site that aggregates information about the industry, and does not produce independent reporting, Walker said.

He said MSI's arguments to McHugh were narrowly tailored to protect confidential information and to help it find someone who defamed it. In fact, the company argued Implode-Explode pulled the 2007 loan summary chart off its site when first requested, so the ban on posting it again should not even be an issue.

Implode-Explode has argued that it provides a valuable service by posting information about an industry that plays a critical part in the nation's economy and that it should have the same right as traditional media to protect sources and to publish information it obtained legally.

Implode-Explode attorney Jeremy Eggleton also argued that the blogger in question did not defame the company, because his posting referred only to MSI president Michael Gill. MSI argues that Gill and the company are so closely linked that defamation of one hits the other.

Eggleton urged the court to reverse McHugh, and to develop guidance for courts to use when handling similar issues related to Internet postings and Web site forums.

Justices dug into the distinction between the media and Internet sites.

Justice Carol Ann Conboy noted, that "a lot of people do blogging on the Internet. Are they all reporters?" The site in question, she said, "is unlike a pure newspaper," noting one click can link a user to all stories about Gill.

The case has drawn attention from several national organizations, including the Reporters Committee for Freedom of the Press, Harvard Law School's Berkman Center for Internet & Society, and the Citizen Media Law Project.

They argue that the order runs counter to First Amendment rulings in the past, which basically hold that a news organization can publish any materials it possess, as long as it has obtained them legally.

Those supporting Implode-Expode argue the court should focus on the function of an organization, and not the medium in which its work is published. By that measure, the Web site deserves the same rights of more traditional media, not only to publish but also to protect its sources.

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