

STATE OF MINNESOTA
COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT
HASTINGS, MINNESOTA 55033

In Re: NEW SCHOOL CORPORATIONS, INC., A MINNESOTA CORPORATION et al.
vs. MICHAEL B BRODKORB et al.
Case Number: 19-CX-06-006432

GREGORY JOHN WALSH
WALSH & GAERTNER
525 PARK ST STE 230
ST PAUL MN 55103

NOTICE OF FILING OF ORDER

You are hereby notified on June 2, 2006 a
ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND DENYING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DKM

was filed in the above entitled matter.

A true and correct copy of this notice has been served by mail upon the
parties named herein at the last known address of each, pursuant to the
Minnesota Rules of Civil Procedure.

Sue Lawrence, Chief Deputy

Dated: June 2, 2006 By _____ DEBORAH MCNAUGHTON _____
Deputy

12096A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

**New School Corporations, Inc.,
a Minnesota Corporation,
Blois Olson,**

Court File No.: CX-06-6432

Plaintiffs,

vs.

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS AND DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

**Michael B. Brodkorb and
www.minnesotademocratsexposed.com,**

Defendants.

The above-entitled matter came on for hearing before the undersigned Judge of District Court on April 28, 2006, at 9:00 a.m. at the Dakota County Judicial Center, Hastings, Minnesota. Mr. Shawn Pearson, Esq., appeared on behalf of Plaintiffs. Mr. Gregory Walsh, Esq., appeared on behalf of Defendants.

Based upon the file, the arguments of counsel, and being fully advised in the premises, the Court hereby makes the following:

CONCLUSION OF LAW

1. Plaintiffs produced clear and convincing evidence that Defendants' acts are not protected by Minnesota Chapter 554.
2. There are genuine issues of material fact regarding whether the statement published by Defendants was false.

ORDER

1. Defendants' Motion to Dismiss is hereby respectfully DENIED.
2. Defendants' Motion for Summary Judgment is hereby respectfully DENIED.

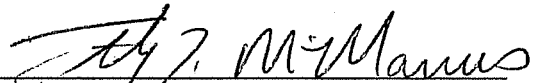
FILED DAKOTA COUNTY
VAN A. BROSTROM, Court Administrator

JUN 02 2006
BY DKM
DEPUTY

3. The attached memorandum is incorporated hereto as part of this Court's Findings and Rationale for its decision.

Dated: May 31, 2006

BY THE COURT:



Timothy J. McManus
Judge of District Court

MEMORANDUM

Background

On December 28, 2005, www.minnesotademocratsexposed.com (hereinafter referred to as "MDE") reported that Hubert H. "Buck" Humphrey, III (hereinafter referred to as "Mr. Humphrey") approached Colleen Rowley's campaign for United States Congress (hereinafter referred to as "the Rowley Campaign") and offered to do consulting work, and that the Rowley Campaign rejected Mr. Humphrey's offer.

At the time Mr. Humphrey made this proposal to the Rowley Campaign, he was employed as a Senior Counselor with New School Communications, Inc. (hereinafter referred to as "New School"). Mr. Humphrey began working for New School in approximately March 2005. New School is owned by Blois Olson (hereinafter referred to as "Mr. Olson"), who is a Democratic strategist, political commentator, and co-author of the political news magazine Politics in Minnesota.

In response to the Rowley story, Mr. Olson contacted MDE via email claiming the report was false and stating that if Mr. Humphrey pursued work with the Rowley Campaign, it was prior to his employment with New School. Mr. Olson demanded that MDE immediately retract the story or face legal action.

On December 29, 2005, this action was commenced by Plaintiffs. Subsequent to the service of the lawsuit upon Defendants, Mr. Olson released a copy of the Summons and Complaint to the Associated Press. Mr. Olson also appeared on two radio talk show programs to discuss the lawsuit.

Legal Analysis

Defendants maintain that this matter is a SLAPP (Strategic Lawsuit Against Public Participation) aimed at interfering with the legitimate exercise of their First Amendment rights to free speech and to procure favorable government action through public participation. Minn. Stat. § 554.03, provides in pertinent part that:

Lawful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights.

Defendants' contend that Plaintiffs' claims relate to acts which were taken during Defendants' involvement in public participation, and, therefore, this lawsuit should be dismissed. *See* Minn. Stat. § 554.01, Subd. 6.

Whether Defendants Acts are protected by Minnesota Chapter 554

To survive Defendants' motion to dismiss, Plaintiffs must provide clear and convincing evidence to this Court that the Defendants acts are not protected by Minnesota Chapter 554. If the plaintiff cannot satisfy this burden of proof, the court must grant the motion to dismiss. *See* Minn. Stat. §§ 554.02, subd. 2(2); subd. 2(3)

Chapter 554 applies to speech that is aimed at procuring favorable government action. DME's website is aimed at influencing voters and is a self-professed "blog dedicated to a truthful discussion on the activities, statements, and tactics of Minnesota Democrats," which does not petition for any favorable government action. Because Plaintiffs have produced clear and convincing evidence for this Court to show that Defendants acts are not protected by Minnesota Chapter 554, Defendants' Motion to Dismiss is denied on this basis.

Summary Judgment

By introducing evidence outside the pleadings, Defendants converted their motion to dismiss into a motion for summary judgment. *Black v. Snyder*, 471 N.W.2d 715, 718 (Minn. Ct. App. 1991) (citing Minn. R. Civ. P. 12.02). A motion for summary judgment will be granted only if “there is no genuine issue as to any material fact and ... either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. The Court will look at the facts “in the light most favorable to the non-moving party.” *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

Defamation

In order to succeed in its defamation claim, Plaintiffs must prove that Defendants published a: (1) statement of fact; (2) that was false; (3) that concerned Plaintiff; and (4) tends to harm their reputation or lower it in the estimation of the community. *Foley v. WCCO Television, Inc.*, 449 N.W.2d 497, 500 (Minn. App. 1989), rev. denied, cert. denied 497 U.S. 1038, 110 S. Ct. 3302 (1990).

There is no dispute that MDE published a statement of fact that concerned New School and Mr. Olson and would tend to harm their reputation or lower it in the community. However, there are genuine issues of material fact as to whether the statement published by MDE was actually false.

MDE still maintains that Mr. Humphrey approached the Rowley Campaign and offered to do consulting work, and the Rowley Campaign rejected Mr. Humphrey's offer, and that at the time Mr. Humphrey made this proposal to the Rowley Campaign, he was employed as a Senior Counselor with New School Communications, Inc. On the other hand, New School still maintains that the report is false and that if Mr. Humphrey

pursued work with the Rowley Campaign, it was prior to his employment with New School. Clearly, the parties' conflicting positions create a genuine issue of material fact regarding whether the statements published by MDE are false. Accordingly, Defendants' summary judgment motion is denied.

T. J. M.