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STATE OF MINNESOTA
IN COURT OF APPEALS

Jerry L. Moore,

Respondent,

v.

John Hoff, a/k/a "Johnny Northside,"

Appellant.

CASE NO: A11-1923

CERTIFICATE OF COMPLIANCE

I, Paul Godfread certify that Appellant's Memorandum complies with Rule 132 of the Minnesota Rules of Appellate Procedure. I further certify that used Pages '09 version 4.01 to prepare this memorandum and that the memorandum contains 5,329 words.

Dated: January 30, 2012

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STATEMENT OF THE CASE

This action was brought by Jerry Moore, whose temporary employment with the University of Minnesota ended the day after a blog post critical of him and his involvement in mortgage fraud was posted online by John Hoff. Moore's position at the University of Minnesota was related to researching housing and mortgage issues in Minneapolis, a topic that Hoff had regularly writes about.

Moore subsequently sued Hoff, Don Allen, and John Doe defendants for defamation and tortious interference based on Hoff's blog posts that Moore alleged led to his termination. Moore eventually settled with defendant Allen, who then testified on Moore's behalf, and failed to identify any of the John Does.

Prior to trial, the trial court ruled that Moore was a limited purpose public figure, due to his frequent involvement in Minneapolis politics and his numerous, willing media appearances in stories relating to housing issues in North Minneapolis. The case proceeded to trial, where the jury found that the allegedly defamatory statement in Hoff's blog about Moore's participation in mortgage fraud was not false. The jury did however find that Hoff had tortiously interfered with Moore's contract and prospective economic advantage.

Hoff then moved for judgment as a matter of law, or in the alternative a new trial. Hoff argued that under Minnesota law and the First Amendment, because the jury found that the statement was true and the blog post therefore not defamatory, the statement could not as a matter of law form the basis of a tortious interference claim. The trial court denied Hoff's motion, ruling that the jury's

findings on the tortious interference claims had reasonable support in the factual record. The trial court did not address Hoff's First Amendment arguments. Defendant then filed a timely notice of appeal.

STATEMENT OF LEGAL ISSUES

1. Does a jury verdict for tortious interference violate the First Amendment, if the jury relied, even in part, on protected speech such as a true statement as evidence to support that verdict?
2. Does a verdict violate for tortious interference violate the First Amendment, if the evidence it was supposedly based on was not specifically identified by the trial court and the trial court failed to carefully scrutinize the evidence in order to determine whether the evidence was expressive and protected by the First Amendment?

In its Order and Memorandum of August 22, 2011, the trial court failed to address Hoff's First Amendment arguments and the related tortious interference precedent set in Minnesota courts.

APPOSITE CASES

Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485 (1984)

Fox Sports Net North, LLC v. Minnesota Twins Partnership, 319 F.2d 329 (8th Cir. 2003)

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)

Wild v. Rarig, 234 N.W.2d 775, 793 (Minn. 1975)

The issue of First Amendment protection was first raised by *plaintiff* throughout his Complaint (A-1) (arguing erroneously that the First Amendment somehow did not apply to defendant Hoff), the issue was raised again in defendant's Answer (A-15), and was raised again with greater specificity along with references to the application to Minnesota tortious interference law throughout defendant's post trial motions (A-40).

STATEMENT OF FACTS

John Hoff is a blogger who writes about issues in North Minneapolis, particularly issues of crime, home foreclosures, and mortgage fraud. Hoff began writing his blog titled "The Adventures of Johnny Northside" in 2008 using a free service called Blogspot.[1] Hoff as a grassroots journalist[2] allowing him to cover news specific to north Minneapolis.[3] Hoff's coverage would include coverage of local political figures that may have escaped the attention of the more established media because he believes that the public ought to have information about such figures.[4] Hoff's blog makes use of public documents such as police reports by printing them online.[5]

Jerry Moore was one of the public figures[6] taken to task by Hoff in his blog. Moore then alleged that Hoff had defamed him and tortiously interfered with his contract and prospective employment with the University of Minnesota by writing a blog post on June 21, 2009.[7] However, by that time, Moore was already the subject of controversy within the neighborhood because of alleged financial impropriety during his tenure as executive director of the Jordan Area Community Council (JACC), an altercation with another JACC board member, and alleged

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[1] *Id.* 47:14-48:6

[2] *Id.* 49:25-50:3

[3] *Id.* 52:1-7

[4] *Id.* 54:5-15

[5] *Id.* 55:4-10

[6] The trial court held that Jerry Moore was a limited purpose public figure. Order and Memorandum appears in the Appendix at A-29.

[7] *See* Second Amended Complaint generally at A-1.

involvement with a mortgage fraud scheme.[8]

Moore's tenure as executive director of JACC was controversial. Among other things, some board members objected to his salary and his choices in expenditures.[9] JACC held a board election on January 12, 2009 where Jerry Moore hit three people, which[10] led to his termination.

Hoff learned that after Moore was terminated by JACC, he had been hired by the University of Minnesota's UROC program, which studied housing and mortgage issues in Minneapolis.[11]

Hoff's June 21 blog post focused on the issue of having a public institution such as the University of Minnesota hiring Moore, who had been involved in numerous controversies in north Minneapolis and especially Moore's likely involvement in mortgage fraud.[12] The allegedly defamatory statement that appeared in the June 21 post was: "[r]epeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave."[13] At trial, Hoff described the "repeated and specific evidence" that he was referring to as Jerry Moore's name appearing in a criminal complaint against Larry Maxwell as a recipient of proceeds from the fraud as well as the documents that establish Moore's involvement such as a check for $5,000 written to Jerry Moore, an invoice from JL Moore

[8] Transcript 63:24-65:1

[9] 340:6-18, 341:1-25

[10] 342:16-343:17

[11] *Id.*

[12] *See* Ex. 101

[13] Ex. 101

Consulting bearing Moore's address at 2022 West Broadway, a HUD statement indicating a payment made to Jerry Moore, as well as testimony given in the Maxwell trial.[14] The rest of the June 21 post describes why in Hoff's opinion the University's decision to hire Moore was a bad development for both the University and the Jordan neighborhood.[15]

The fraudulent transaction involving 1564 Hillside involved the theft of John Foster's identity.[16] Foster, who testified at trial, had applied for a refinance of his mortgage with Common Sense Mortgage in 2003 which he believes was the source of documents used in the identity theft.[17] In early 2006, Moore briefly held a position at Common Sense Mortgage.[18] Foster kept meticulous financial records and in 2006 noticed several problems indicating that his identity had been stolen and used to take out several mortgages.[19] Mr. Foster learned that mortgages on 1564 Hillside had been taken in his name because mortgage statements were mailed to his true address.[20]

There is little in the record by way of evidence from Moore's employer, the University of Minnesota. A University employee, Makeda Zulu-Gillespie testified that hiring and firing decisions were made by Irma McClaurin who did not

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[14] Transcript 77:19-78:17, Moore indicated the address on the invoice was his at 280:3.

[15] Ex. 101

[16] Transcript 399:18

[17] *Id.* 399

[18] *Id.* 288:12-17

[19] *Id.* 400:20-401:12

[20] *Id.* 403:24-404:5

testify.[21] When asked whether she knew of any University employee being fired based on blog postings, Gillespie said, "I don't know why people are - - are let go."[22] The letter Moore received gave no indication as to the cause of his termination, but merely stated that his temporary, part-time, and casual position at the University had ended and directed him to a listing of vacant positions at the University so that he could apply.[23]

During trial, Hoff had been serving as an Army National Guard Reservist in Minnesota. Shortly after the conclusion of the trial, Hoff was called to active duty and has been deployed to Afghanistan as part of Operation Enduring Freedom.

[21] *Id.* 225:23-25

[22] *Id.* 228:1-7

[23] Exhibit 103

STANDARD OF REVIEW

The trial court's denial of defendant motions for judgment as a matter of law or new trial were premised upon errors of law. Where the appellant "raises only a question of law, our review is de novo." *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (addressing constitutional challenges). Additionally, First Amendment questions of "constitutional fact" compel *de novo* review. *Bose Corp. v. Consumers' Union of United States, Inc.*, 466 U.S. 485, 509 n.27 (1984).

ARGUMENT

This action began as one for defamation and tortious interference. Plaintiff based his claims on certain comments that defendant John Hoff had posted on his blog, known as "The Adventures of Johnny Northside." The gist of those comments was that plaintiff had participated in mortgage fraud, and plaintiff's objection to those comments formed the linchpin of his lawsuit against Hoff.

At the conclusion of the district court trial, however, the verdict returned by the jury included a finding that defendant's claim about plaintiff's participation in mortgage fraud was true. This caused plaintiff's cause of action for defamation to be dismissed. However, the jury awarded plaintiff $60,000 on the tortious interference claims.

Defendant's subsequent motion for judgment as a matter of law or a new trial was denied because, according to the trial court, there was reasonable support in the record for the tortious interference counts, and the jury found that

defendant's conduct "taken as a whole" amounted to interference. If the trial record is examined, however, it is clear that the jury was not presented with any evidence supporting the tortious interference claims that was separate and distinct from defendant's allegations about plaintiff's involvement in mortgage fraud, his efforts to bring them to public attention, and his argument that because of them, plaintiff should not be employed by the University of Minnesota. Consequently, given the jury's finding that defendant's allegations were true, the First Amendment bars plaintiff's tortious interference claims, just as it does his action for defamation. This Court on appeal must make an independent examination of the record in order to ensure the First Amendment has not been violated.

I. Minnesota Law Does Not Permit Liability for Tortious Interference To Attach In The Case Of True Statements.

A plaintiff suing for tortious interference must show that alleged interference was improper. *R.A., Inc. v. Anheuser-Busch, Inc.*, 556 N.W. 2d 567, 571 (Minn. App. 1996). Minnesota courts have followed the Restatement of Torts rule that true statements cannot constitute *improper* interference. *Glass Service Co. Inc. v. State Farm Mut. Auto Ins. Co.*, 530 N.W.2d 867, 871 (Minn. App. 1995); *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.2d 329, 337 (8th Cir. 2003). The Restatement at section 772(a) states in relevant part:

> "One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person . . . truthful information." Restatement (Second) of Torts § 772(a) (1979).

At trial, plaintiff failed to show Hoff's alleged interference was improper or wrongful, because the jury found that Hoff's statements were true and plaintiff failed to provide evidence of any other independent actions taken by Hoff that could have otherwise supported the verdict. The trial court therefore erred in denying defendant's post-trial motion, since the element of wrongfulness cannot be satisfied as a matter of law. Plaintiff failed to produce any evidence of wrongful behavior or any evidence of actions taken by Hoff other than communicating true statements and opinions. There is no indication whatsoever in the record that Hoff otherwise acted improperly (such as by bribing, threatening, or coercing the University). In fact, the record does not contain any other evidence that could have lead to an interference verdict. Hoff's statements were true and Hoff had legitimate justification for making the statements because it was done for an entirely legitimate purpose.

The wrongfulness element fails as a matter of law precisely because Hoff's publication of true statements and opinion are not the kind of behavior that tortious interference law is meant to remedy. The evidence about Hoff's statements and actions taken as a whole cannot demonstrate any tortious interference under Minnesota law.

The trial court impermissibly circumvents the protections that are built in to defamation law by reframing a defamation claim as tortious interference. *See Beverly Hills Foodland, Inc. v. United Food and Commercial Workers Union, Local 655*, 39 F.3d 191, 196 (8th Cir. 1994). The trial court's error in deferring to

the jury's interpretation of other unidentified evidence also inappropriately allowed a verdict to stand that was very likely based on protected speech. This violates both Minnesota common law and the First Amendment.

"Speech does not lose its protected character. . . simply because it may embarrass others or coerce them into action." *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 910 (1982). However, it appears that the trial court came to precisely the opposite conclusion in its denial of defendant's motion for a judgment as a matter of law. All of plaintiff's claims were based on defendant's speech and its subsequent effect.

"The Free Speech Clause of the First Amendment — "Congress shall make no law . . . abridging the freedom of speech" — can serve as a defense in state tort suits." *Snyder v. Phelps,* 131 U.S. ___ (2011); *citing Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46 (1988) (no liability for intentional infliction of emotional distress for statements about a public figure without proving elements of defamation). Were this Court to allow the verdict to stand, Hoff would be punished for exercising his right to truthfully discuss issues of public concern, public figures and public funds. Hoff's speech is Constitutionally protected because it contains true statements and opinions about a limited purpose public figure in regards to topics that are of public concern.

Hoff's true blog post about Jerry Moore's prior involvement in mortgage fraud and later hiring by a public institution to work with mortgage and housing issues is exactly the kind of public statement about public issues that the First

Amendment was created to protect. The First Amendment guarantees "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S. Ct. 710 (1964). If Hoff's expressive activity can be punished, that robust public debate is obliterated. Moore was a limited purpose public figure who was involved in at least one instance of mortgage fraud. Here, the trial court failed to protect public debate and expressive activity.

II. The Record Shows No Evidence Presented To The Jury Supporting Plaintiff's Tortious Interference Claims That Was Not Integrally Related To Defendant's True Statements About Plaintiff's Mortgage Fraud.

The trial court's rejection of defendant Hoff's post-trial motions was based on the court's assertion that "the jury's findings on plaintiff's tortious interference claims had reasonable support in the factual record." Order and Memorandum, Add. 4. According to the trial court:

> [T]he Court heard direct testimony regarding Defendant's active involvement in getting Plaintiff fired by contacting leaders at the University of Minnesota and threatening to launch a negative public relations campaign if Plaintiff remained in their employment. By way of example, Don Allen testified that he sent an email to the University of Minnesota, at Defendants's behest, threatening negative publicity and lobbying to get Plaintiff fired. In addition to Mr. Allen's direct testimony, the jury also heard circumstantial evidence supporting the jury's verdict. The Court heard testimony that Plaintiff was terminated from his position at the University of Minnesota one day after transmission of the email from Mr. Allen. Furthermore, during this same time period, Defendant acknowledged that it was his goal to get Plaintiff fired and that he was working 'behind the scenes' to do so. After the fact, Defendant took personal responsibility for Plaintiff's termination and announced his ongoing, active involvement in the University's actions. The direct evidence, combined with the

> inferences drawn from the circumstantial evidence presented, supports the jury's verdict.

Id., at 5.

However, all of the evidence described in this passage relates exclusively to defendant Hoff's expressive activity, in communicating information that the jury found was true. A tortious interference claim is no more viable than one for defamation where the behavior complained of is that defendant communicated truthful information. See *Glass Service Co., Inc. v. State Farm Mut. Auto. Ins. Co.,* 530 N.W.2d, 867, 871 (Minn. App. 1995), citing *Restatement (Second) of Torts* §772, cmt. b (1979). Yet all of the behavior cited by the trial court directly involved Hoff's efforts to convey his concerns about plaintiff's mortgage fraud to the University. All of the actions listed by the court flowed from defendant's belief that plaintiff had engaged in fraud and should therefore not be employed by the University. All involved defendant communicating variations of this claim to University officials and others. And all of the actions were therefore part of the expressive activity derived directly from the statement that the jury determined was true.

Specifically, defendant's efforts at "getting Plaintiff fired by contacting leaders at the University of Minnesota and threatening to launch a negative public relations campaign," Order, Add. 5, consisted of nothing more than defendant telling University officials about plaintiff's mortgage fraud, and

informing them that if they failed to terminate plaintiff, Hoff would communicate information about this to the broader public. Similarly, the actions of Don Allen cited by the trial court "threatening negative publicity and lobbying to get Plaintiff fired," *id*., (even if they could properly be attributed to defendant), consisted only of Allen acting as a conduit for the information obtained from defendant Hoff about plaintiff's mortgage fraud. And defendant's supposed "acknowledg[ment] that it was his goal to get Plaintiff fired and that he was working 'behind the scenes' to do so," along with his taking "personal responsibility for Plaintiff's termination" and "his ongoing, active involvement in the University's actions," *id*., were all connected to his expressive activity–his efforts to communicate accurate information to University officials about plaintiff.

Thus every action cited by the trial court in approving the tortious interference verdict was integrally related to defendant Hoff directly or indirectly conveying information to the University or the public about plaintiff's mortgage fraud along with his entirely legitimate belief that such behavior should disqualify plaintiff from employment there. These actions cannot be separated from the actual statement itself about plaintiff, and they are no less subject to the protections of the First Amendment and the strictures of defamation law than is that statement simply because plaintiff chooses to repackage them as tortious interference. The barriers that the courts have erected in order to protect true statements, especially those

involving public figures and issues of public concern, are not a jurisprudential Maginot Line around which plaintiffs may skitter simply by the use of creative pleading.

Defendant's post-trial motions were grounded primarily on this argument (as acknowledged by the trial court), namely that "the jury's award in favor of plaintiff on the tortious interference claims were premised solely upon the same statement that formed the basis of plaintiff's defamation claim," Order and Memorandum, *id*. But though the court responded that plaintiff did provide "direct and circumstantial evidence . . . independent of and distinct from his defamation claim," *id*., Add. 7, nowhere in the long passage from the court's decision quoted above–or in any other part of its decision–does the court address how the evidence that it refers to is in fact distinct and separate from the mortgage fraud allegation, which it *must* be in order for plaintiff's tortious interference claims to surmount the restrictions imposed by defamation law principles and the First Amendment.

The trial court also rejected defendant's argument that the jury's verdict on the tortious interference claims relied on the same statement that supported plaintiff's defamation claim, by contending that "Defendant does not present any evidence in support of this argument, nor does the Court find it necessary to invade the province of the jury." *Id*., Add. 6-7. According to the Order and Memorandum, "[i]t is not the Court's function

to determine on what theory the jury arrived at its verdict;" instead "it is the Court's responsibility to interpret the special verdict form 'and harmonize the jury's responses where possible.'" *Id*. (citation omitted).

The untenability of this explanation is obvious. The whole point of defendant's post-trial motion was that in light of the jury's finding that the statement about plaintiff's participation in mortgage fraud was true, and that because no other evidence unrelated to this statement was presented, the trial court was obligated as a matter of constitutional law to rule in defendant's favor, that the First Amendment objection raised in the motion was outside the jury's province, and that where a jury relies on a "theory" that is prohibited by the protections of the Constitution, its verdict must be rejected.

Furthermore, the trial court's claim that defendant "did not present any evidence" in support of his argument is hardly persuasive, because it turns the governing law on its head. It was obviously *plaintiff's* burden to offer admissible and relevant evidence demonstrating that defendant engaged in behavior unprotected by the First Amendment that improperly interfered with plaintiff's employment. And once the jury found that the statement about mortgage fraud was true, it was the trial court's responsibility in addressing defendant's post-trial motion to determine if plaintiff had in fact presented such evidence to the jury, a responsibility that the trial court plainly failed to shoulder.

Again, because the substance of all of the communications from defendant to the University involved variations on the theme of plaintiff's mortgage fraud (coupled with defendant's belief that plaintiff should therefore not be retained by a public institution to investigate mortgages), and because all of defendant's actions were integrally related to those communications, the jury's finding that the statement about plaintiff participating in mortgage fraud was true obliterates not only plaintiff's action for defamation, but his tortious interference claims as well.

The trial court also contends that "the jury found Defendant's statement was not false, but that his conduct, *taken as a whole*, amounted to an intentional interference with Plaintiff's employment contract and prospective employment advantage." *Id.*, Add. 7-8. This claim, however, far from providing assurance that the verdict was sound, suggests exactly the opposite, directly acknowledging that the jury may well have considered defendant's protected expression in reaching its decision, since that expression was a significant part of his conduct taken as a whole. The First Amendment does not permit the trial court to uphold a verdict by using sleight of hand such as this. As described above, essentially all facets of defendant's "conduct" related to defendant's efforts to communicate his concerns about plaintiff's fraudulent behavior to University officials, and there is simply nothing in the trial record showing otherwise. Thus contrary to the trial court's conclusion, the jury's responses cannot be harmonized.

And because the trial record contains nothing that could independently support the jury's verdict on the tortious interference claims, defendant was entitled to judgment as a matter of law.

III. Even If Independent Evidence Supporting The Tortious Interference Claims Had Been Presented, The Trial Court Failed To Consider The Requirements Of The First Amendment In Assessing It.

Even if the trial court were correct in stating that there was evidence supporting the tortious interference claims which was independent and distinct from defendant's communications about plaintiff's mortgage fraud, the First Amendment still requires a far more careful and critical analysis of that evidence than was employed by the trial court. This is especially important in actions such as those for tortious interference, where there is significant possibility that the behavior complained of by the plaintiff involves expressive activity. As one commentator notes, because the "interference in each case is often accompanied by the use of unflattering words, it is not uncommon for a claim for defamation or disparagement to be combined with a claim for either type of intentional interference." Robert D. Sack, *Sack on Defamation* §13.4 (4th ed. 2010).

This brief described earlier how Minnesota's appellate courts have rejected attempts by a plaintiff to carve out separate tort claims premised on statements also used to support a defamation claim where those statements are true, and that such claims must be analyzed according to defamation law rules. A corollary of this principle is that the trial court must thoroughly

scrutinize the evidence offered in these kinds of actions, even where the plaintiff claims that portions of the evidence are separate from the statement supporting the defamation claim, in order to insure that expressive activity protected by the First Amendment is not improperly sanctioned.

If it turns out that this evidence includes communications made by the defendant, then no matter how the cause of action is framed, defamation law rules will normally need to be applied. *See, e.g.*, *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 57 (1988) (requiring on First Amendment grounds that a public figure pursuing intentional infliction of emotional distress claim must establish falsity and actual malice). *See also Wild v. Rarig*, 234 N.W. 2d 775, 793 (Minn. 1975) ("It seems to us that, regardless of what the suit is labeled, the thing done to cause any damage to [plaintiff] eventually stems from and grew out of the defamation," and therefore "this phase of the matter has crystallized into the law of defamation and is governed by the special rules which have developed in that field.").

Thus even if the trial court in the present action is right in asserting that plaintiff Moore provided evidence in support of his tortious interference claims that was "independent and distinct from his defamation claim," Add. 7-8., in other words, that had nothing to do with the substance of the statement made by defendant Hoff which the jury found to be true, the trial court was still obligated to reject the verdict unless all of that independent and distinct evidence was permissible under governing principles of

defamation law.

The trial court entirely fails to acknowledge this. Nowhere in its Order and Memorandum is there any description of the "independent and distinct" evidence supposedly supporting the jury verdict, to say nothing of a description that is sufficiently specific to permit a determination as to whether it might be considered expressive activity, and whether it might be false. As noted, the few examples of evidence that are cited by the trial court in its Memorandum all integrally involve the communications made by defendant Hoff relating to the fact of plaintiff's participation in mortgage fraud or statements made by others such as Don Allen, for which Hoff cannot be liable.[24] Nowhere does the trial court point to any evidence unrelated to that topic, which might then be false. And nothing in the trial court's discussion addresses evidence that might satisfy any of the other requirements imposed on defamation actions. Correspondingly, neither plaintiff's Complaint nor any of his submissions in response to defendant's post-trial motion identify any such evidence.

Decades of precedent construing the First Amendment–especially with respect to defamation actions–have produced rules designed to insure that before juries may decide questions involving protected speech, the trial court must first be presented by plaintiff with and must then carefully examine the specific statements that are at issue. Thus, for example, Minnesota courts

[24] The trial court granted a pre-trial motion made by Hoff citing 47 U.S.C. § 230(c)(1) and (e)(3) which exempts online services providers, such as Hoff from tort liability based on third party content such as comments. The trial court order appears in the Transcript at 110:9-111:8.

have long held that in defamation actions, the challenged language needs to be specifically described in the Complaint: "Minnesota law has generally required that in defamation suits, the defamatory matter be set out verbatim." *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 326 (Minn. 2000).

Similarly, before particular statements may be submitted to the jury or be used to support a defamation judgment, the trial court is required to determine *as a matter of law* whether they may be considered defamatory: "The district court makes an initial determination of whether the statements are reasonably capable of carrying a defamatory meaning," and "this determination is made as a matter of law." *Schlieman v. Gannett MN Broadcasting, Inc.,* 637 N.W.2d 297, 307 (Minn. App. 2001). (Minn. 1985). The trial court is obligated to determine as a matter of law whether plaintiff's evidence could plausibly satisfy this standard, both before submitting the language at issue to the jury, and in response to post-trial motions raising the First Amendment issue: "The question whether the evidence in the record . . . is sufficient to support a finding of actual malice is a question of law [based] on the unique character of the interest protected by the actual malice standard." *Diesen v. Hessburg*, 455 N.W.2d 446, 453-54 (Minn. 1990), *Harte-Hanks Communications, Inc., v. Connaughton*, 491 U.S. 657 (1989). Courts "have a constitutional duty to exercise independent judgment and determine whether the record establishes actual malice with

convincing clarity." *Bose Corp. v. Consumers' Union of United States, Inc.*, 466 U.S. 485, 514 (1984).

The trial court erred because even if the record had shown that defendant had committed some tortious conduct or unlawful activities in addition to the exercise of free speech; tort liability "must be supported by findings that adequately disclose the evidentiary basis for concluding that specific parties agreed to use unlawful means, that carefully identify the impact of such unlawful conduct, and that recognize the importance of avoiding the imposition of punishment for constitutionally protected activity." *NAACP,* 458 U.S. at 933–34. The trial court made no such distinction.

In sum, where a tortious interference claim may, in whole or part, involve communications made by the defendant, they must be specifically identified by the plaintiff, and they must be scrutinized by the trial court before submission to the jury according to the criteria described above. Here, however, neither the trial court nor plaintiff even acknowledge this, to say nothing of demonstrating that the mandates of precedent have been satisfied with respect to the evidence of tortious interference that the trial court claims was presented to the jury that was "independent of and distinct from his defamation claim." Order and Memorandum, Add. 7-8.

CONCLUSION

For all of the reasons stated above, this Court should reverse the judgment of the trial court and order that judgment as a matter of law be granted in defendant Hoff's favor or that the action be remanded for a new trial.

Dated: January 30, 2012

Respectfully submitted,

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ADDENDUM

INDEX OF DOCUMENTS IN ADDENDUM

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

FILED
2011 AUG 22 AM 11:02
BY
HENN CO. DISTRICT COURT ADMINISTRATOR DEPUTY

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

ORDER

Ct. File No. 27-CV-09-17778

The above-entitled matter came on for hearing before the Honorable Denise D. Reilly, Judge of District Court on May 31, 2011 on Defendant's motion for judgment as a matter of law or in the alternative for a new trial. Counsel noted their appearances on the record. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

ORDER

1. Defendant's motion for judgment as a matter of law or in the alternative for a new trial is denied in its entirety.
2. Any other relief not specifically ordered herein is denied.
3. The Court's Memorandum, filed herewith, is incorporated herein.

IT IS SO ORDERED.

Dated this 22nd day of August, 2011.

BY THE COURT:

The Honorable Denise D. Reilly
Judge of District Court

MEMORANDUM

I. Factual and Procedural Background

The above-entitled case came before the Court on Plaintiff Jerry L. Moore's ("Plaintiff") claims for defamation, interference with contractual relationships, and interference with prospective advantage against Defendant John Hoff ("Defendant"). A jury trial was held in this matter from March 7, 2011 to March 11, 2011, during which time the Court heard testimony from several witnesses, including the parties, and received numerous exhibits into evidence. On March 11, 2011, the jury returned a unanimous special verdict. The jury returned a verdict in favor of Defendant on Plaintiff's defamation claim, and in favor of Plaintiff on the remaining two claims. Specifically, the jury found Defendant intentionally interfered with Plaintiff's employment contract and interfered with Plaintiff's prospective employment advantage. Judgment was entered in favor of Plaintiff and against Defendant on April 13, 2011. On April 1, 2011, Defendant filed a notice of motion and motion for judgment as a matter of law or for a new trial. Plaintiff submitted a memorandum in opposition to the motion on May 24, 2011. Defendant filed a reply brief in further support of his motion on May 26, 2011. The parties appeared before the Court on May 31, 2011 on Defendant's contested motion for relief.

II. Defendant's Motion is Denied

a. Standard of Review

When considering a motion for judgment as a matter of law, the district court must take into account all of the evidence in the case, view that evidence in a light most favorable to the jury verdict, and not weigh the evidence or judge the credibility of the witnesses. *Lamb v.*

Jordan, 333 N.W.2d 852, 855 (Minn. 1983).[1] The standard that applies to such a motion is "that the evidence must be 'so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.'" *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006) (quoting *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004)); *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998) (providing motions should be granted when, "viewing the evidence in the light most favorable to the nonmoving party, the verdict is manifestly against the entire evidence or when, despite the jury's findings of fact, the moving party is entitled to judgment as a matter of law"). A jury's answer to special verdict questions shall not be disturbed if it can be sustained on any reasonable theory of the evidence. *Pouliot*, 582 N.W.2d at 224. The Court should defer to a jury's reasonable inferences from the evidence presented. *See Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (recognizing that a reviewing Court is to "give great deference to the jury's verdict" and uphold it if it "can be reconciled with the evidence in the record and the fair inferences from that evidence"). Thus, judgment as a matter of law under Rule 50 may only be granted "when a jury verdict has no reasonable support in fact or is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007). If a jury verdict has any reasonable evidentiary support, both the district court and the appellate court must accept it as final. *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 683 (Minn. Ct. App. 1987), *review denied* (Minn. Jan. 28, 1988).

Under Rule 59, the Court may grant a request for a new trial when the jury's verdict "is not justified by the evidence." Minn. R. Civ. P. 59.01(g). In order to grant a motion for new trial on the grounds that the evidence does not justify the verdict, "the verdict [must be] so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the

[1] The 2006 amendments to the Minnesota Rules of Civil Procedure changed this type of post-trial motion to one for judgment as a matter of law rather than a motion for JNOV. This change did not alter the substantive practice relating to such a motion. *See Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007).

evidence, or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quoting *LaValle v. Aqualand Pool Co.*, 257 N.W.2d 324, 328 (Minn. 1977)). A motion for a new trial should be "granted cautiously and used sparingly." *Patton v. Minneapolis Street Ry. Co.*, 77 N.W.2d 433, 438-39 (Minn. 1956). A decision to grant a new trial rests in the sound discretion of the district court and will be reversed only upon a clear abuse of that discretion. *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 334 (Minn. Ct. App. 2004).

b. The Jury's Findings on Plaintiff's Tortious Interference Claims Had Reasonable Support in the Factual Record

Defendant attacks the jury's verdict on the grounds that it was not supported by the evidence. Defendant argues, in essence, that there was no reasonable basis in the evidence presented to the jury to support the jury's finding of liability on Plaintiff's tortious interference claims. Upon review of the trial record as a whole, the Court finds Defendant's argument fails.

Plaintiff's Complaint alleged that Defendant intentionally interfered with his contractual rights by actively working to get Plaintiff fired from his position at the University of Minnesota by, among other things, contacting individuals at the University of Minnesota, making disparaging remarks about Plaintiff, and encouraging others to do the same. To establish a claim for tortious interference of contract, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of the contract's breach; (4) absence of justification; and (5) damages caused by the breach. *Bebo v. Delander*, 632 N.W.2d 732, 738 (Minn. Ct. App. 2001). Similarly, a claim for tortious interference with prospective advantage requires a showing that: (1) the defendant intentionally and improperly interfered with the prospective contractual relation, (2) causing pecuniary harm resulting from loss of the

benefits of the relation, and (3) the interference either induced or otherwise caused a third person not to enter into or continue the prospective relation or prevented the continuance of the prospective relation. *United Wild Rice, Inc. v. Nelson*, 313 N.W.2d 628, 633 (Minn. 1982).

Defendant argues that the record before the jury did not contain sufficient evidence regarding Plaintiff's interference claims. On the contrary, the Court heard direct testimony regarding Defendant's active involvement in getting Plaintiff fired by contacting leaders at the University of Minnesota and threatening to launch a negative public relations campaign if Plaintiff remained in their employment. By way of example, Don Allen testified that he sent an email to the University of Minnesota, at Defendant's behest, threatening negative publicity and lobbying to get Plaintiff fired.[2] In addition to Mr. Allen's direct testimony, the jury also heard circumstantial evidence supporting the jury's verdict. The Court heard testimony that Plaintiff was terminated from his position at the University of Minnesota one day after transmission of the email from Mr. Allen. Furthermore, during this same time period, Defendant acknowledged that it was his goal to get Plaintiff fired and that he was working "behind the scenes" to do so. After the fact, Defendant took personal responsibility for Plaintiff's termination and announced his ongoing, active involvement in the University's actions.[3] The direct evidence, combined with the inferences drawn from the circumstantial evidence presented, supports the jury's verdict. *See, e.g., Rochester Wood Specialties, Inc. v. Rions*, 176 N.W.2d 548, 552 (Minn. 1970) (stating that juries are entitled to draw inferences from circumstantial evidence, as long as those inferences are reasonably supported by the available evidence). Plaintiff set forth sufficient

[2] The Court presents this as just one example of the type of testimony elicited at trial regarding Defendant's interference claims.

[3] Defendant did not object to the introduction of this evidence during trial. *Poppler v. O'Connor*, 235 N.W.2d 617, 619, n. 1 (Minn. 1975) (prohibiting party from enlarging objection for first time on a motion for a new trial where party failed to object to the admission of testimony during trial).

evidence of intentional interference to support the jury's verdict. *See Potthoff v. Jefferson Lines, Inc.*, 363 N.W.2d 771, 777 (Minn. Ct. App. 1985).

Moreover, Defendant failed to show that the evidence was "contradicted by logic and other evidence." *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 335 (Minn. Ct. App. 2004). The jury, in its capacity as fact-finder, was entitled to judge the credibility of the witnesses and determine what weight to give the testimony and exhibits presented during the course of the week-long trial. *See, e.g., Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 329 (Minn. Ct. App. 2007) (holding that "selecting certain evidence over conflicting countervailing evidence," judging believability and reasonableness of evidence, and "giving more weight to some evidence than other evidence" remain the "precise functions reserved to the jury under our system of jurisprudence"); *Lee v. Metropolitan Airport Com'n*, 428 N.W.2d 815, 822 (Minn. Ct. App. 1988). Here, the jury found Plaintiff's witnesses credible with respect to the facts supporting Plaintiff's tortious interference claims. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (stating that factfinder is in the best position to judge credibility of witnesses).

c. The Jury's Findings on the Special Verdict Form Are Reconcilable

During the course of the trial, the jury was asked to consider whether a particular statement was true or false for the purposes of assessing Plaintiff's defamation claim.[4] The jury determined that the statement was not false. With his current motion, Defendant argues that the jury's award in favor of Plaintiff on the tortious interference claims were premised solely upon the same statement that formed the basis of Plaintiff's defamation claim. Defendant does not

[4] The statement is: "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved in a high-profile fraudulent mortgage at 1564 Hillside Ave. N." This is the sole statement undergirding Plaintiff's defamation claim.

present any evidence in support of this argument, nor does the Court find it necessary to invade the province of the jury.

It is not the Court's function to determine on what theory the jury arrived at its verdict. *Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971). Instead, it is the Court's responsibility to interpret the special verdict form "and harmonize the jury's responses where possible." *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 441-442 (Minn. Ct. App. 2001) (citing *Bartosch v. Lewison,* 413 N.W.2d 530, 532 (Minn. Ct. App. 1987)). Thus, the Court must sustain the verdict "on any reasonable theory of evidence." *Shepherd of the Valley Lutheran Church of Hastings*, 626 N.W.2d at 441-442; *see also Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971) (stating that upon review of findings, court "need only examine the record to decide whether the verdicts are consistent on any theory"); *Blatz v. Allina Health System*, 622 N.W.2d 376 (Minn. Ct. App. 2001); *Harman v. Heartland Food Co.*, 614 N.W.2d 236 (Minn. Ct. App. 2000); *Russell v. Johnson,* 608 N.W.2d 895 (Minn. Ct. App. 2000); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997); *Tsudek v. Target Stores, Inc.,* 414 N.W.2d 466, 470 (Minn. Ct. App. 1987), *review denied* (Minn. Dec. 13, 1987) (affirming an appellate court will not disturb a trial court's decision to uphold a verdict where there is a reasonable theory to reconcile the verdict).

The Court may only set aside a jury's findings when it is clear that they "cannot be reconciled." *Nihart*, 190 N.W.2d at 778. By special verdict, the jury found Defendant's statement was not false, but that his conduct, taken as a whole, amounted to an intentional interference with Plaintiff's employment contract and prospective employment advantage. Despite Defendant's argument to the contrary, Plaintiff provided direct and circumstantial evidence in support of his tortious interference claims, independent of and distinct from his

defamation claim. These findings are not "palpably contrary to the evidence," nor is the evidence "so clear as to leave no room for differences among reasonable people." *St. Paul Fire and Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 410 (Minn. Ct. App. 2007).

The Court defers to the jury's reasonable inferences of the evidence presented and views the evidence in the light most favorable to the jury verdict. *See Raze*, 587 N.W.2d at 648 (recognizing that a reviewing Court is to "give great deference to the jury's verdict" and uphold it if it "can be reconciled with the evidence in the record and the fair inferences from that evidence"); *St. Paul Fire and Marine Ins. Co.*, 738 N.W.2d at 410. The Court finds the direct and circumstantial evidence adduced at trial "supports the findings of the jury and can be reconciled." *Nihart*, 190 N.W.2d at 779. The evidence supports the jury's determination of fact issues relating to Defendant's liability on Plaintiff's tortious interference claims. Accordingly, Defendant's motion for judgment as a matter of law under Rule 50.02 or for a new trial under Rule 59 is denied in its entirety.

III. Conclusion

For the reasons set forth above, the Court upholds the jury's findings. Accordingly, Defendant's motion for judgment as a matter of law is denied.[5] The Court also denies Defendant's alternative motion for a new trial. The jury's verdict of March 11, 2011 is hereby affirmed. Any other relief not specifically ordered herein is denied.

[5] Defendant's memorandum further seeks to overturn the jury's verdict on the grounds that (1) the jury was swayed by emotion, and (2) the Court failed to allow in certain character evidence. Defendant failed to put in any evidence in support of these assertions and there is nothing in the record to support these contentions.

The Adventures of Johnny Northside

Being the amazing, true-to-life adventures and (very likely) misadventures of a divorced man who seeks to take his education, activism and seemingly boundless energy to North Minneapolis, (NoMi) to help with a process of turning a rapidly revitalizing neighborhood into something approaching Urban Utopia. I am here to be near my child. The journalism on this blog is dedicated to my son Alex, age 14, and his dream of studying math and robotics at MIT. Email me at hoffjohnw@gmail.com

Sunday, June 21, 2009

Former JACC Executive Director Jerry Moore Hired By U of M, Neighborhood Leaders Are All, Like, WTF?!!!

Stock Photo, U of M

Word reached me about a week ago from a source that former JACC Executive Director Jerry Moore had been hired by the UROC program at U of M; the nice (but obviously naive) folks bringing North Minneapolis that big, expensive, rather slowly-delivered project at the former Penn-Plymouth shopping center. Another creditable source made some calls and confirmed firsthand this was, in fact, the case. Jerry Moore is now--among many other things--a gopher.

My U of M gopher blood boils with shame. THE SHAME!!!!!!!!

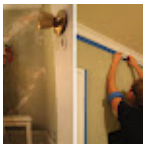
Jerry Moore--who has been a plaintiff in a lawsuit against JACC, and was fired from his executive director position for misconduct, (fistfight, cough cough) is nothing if not a controversial figure in the Jordan Neighborhood...

So when word reached certain neighborhood movers and shakers

Recent Comments

My Blog List

Hammers and High Heels



Some Action in the Master Bedroom

9 minutes ago

The Deets

Destroy the 511 Building to Build a Vikings Stadium? Not Smart. #wilfare

23 hours ago

Webber Camden

Minneapolis gives away radon test kits on January 31

2 days ago

North by Northside

Lowry Bike Lanes and a Blogging Success Story

3 days ago

Alleycat

Add-9

about Jerry being hired by UROC, and being involved with some kind of "research" about mortgage issues in North Minneapolis, consternation was followed by seething anger. Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N. The collective judgment of decent people in the Jordan Neighborhood--"decent" being defined as "not actively involved in mortgage fraud"--is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him?

Even assuming (as lawyers say) "arguendo" that Jerry Moore has received a bad rap over 1564 Hillside Ave. N., the problem remains that current JACC leadership will have nothing to do with Jerry Moore, and the Jordan Neighborhood makes up a big part of North Minneapolis. It's not hard to picture situations where the UROC people attempt to engage the leadership of Jordan, but all the "Jordanites" will want to talk about is, "Why the hell did you hire Jerry Moore, and when will you be getting rid of him? Get rid of him and we will talk."

That's the word I'm getting from neighborhood leadership. In fact, my reason for delaying posting about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess. With the matter still pretty much the same as it was a week ago, I was contacted and told to please, please blog about this matter. So: Jerry Moore is working for UROC, and UROC has just lost major cred with North Minneapolis leadership. (The ones not involved with mortgage fraud, anyway, which clearly doesn't include all the self-declared leadership)

In fact, some are going so far as to say UROC has never had the creditability of CURA, which is another program at U of M which has been working with neighborhood issues for a long time, very successfully, though often with a low profile. The question being asked in this time of budget cuts is "Why is there a UROC at all? Why not just have things done under CURA, a program with a proven track record which would never, in a hundred years, pull this kind of stupid bulls***t?"

0

twitthis

*Posted by Johnny Northside at **9:57 AM***

*Labels: **Jerry Moore, Jordan Neighborhood, UROC***

Old Mandarin Islamic in images, circa my trip to San Francisco,...
4 days ago

Minnesota Investment Property Blog
Foreclosure Rates Stay Steady, but Serious Delinquencies Decline
2 weeks ago

Hawthorne Voices

Ominous Graffiti on Block of Recent Tragic Shooting
4 weeks ago

The Adventures Of Johnny Guardsman

Gone Fishing (In A Landlocked Country, Relatively Free Of Standing Water)
5 weeks ago

Over North
"Who would ever want to live at 26th and Portland?!"
5 weeks ago

Irving Inquisition

Hennepin County's HUB Project
1 month ago

Redd in the City
Quick plug for NoMi lead testing
2 months ago

The Hillside Chronicles

1551 Hillside Avenue N. Update ~ Did She Yell "Timber"?
2 months ago

NoMi Passenger

A Tribute To NoMi Dogs - And a GIVEAWAY!

APPENDIX

INDEX TO DOCUMENTS IN APPENDIX

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

v.

Donald W.R. Allen, individual and as Principal of V-Media Development Corporation, Inc. a Minnesota Non-Profit corporation, John Hoff a/k/a Johnny Northside, and John Does 1-5,

Defendants.

Civil No. 27-CV-09-17778

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

PARTIES

1. Plaintiff Jerry Moore ("Moore") is a resident of Hennepin County, and at material times was employed by the University of Minnesota, UROC.
2. Defendant Donald W.R. Allen ("Allen") is an individual, and a Principal in Defendant V-Media Development Corporation, Inc., a Minnesota Non-profit corporation.
3. John Hoff, a/k/a Johnny Northside ("Hoff"), is an individual who writes on his own blog/website.
4. Hoff publishes to the public for purposes of defamation analysis, but he is not the "press" for purposes First Amendment or statutory protection. Reasons for this include but are not limited to that he does not neutrally report news, he does not have (or does not enforce) journalistic standards (including accuracy and standards of factual reports,

slander and libel considerations and review, and application of the harm limitation principle).

5. Instead, the blog is a mouthpiece for Hoff's own views and agendas, or as an agent for specific individuals or entities (and their agendas).
6. Hoff makes little, if any, attempt to get the "other side" of any story. He makes little, if any, attempt to screen his own personal feelings or political viewpoint.
7. Hoff's blog has a "comments" section, but it is not automated.
8. Readers must submit comments for Hoff's review.
9. Hoff then decides which ones to publish on his blog, which ones to "approve." If Hoff doesn't like a comment (for example, if it criticizes Hoff, or is articulate about a viewpoint different from his), he does not have to post it, and there is evidence that he does not post it in these situations.
10. Hoff invites readers to post "anonymously," without sufficient accountability, essentially creating a defamation zone for negative, inaccurate and/or unverified facts, which allows the defamation to be perpetrated, but which makes it difficult or impossible, to locate the speaker, in order to hold him or her accountable.
11. This lawsuit contends that Hoff's facilitation of such a defamation zone makes him responsible for any defamatory remarks made in his comments section, particularly for "anonymous" writers, or for those who use some moniker other than their real name.
12. Hoff has been criticized as being a mouthpiece for Minneapolis Council Member Don Samuels. He has close ties with the City of Minneapolis.

13. A claimed reporter who is aligned with government or acting as an agent of government is not entitled to First Amendment protection, which was created, essentially, to allow the press to criticize government.

14. To the extent it may be necessary to allege it, Hoff acted with malice while engaged in the acts complained of herein.

15. Just recently, in Hoff's own comments section, a reader wrote, "What's up with the Jerry Moore fixation?"

16. John Does 1-5 are reserved for those who are identified as additional defendants, herein.

FACTUAL STATEMENT

17. Plaintiff Moore was Executive Director of the Jordan Area Community Council ("JACC").

18. The administration of JACC that hired Moore came under political attack from others who wanted to control JACC.

19. In the final analysis, Moore was ousted by the group that organized a take-over of the JACC Board. And that take-over resulted in civil litigation venued in Hennepin County District Court.

20. Jerry Moore was a plaintiff in that action, and had a constitutional right of access to courts, to participate in that litigation.

21. During the court proceedings, John Hoff came nearly every day to sit in the gallery.

22. Hoff then blogged his observations in an obviously one-sided manner, praising the defendant board members, and vilifying anyone who had anything to do with the plaintiffs.

23. Hoff repeatedly suggested that Jerry Moore's status as plaintiff in that action was somehow improper.

24. Upon information and belief it was Hoff who gave the defendants' attorney 2 documents that purportedly had something to do with Jerry Moore including an invoice for $5,000 and a check made out for $5,000.

25. Hoff sat in the Courtroom while Jerry Moore was asked under oath whether he had seen either of those documents before, and he heard Moore answer that he had not.

26. Hoff was present when the Court sustained an objection to the documents coming into evidence and knows that they did not come into evidence.

27. Yet Hoff has never acknowledged in his blog that there is this "other side" of the story.

28. Hoff was physically present and involved in the defense attorneys' use of these documents.

29. Defense attorneys turned around to look at Hoff during their attempt to get the documents into evidence.

30. Upon information and belief, Hoff inserted himself into the litigation, provided the documents to the defense attorneys, and actively worked to get the defense attorneys to use the documents against Jerry Moore in that litigation.

31. Hoff's active involvement in seeking to have those documents become discussed in the evidentiary hearing is noteworthy, since he would later claim that there was evidence to support his blog claims, in the Hennepin County District Court.

32. No legitimate news reporter becomes part of the story.

33. No legitimate news reporter offers documents obtained from sources, to be put into evidence.

34. No legitimate news reporter later claims that his 'support' for his public comments are documents that surfaced in court – when he is himself the source of those 'court' documents.

35. This is yet another way in which Hoff acted as private citizen and not "press" for purposes of the First Amendment and statutory protections, and defamation analysis.

36. Hoff continued to support the defendant board members in that litigation, and did not hide that fact.

37. Hoff did not remain neutral like a reporter, but instead became personally involved in the subject matter, and in his discussion of it.

38. His pages were vitriolic and emotional as opposed to objective.

39. Hoff's blog is alleged to be a mouthpiece for the City of Minneapolis, Don Samuels, and/or certain factions of the JACC organization.

40. Upon information and belief Hoff was provided confidential employment information about Jerry Moore, by those currently in control of JACC.

41. After the take-over group voted to oust Jerry Moore as Executive Director of JACC in January 2009, Moore looked for work elsewhere.

42. Moore eventually was able to obtain work at UROC, a program of the University of Minnesota, doing community-based research.

43. Around mid June, Hoff learned that Moore was working at UROC.

44. Hoff, and others, launched a campaign intended to intentionally interfere in Moore's employment contract with UROC.

45. According to Hoff's blog, he "delay[ed] posting about this matter [] because [he] was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders of U of M and fix this mess."

46. Upon information and belief John Doe defendants took action to interfere with Moore's employment at UROC "behind the scenes."

47. Hoff either knows their identity (and they are not protected "sources"), or there are no such "others" and Hoff made a false statement on his blog.

48. When, a week later, Moore was still working for UROC, Hoff blogged about it on June 21, 2009, entitling his piece, "**Former JACC Executive Director Jerry Moore Hired by U of M, Neighborhood Leaders Are All, Like, WTF?**"

49. Hoff complained that Moore had been a plaintiff in the lawsuit against JACC.

50. Hoff recklessly disregarded Jerry Moore's constitutional right to file a lawsuit.

51. Hoff stated that Moore had been fired for "misconduct," even though he sat through nearly all of the evidentiary hearing, and upon information and belief had information that, in fact, no reason was given on the written motion, when the vote was called to terminate Moore as ED.

52. Hoff's June 21 blog stated that Moore had been hired at UROC and was involved with "some kind of 'research' about mortgage issues in North Minneapolis."

53. The June 21 blog went on to make this false and defamatory statement: "Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N."

54. Hoff went on, "The collective judgment of decent people in the Jordan Neighborhood – 'decent' being defined as 'not actively involved in mortgage fraud' – is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him."

55. In context, the statement in Paragraph 54 is also defamatory of Jerry Moore.

56. Hoff went on to state "the current JACC leadership will have nothing to do with Jerry Moore...."

57. When penning the statement in Paragraph 65, Hoff was well aware that there are two sides to that story, and that the fate of JACC is currently pending in court.

58. Hoff had clearly come down on the side of the Browne-McCandless-Hodson-Hubbard group, both on his blog, and in his nearly daily appearances at court to watch the proceedings.

59. Hoff acknowledged none of that in his June 21 blog, which was designed to get Jerry Moore fired from UROC.

60. Hoff's June 21 post continued with statements like, "It's not hard to picture situations where the UROC people attempt to engage the leadership of Jordan, but all the 'Jordanites' will want to talk about is, 'Why the hell did you hire Jerry Moore, and when will you be getting rid of him? Get rid of him and we will talk.'"

61. Hoff declared that he was "contacted and told to please, please blog about this matter."

62. Hoff declared that UROC had lost "major cred" with North Minneapolis leadership.

63. Hoff then published a number of "comments" which were designed intentionally to interfere with Jerry Moore's employment at UROC.

64. Upon information and belief one or more of the "anonymous" comments were written by Hoff himself.

65. Comments published and/or republished by Hoff included, "Let's track down the contact information for these people [UROC], post it, and have a coordinated effort to remove Jerry Moore."

66. Another "comment" included a URL for the Board of Regents. That "anonymous" commenter urged "[b]e sure to include printed pages of blogs, news articles and other documentation of the type of quality leader that Mr[.] Moore exemplifies."

67. It is clear that Hoff wrote the June 21 blog post, so that others could send it to UROC in an attempt to get Jerry Moore fired.

68. Hoff published and/or republished an email that Defendant Donald Allen says he sent to Dr. McClaurin at UROC.

69. The email referenced in Paragraph 68 was designed intentionally to interfere with Jerry Moore's employment contract with UROC and contained false and defamatory statements.

70. False and defamatory statement: This comes on the heels of several different scenarios involving Mr. Moore and his relationship with Tynessia Snoddy who is under

indictment for mortgage fraud as reported on KSTP-TV (Read it here: http:///kstp.com/news/stories/5795057.shtml?cat=1).

71. False and defamatory statement: Mr. Moore did a deal that remains in question where he received a $5000 check for 'new windows' at 1564 Hillside Avenue North.

72. False and defamatory statement: This was a conflict of interest, at the time he was JACC's executive director.

73. Defendant Allen has been criticized as doing the bidding of Don Samuels.

74. Defendant Allen went on to cite the John Hoff blog quoted from above, and the date and time under his "comment" is June 22, 2009 12:18 AM (early morning hours of Monday, June 22).

75. Allen further stated, "[t]he Independent Business News Network will consider covering this on Tuesday, but since our media group is trying to do business with the U of M, I will remain cordial and diplomatic - for now."

76. By letter dated Monday, June 22, 2009, UROC terminated Jerry Moore's employment.

77. By post dated June 23, 2009, Hoff posted, "[a] known, creditable source at U of M gave information to a known, creditable source in the Hawthorne Neighborhood, who conveyed it to me earlier today: Jerry Moore, the former Executive Director of JACC, who is currently involved in a lawsuit against JACC, was 'let go' from his job at the University of Minnesota UROC program. According to the U of M source....It was reportedly coverage on this blog which 'blew open' the issue of Moore's hiring and forced the hand of U of M decision-makers after the issue had been quietly, respectfully brought to their attention

over a week ago. I am told pages were printed from my previous blog post about Moore's hiring by UROC, including the extensive comment stream, and these pages got 'waved around' in a bit of a discussion at U of M."

COUNT I

Defamation

Plaintiff re-alleges all foregoing information as if fully set forth herein.

78. Defendants Hoff and Allen made and published (and/or republished) false statements about Moore to third parties as quoted above and identified herein as false and defamatory statements. The statements were false and defamatory in isolation, and/or were false and defamatory in context.

79. These statements as described and quoted herein have harmed Moore's reputation, and result in defamation *per se* because they were targeted at him in the context of his work/profession.

80. Moore's reputation was lowered in the estimation of the community (as evidenced by other comments on the very blog dated June 21, 2009), and subjected Moore to ridicule.

81. To the extent necessary to be pled, the statements were made with malice, which is averred generally at this time, although there is evidence of malice contained in this complaint.

82. The false and defamatory statements caused Moore to lose his employment at UROC. As a direct or proximate result of the defamation, Moore has been damaged in an amount in excess of $50,000 to be proven at trial.

COUNT II

Intentional Interference with Contract

Plaintiff re-alleges all allegations made herein.

83. A valid contract existed between Moore and the U of M/UROC.

84. Defendants knew about Moore's employment contract with UROC.

85. Defendants intentionally induced the breach of the contract and/or intentionally induced UROC to refuse to perform its contract with Plaintiff.

86. Defendants actions were not justified. UROC did terminate said contract, just before the "Tuesday" deadline imposed by Defendant Allen.

87. The intentional interference caused the termination of Moore's employment contract at UROC.

88. As a direct or proximate result of the defamation, Moore has been damaged in an amount in excess of $50,000 to be proven at trial.

COUNT III

Interference with Prospective Advantage

Plaintiff re-alleges all of the allegations stated herein.

89. Defendants, acting separately or in cooperation, induced or caused the U of M/UROC not to enter or continue in the relationship, or prevented Moore from getting or continuing the relationship.

90. Damages were proximately caused by the conduct of these Defendants, and Plaintiff is entitled to judgment and compensatory damages in excess of $50,000, as well as costs and disbursements herein.

COUNT IV

Aiding and Abetting

Plaintiff re-alleges all of the allegations stated herein.

91. The primary tortfeasors committed a tort(s) that caused injury to Plaintiff and the other Defendants knew that the conduct of the primary tortfeasors was tortious, and the other defendants substantially assisted the primary tortfeasors in the achievement of the tort.

92. Damages were proximately caused by the conduct of these Defendants, and Plaintiff is entitled to judgment and compensatory damages in excess of $50,000, as well as costs and disbursements herein.

WHEREFORE, Plaintiff prays for relief in the form of an injunction against Defendants, and each of them, and/or as follows:

A. Judgment in a reasonable amount in excess of $50,000, and including but not limited to compensatory, presumed and punitive damages (Plaintiff reserves the right to bring a motion to add punitive damages to state-law claims);

B. Interest on the aforesaid amounts;

C. Awarding to Plaintiff his reasonable attorney fees and costs and disbursements incurred herein; and

D. Issuing a temporary and/or permanent prohibitory injunction prohibiting Defendants, their officers, agents, employees, and successors, from engaging in the illegal practices complained of herein. Moore seeks an order requiring Hoff to remove all offending material from his website, and/or an order to shut down the website. Moore seeks an order prohibiting Allen from distributing the offending material.

***

Plaintiff hereby demands a trial by jury on all applicable Counts. Plaintiff reserves the right move to amend to add punitive damages.

Dated: October 2, 2009

ATTORNEYS FOR PLAINTIFF
JILL CLARK, P.A.

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

ACKNOWLEDGEMENT

The undersigned hereby acknowledged that, pursuant to Minn. Stat. § 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party of parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: October 2, 2009

ATTORNEYS FOR PLAINTIFF
JILL CLARK, P.A.

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

Donald W.R. Allen, individual
and as Principal of V-Media Development
Corporation, Inc., a Minnesota Non-Profit corporation,
John Hoff a/ka/ Johnny Northside, and John Does 1-5,

Defendants.

Court File No. 27-CV-09-17778

Judge Denise Reilly

DEFENDANTS' ANSWER TO SECOND AMENDED COMPLAINT

Now come the Defendants and for their Answer to the Plaintiff Jerry Moore's First Amended Complaint, they state and allege as follows:

1. Defendants deny each and every thing, fact, claim, averment, statement, allegation, prayer for relief, and any other matter as set forth in Plaintiff's Second Amended Complaint except as hereinafter expressly qualified or admitted herein.
2. As to the allegations in paragraph one, Defendants lack sufficient knowledge to admit or deny, therefore they are denied.
3. As to paragraphs two and three, Defendants admit the facts alleged therein; however as to paragraph three, Defendants state Hoff is not the sole author or contributor to the blog and that a "blog" is distinct from a "website".
4. Defendants deny the allegations of paragraph four.
5. Defendants deny the allegations of paragraph five.

6. Defendants deny the allegations of paragraph six.

7. Admit the allegations of paragraph seven.

8. Admit the allegations of paragraph eight, but deny that Hoff maintains editorial control over said comments.

9. Admit that Hoff screens comments, but deny the remaining allegations of paragraph nine.

10. Deny the allegations of paragraph ten. Hoff specifically asserts that many comments are mere opinion and that he identifies such comments as opinion on a routine basis.

11. Deny the allegations of paragraph eleven as a mere legal contention unsupported by fact or law.

12. Defendants lack sufficient information to admit or deny the claims of Hoff's critics purportedly alleged in paragraph twelve, therefore the allegations are denied. Hoff, moreover, specifically denies the claim that he has "close ties with the City of Minneapolis."

13. Defendants deny the allegations of paragraph thirteen as a mere legal contentions unsupported by fact or law.

14. Defendants deny the allegations of paragraph fourteen and specifically assert that any and all publications made by Hoff are entitled to all available First Amendment protections, similar protections under the Minn. Constitution, the common law, and applicable statutes.

15. Defendants admit that a submitted comment to Hoff's blog read as set forth in paragraph fifteen, but deny that Hoff is liable for said comment, or that it contained defamatory content or intent, or that it is susceptible to being defamatory because it was not a

statement of fact susceptible to being proven true or false. Defendant denies the remainder of the allegations of paragraph fifteen.

16. Defendants lack sufficient information to admit or deny the legal or factual allegations of paragraph sixteen, therefore it is denied.

17. Defendants admit the allegations of paragraph seventeen.

18. Defendants deny that the "administration of JACC" was subjected to a political attack from others seeking control of Jordan Area Community Council as set forth in paragraph eighteen.

19. Defendants deny the allegations of paragraph nineteen, except to state that Defendants agree that certain past or present JACC board members instituted civil litigation venued in Hennepin County District Court.

20. Defendants deny the allegations of paragraph twenty as setting forth a legal contention. Defendants admit that Plaintiff Moore was a named party to certain litigation in Hennepin County District Court involving JACC board members and officers.

21. Defendants admit the allegations of paragraph twenty-one.

22. Defendants deny the allegations of paragraph twenty-two as a mere statement of contention or opinion. Defendant Hoff specifically denies that his actions waived any available reportorial privilege or First Amendment privilege based on any reportage of the proceedings referred to in paragraph twenty-two.

23. Defendants deny the allegations of paragraph twenty-three.

24. Defendants deny the allegations of paragraph twenty-four.

25. Defendants admit the allegations of paragraph twenty-five, but deny that this allegation supports a legal claim against Hoff or any of the Defendants.

26. Defendants admit the allegations of paragraph twenty-six, but deny that this allegation supports a legal claim against Hoff or any of the Defendants. Hoff affirmatively states the same referenced documents were received into evidence in the criminal trial of State v. Maxwell in the Hennepin County District Court.

27. Defendants lack sufficient information to admit or deny the purported predicate facts alleged in paragraph twenty-seven, therefore they are denied. Moreover, defendant Hoff denies that he is required to acknowledge any specific "other side" with respect to any truthful publication of fact or comment or opinion.

28. Defendants deny the allegations of paragraph twenty-eight.

29. Defendants deny the allegations of paragraph twenty-nine and state that during the JACC trial defense attorney Schooler looked at the gallery but not expressly at Hoff. Hoff affirmatively denies that conduct as imputing or imposing legal liability as to the answering Defendants herein.

30. Defendants deny the allegations of paragraph thirty.

31. Defendants deny the allegations of paragraph thirty-one.

32. Defendants deny the allegations of paragraph thirty-two as setting forth an unsupported legal contention. Defendant Hoff affirmatively states that he was "not a part of the story" during the JACC trial in Hennepin County District Court or that his actions caused or created liability as to the answering Defendants herein.

33. Defendants lack sufficient information to admit or deny the purported predicate facts alleged in paragraph thirty-three, or the purported legal or factual conclusions stated, therefore they are denied. Defendants deny the allegations of paragraph thirty-three as setting forth an unsupported legal contention. Defendant Hoff specifically denies he

acted as implied in the said paragraph thirty-three or that his actions caused or created liability as to the answering Defendants herein.

34. Defendants lack sufficient information to admit or deny the purported predicate facts alleged in paragraph thirty-four, or the purported legal or factual conclusions stated, therefore they are denied. Defendants deny the allegations of paragraph thirty-four as setting forth an unsupported legal contention. Defendant Hoff specifically denies he acted as implied in the said paragraph thirty-four or that his actions caused or created liability as to the answering Defendants herein.

35. Defendants deny the allegations of paragraph thirty-five.

36. Defendants deny the allegations of paragraph thirty-six, except insofar as Defendant Hoff states that he properly editorialized regarding the events surrounding the JACC trial in Hennepin County District Court.

37. Defendants deny the allegations of paragraph thirty-seven.

38. Defendants deny the allegations of paragraph thirty-eight; Defendant Hoff specifically denies the implication that his actions were wrongful or malicious.

39. Defendants deny the allegations of paragraph thirty-nine.

40. To the extent the allegations of paragraph forty seek to require Defendants to disclose journalistic sources, those allegations are denied, and Defendant Hoff specifically claims the protections of the First Amendment, of the Minnesota "shield law", and all other available common law and/or statutory protections.

41. As to the allegations in paragraph forty-one, Defendants lack sufficient knowledge to admit or deny, therefore they are denied.

42. As to the allegations in paragraph forty-two, Defendants lack sufficient knowledge to admit or deny, therefore they are denied, except to the extent that Defendants admit that Plaintiff was temporarily employed by the University of Minnesota.

43. Defendants admit the allegations of paragraph forty-three.

44. Defendants deny the allegations of paragraph forty-four.

45. Defendants admit that Hoff's blog delayed reporting certain facts because of his own journalistic and editorial criteria, however, these answering Defendants deny the allegations and implications of paragraph forty-five.

46. As to the allegations in paragraph forty-six, Defendants lack sufficient knowledge to admit or deny, therefore they are denied. Moreover, these answering Defendants affirmatively disclaim liability or responsibility for the alleged acts or conduct of persons unknown and unidentified by Plaintiff Moore. Moreover, these answering Defendants deny acting in concert to with any person "interfere" with Moore's employment.

47. Defendants deny the allegations of paragraph forty-seven. Defendants, including Hoff, affirmatively assert their right to protect journalistic sources notwithstanding Plaintiff's claims of alleged injury. To the extent that Hoff has known sources for any of his journalistic endeavors, including those involving Moore, Plaintiff will not disclose them.

48. Defendants admit the allegations of paragraph forty-eight to the extent it recites the partial contents of one of Hoff's blogs; however, these answering Defendants lack sufficient information to admit or deny the remaining allegations, so they are denied.

49. Defendants admit the allegations of paragraph forty-nine to the extent it recites the partial contents of one of Hoff's blogs; however, these answering Defendants deny that

Hoff's blog is properly characterized by the term "complained" and as to the remaining allegations, they lack sufficient information to admit or deny them, so they are denied.

50. Defendants deny the allegations of paragraph fifty.

51. Defendants admit the allegation of paragraph fifty-one that Hoff reported the cause of Moore's firing as "misconduct"; Defendants deny the remaining contention non-factual allegations of paragraph fifty-one which seek to characterize another legal proceeding. Defendants affirmatively assert that Hoff's reporting was made truthfully, in good faith, and without malicious intent. Moreover, Hoff was privileged to report said statement.

52. Defendants admit the allegations of paragraph fifty-two.

53. Defendants deny the allegations of paragraph fifty-three. Specifically, Defendant Hoff denies that any of the statements alleged therein were either false or defamatory. Moreover, Defendant Hoff states that identical truthful statements were published by another local journalistic outlet.

54. Defendants admit the allegations of paragraph fifty-four and state that such a statement constituted opinion or editorial expression and are neither defamatory or false; neither are they susceptible to being proven true or false.

55. Defendants deny the allegations of paragraph fifty-five.

56. Defendants admit the allegations of paragraph fifty-six and state that such a statement constituted opinion or editorial expression and are neither defamatory nor false.

57. Defendants deny the allegations of paragraph fifty-seven to the extent they assert a factual allegation susceptible of knowledge.

58. Defendants admit the allegations of paragraph fifty-eight and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

59. Defendants deny the allegations of paragraph fifty-nine.

60. Defendants admit the allegations of paragraph sixty and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice as stated by Hoff's post based on Hoff's sources and published account.

61. Defendants admit the allegations of paragraph sixty-one and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

62. Defendants admit the allegations of paragraph sixty-two and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

63. Defendants deny the allegations of paragraph sixty-three.

64. Defendants deny the allegations of paragraph sixty-four.

65. Defendant Hoff admits the allegations of paragraph sixty-five and states that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

66. Defendant Hoff admits the allegations of paragraph sixty-six and states that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

67. Defendants deny the allegations of paragraph sixty-seven.

68. Defendants admit the allegations of paragraph sixty-eight and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

69. Defendants deny the allegations of paragraph sixty-nine.

70. Defendants deny the allegations of paragraph seventy.

71. Defendants deny the allegations of paragraph seventy-one.

72. Defendants deny the allegations of paragraph seventy-two.

73. Defendants deny the allegations of paragraph seventy-three.

74. Defendants admit the allegations of paragraph seventy-four and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

75. Defendants admit the allegations of paragraph seventy-five and state that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice

76. As to the allegations in paragraph seventy-six, Defendants lack sufficient knowledge to admit or deny, therefore they are denied as to manner of Moore's termination.

77. Defendant Hoff admits the allegations of paragraph seventy-seven and states that such a position or statement constituted opinion or editorial expression and are neither defamatory nor false nor is it evidence of malice.

COUNT I

Defamation

Defendants restate each and every foregoing denial and response herein.

78. Defendants deny the allegations of paragraph 78 through 82.

COUNT II

Intentional Interference with Contract

Defendants restate each and every foregoing denial and response herein.

79. Defendants deny the allegations of paragraph 83 because they lack sufficient knowledge or information as to the existence of any contract between Moore and U of M/UROC.

80. Defendants deny the allegations of paragraphs 84 through 88.

COUNT III

Interference with Prospective Advantage

Defendants restate each and every foregoing denial and response herein.

81. Defendants deny the allegations of paragraphs 89 though 90.

COUNT IV

Aiding and Abetting

Defendants restate each and every foregoing denial and response herein.

82. Defendants deny the allegations of paragraphs 91 though 92.

AFFIRMATIVE DEFENSES

83. The Plaintiff's complaint fails to state a claim upon which relief can be granted.

84. Plaintiff's claims are barred by the doctrines of Laches, Estoppel, and Unclean Hands.

85. The alleged defamatory statements made by Defendants are true.

86. The Defendants were and are entitled to a qualified privilege as to any statements made.

87. Defendants actions were privileged.

88. Defendants were not the proximate cause of injury to Plaintiff, if any.

89. The injury or harm to Plaintiff, if any, was caused by persons who these answering Defendants did not control.

90. The injury or harm to Plaintiff, if any, was caused in whole or in part by Plaintiff's own acts, omissions or conduct.

91. Defendants are entitled to a journalistic privilege based on the First Amendment and the Minnesota Constitution.

92. Defendants statements were made in good faith and/or on matters of public concern or interest and without malice.

93. Defendants are entitled to claim the Minnesota Shield Law.

94. Plaintiff has failed to mitigate damages, if any.

95. Plaintiff has waived any claim to damages by placing himself in the public eye and engaging in public debate on matters of public interest and concern.

96. Defendants' statements were neither reckless nor made in probable disregard of the truth.

97. The alleged defamatory statements are properly opinion.

98. The alleged defamatory statements are not susceptible to being proven true or false.

99. Defendants' statements are true on their face.

100. Any alleged statements made by Defendants did not tend to or actually lower Plaintiff's reputation in the community at the time they were made.

101. Plaintiff has failed to properly allege specific damages or actual damages resulting from the statements allegedly made by these Answering Defendants.

102. Plaintiff has not suffered actual injury based on any alleged statements or acts of these answering Defendants.

103. Defendants' alleged statements are substantially true.

104. Some of Defendants' alleged statements were not made concerning Plaintiff.

105. Plaintiff has failed to join an indispensable party who published similar alleged statements regarding Plaintiff.

106. Defendants' mere conduct as alleged does not constitute defamation as a matter of law.

107. Defendants are immune from liability because some or all of their alleged statements were made at a proper time, in a proper place, with a proper motive, and for a proper purpose.

108. Some of Plaintiff's purported claims are encompassed and therefore barred by his assertion of other claims based on the same alleged factual circumstances.

109. Defendants' alleged statements are absolutely privileged under the First Amendment and the Minnesota Constitution.

110. Defendants' alleged statements and conduct are immune from suit based on Minn. Statutes Section 554.03, and was intended in whole or in part to procure favorable government action.

111. Defendants reserve the right to assert any and all other available affirmative defenses following discovery in this matter.

PRAYER FOR RELIEF

A. Wherefore, Defendants pray that this Plaintiff take nothing by his pretended complaint and Defendants be granted judgment against Plaintiff and an award of their costs and disbursements.

B. Defendants demand a jury trial.

C. Defendants request any and all other relief available at law or equity.

Dated: 12 October 2009

GOINS LAW OFFICES, LTD.

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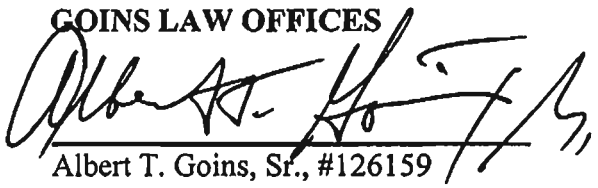
ATTORNEY FOR DEFENDANTS DONALD W.R. ALLEN, V-MEDIA DEVELOPMENT, INC. and JOHN HOFF.

ACKNOWLEDGMENT

The undersigned attorney does hereby acknowledges the provisions of Minn. Stat. §'549.211.

Dated: October 12, 2009

GOINS LAW OFFICES



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STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

Donald W.R. Allen, John Hoff a/k/a Johnny Northside and John Does 1-5,

Defendants.

ORDER

Ct. File No. 27-CV-09-17778

The above-entitled matter came on for hearing before the Honorable Denise D. Reilly, Judge of District Court on March 3, 2011. Counsel noted their appearances on the record. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

ORDER

1. The Court determines as a matter of law that Plaintiff Jerry L. Moore is a limited-purpose public figure.
2. The Court determines as a matter of law that paragraphs 53 and 71 are statements of fact; and paragraphs 54 and 72 are statements of opinion.
3. Trial in this matter shall begin on March 7, 2011 at 9:00 a.m.
4. The Court's Memorandum, filed herewith, is incorporated herein.

IT IS SO ORDERED.

Dated this 3 day of March, 2011.

BY THE COURT:

The Honorable Denise D. Reilly
Judge of District Court

MEMORANDUM

I. Plaintiff Jerry L. Moore is a Limited-Purpose Public Figure

During the time frame relevant to this case, Plaintiff Jerry L. Moore ("Plaintiff") was an elected member of the Board, interim director, and Executive Director of the Jordan Area Community Council ("JACC"). The JACC, among its other duties, addresses housing issues and community organization unique to the Jordan-area neighborhood in Minneapolis, Minnesota. In the years at issue, the JACC focused on the high foreclosure rates in its neighborhood. The JACC is registered with the Minnesota Secretary of State as a private, non-profit organization but receives both public and private funds to support its neighborhood projects.

The issue before the Court is the status of Plaintiff as a public or private figure for purposes of his defamation claim against Defendant John Hoff ("Defendant"). Where material facts concerning a defamation plaintiff's status are in dispute, the district court may conduct an evidentiary hearing. *See Chafoulias v. Peterson*, 668 N.W.2d 642, 651 (Minn. 2003). The Court conducted an evidentiary hearing on March 3, 2011. The Court heard testimony from Don Samuels, Plaintiff and Defendant and received exhibits into evidence. The exhibits were copies of articles in Finance & Commerce, the Twin Cities Daily Planet, MPR News, the Star Tribune, NPR, City Pages and MinnPost. Plaintiff was quoted in the articles, or his work was described. His association with the JACC was usually noted.

Whether Plaintiff is a public figure is a threshold issue which the Court may determine as a matter of law. *See Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985). The court's findings of fact regarding the status of a plaintiff in a defamation case is subject to appellate review under a clearly erroneous standard. *See Chafoulias*, 668 N.W.2d at 651.

The Minnesota Supreme Court recognizes three categories of public figures: an involuntary public figure, an all-purpose public figure, and a limited-purpose public figure. *Jadwin*, 367 N.W.2d at 484. An involuntary public-purpose figure is one who becomes a public figure through no purposeful action of his or her own and is an exceedingly rare classification. *Id.* at 483. An all-purpose public figure is generally described as a celebrity or a prominent social figure. *Id.* at 484. Neither party contends that Plaintiff is an "involuntary" public figure or an "all purpose" public figure. The issue, then, is whether Plaintiff is a limited-purpose public figure. A limited-purpose public figure is one who voluntarily "injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974).

The Court recognizes that "[t]he line between limited-purpose public figure status and private individual status has proved difficult to draw." *See* Jadwin, 367 N.W.2d at 484. To determine whether an individual is a limited purpose public figure, courts consider whether (1) a public controversy existed; (2) the individual assumed a purposeful or prominent role in that controversy; and (3) the allegedly defamatory statement was related to the public controversy. *Meige v. Central Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 495 (Minn. Ct. App. 2002) (citing *Hunter v. Hartman*, 545 N.W.2d 699, 704 (Minn. Ct. App. 1996)).

As an initial matter, the Court finds a public controversy existed. A public controversy is a dispute that "has received public attention because its ramifications will be felt by persons who are not direct participants." *Chafoulias*, 668 N.W.2d at 651 (quoting *Waldbaum v. Fairchild Publ'ns, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980)). Significant public controversies are those that touch "upon serious issues relating to, for example, community values, historical events, governmental or political activity, arts, education, or public safety." *Dedefo v. Wake*, WL

21219830, 3 (Minn. Ct. App. 2003) (citing *Wells v. Liddy*, 186 F.3d 505, 540). Here, a public controversy existed regarding housing issues in the Jordan-area neighborhood. The Court heard credible testimony that one of the primary functions of the JACC was to address housing and livability issues in the Jordan neighborhood. Exhibits also describe the work of JACC as involving housing issues in the Jordan neighborhood. Housing concerns were a matter of public debate and dispute. Moreover, it is reasonably foreseeable that housing concerns could have "substantial ramifications" for persons beyond the JACC and Plaintiff. *Chafoulias*, 668 N.W.2d at 652.

Next, the Court finds that Plaintiff "assumed a purposeful or prominent role in that controversy." *Metge*, 649 N.W.2d at 495. Plaintiff was elected to be the neighborhood representative on the JACC Board in 2005. Plaintiff became the interim director of the organization in December 2006. In May 2007, Plaintiff became the Executive Director of the JACC, a position he held until approximately December 2008. Plaintiff held a prominent role on the JACC and in its work related to housing issues in the Jordan neighborhood. Mr. Samuels, a City Council member for the City of Minneapolis, Fifth Ward, testified that Plaintiff's name often came up with respect to issues and controversies related to the Jordan-area neighborhood. Further, the Court received into evidence news articles recognizing Plaintiff's role in the housing controversy in this area. In many instances, the media approached Plaintiff to secure his perspective on issues relating to housing. It is evident that Plaintiff assumed a prominent role in the housing controversy and should have realistically expected, due to his position, to have an impact on its resolution. *See Chafoulias*, 668 N.W.2d at 653. The fact that Plaintiff did not call press conferences or call the media is not dispositive in this Court's determination of this issue. It appears from the exhibits that the news media sought out Plaintiff when it wanted comments

about the Jordan neighborhood. Plaintiff was "drawn into the controversy." *Gertz*, 418 U.S. at 351 (1974).

Lastly, the Court finds that the allegedly defamatory statements were related to the public controversy. *Merge*, 649 N.W.2d at 495. Defendant's statements include, among other allegations, that Plaintiff was involved with a fraudulent mortgage at 1564 Hillside Avenue North and received a $5,000 check for new windows at the same location. (*See* Compl. ¶¶ 53 & 71.) The property located at 1564 Hillside Avenue North was the subject of a criminal complaint against Larry Maxwell involving flipping, mortgage fraud and identity theft. The criminal complaint against Larry Maxwell was well-known in the Jordan area. Mr. Samuels lived on the same block as the Hillside property and testified that he and other neighbors were aware of the criminal lawsuit. These statements relate to the public controversy surrounding housing issues in the Jordan-area neighborhood.

On balance, the Court finds that Plaintiff is a limited-purpose public figure in that he "thrust himself to the forefront of a particular public controversy in order to influence the resolution of the issues involved." *See Hunter v. Hartman*, 545 N.W.2d 699, 704 (Minn. Ct. App. 1996), *review denied* (Minn. June 19, 1996) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S.Ct. 2997, 3009 (1974)); *see also Bieter v. Fetzer*, WL 89484, 3 (Minn. Ct. App. 2005). The Court's finding is further bolstered by the appellate court's findings in *Merge*. In that case, the Minnesota Court of Appeals determined that a defamation plaintiff qualified as a limited-purpose public figure when the private, non-profit corporation at issue was nevertheless "imbued with a public purpose…substantially supported with public funds [and where] its activities [were] routinely reported in the media." *Merge*, 649 N.W.2d at 496. Based upon the evidence and the testimony presented at the hearing, the Court concludes that Plaintiff is a

limited-purpose public figure with respect to his involvement with JACC and the housing issues in the Jordan-area neighborhood.

II. Paragraphs 53 and 71 are Statements of Fact; Paragraphs 54 and 72 are Statements of Opinion

The issue presented to the Court is whether each of the following four statements[1] qualifies as a statement of opinion or a statement of fact for purposes of Plaintiff's defamation case:

> Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N. (Compl. ¶ 53.)
>
> The collective judgment of decent people in the Jordan neighborhood – "decent" being defined as "not actively involved in mortgage fraud" – is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him. (Compl. ¶ 54.)
>
> Mr. Moore did a deal that remains in question where he received a $5,000 check for 'new windows' at 1564 Hillside Ave. N. (Compl. ¶ 71.)
>
> This was a conflict of interests, at the time he was JACC's executive director. (Compl. ¶ 72.)

A statement is only actionable under defamation law if it is capable of being proved true or false. *See Nexus v. Swift*, 785 N.W.2d 771, 784 (Minn. Ct. App. 2010) (citing *Marchant Inv. & Mgmt Co v St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. Ct. App. 2005)). In reaching its determination, the district court may consider the following variables:

> the statement's broad context, which includes the general tenor of the entire work and its statements, setting, and format; the specific context of the statements, including the use of figurative or hyperbolic language and the reasonable expectations of the audience; and whether the statement is sufficiently objective to be susceptible of being proved true or false.

[1] During the hearing on this matter, Plaintiff withdrew his claim with respect to paragraph 70 of the amended Complaint.

Nexus, 785 N.W.2d at 784. Whether a statement can be proven true or false is a question of law which the appellate court reviews de novo. *Lund v. Chicago & Nw. Transp. Co.*, 467 N.W.2d 366, 369 (Minn. Ct. App. 1991), *review denied* (Minn. June 19, 1991).

The Court finds that paragraphs 53 and 71 of Plaintiff's amended complaint are statements of fact which are capable of being proven true or false. With respect to paragraph 53, Defendant claims the words "high-profile" are subjective and not susceptible of being provided true or false. However, when taken as a whole, the statement is sufficiently objective and verifiable for the finder of fact to determine its truth or falsity. *See Nexus*, 785 N.W.2d at 784. Similarly, paragraph 71 is a precise statement that is capable of being proved true or false. *Id.*

The Court finds that paragraphs 54 and 72 of Plaintiff's amended complaint are statements of opinion and therefore not actionable under defamation law. *See id.* With respect to paragraph 54, it is clear that Defendant is expressing his subjective viewpoint rather than asserting a statement of fact regarding the collective judgment of individuals in the Jordan neighborhood or the personnel decisions of the University of Minnesota. "If it is plain that the speaker is expressing a subjective view, such as an interpretation, a theory, conjecture, or surmise, rather than objectively verifiable facts, the statement is not actionable." *Schlieman v. Gannett Minn. Broad.*, 637 N.W.2d 297, 308 (Minn. Ct. App. 2001), *review denied* (Minn. Mar. 19, 2002). Similarly, paragraph 72 is a statement of opinion which is not capable of being proved true or false. *See Nexus*, 785 N.W.2d at 784. Defendant's contention that "[t]his was a conflict of interest" lacks specificity and precision and is not verifiable by the finder of fact. *See Geraci v. Eckankar*, 526 N.W.2d 391, 397 (Minn.App.1995), *review denied* (Minn. Mar. 14, 1995). For these reasons, the Court concludes that paragraphs 53 and 71 of the amended complaint are statements of fact, whereas paragraphs 54 and 72 are statements of opinion.

DSR 3/3/11

STATE OF MINNESOTA

COUNTY OF HENNEPIN

FILED
2011 MAR 11 AM 11:08
BY
HENNEPIN COUNTY DISTRICT COURT

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

SPECIAL VERDICT FORM

Court File No. 27-CV-09-17778

We, THE JURY, in the above-entitled action, for our special verdict, answer the question submitted to us as follows:

1. Was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." false?

NO
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question*: Did the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." convey a defamatory meaning as to Jerry Moore?

_____
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* By clear and convincing evidence, was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." made by John Hoff with actual malice?

_____
Yes or No

[If your answer to Question 3 was "Yes", then answer Questions 4 and 5.]

4. What amount of money will fairly and adequately compensate Jerry Moore for damages directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." up to the time of this verdict, for:

a. Past harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Past economic loss? $_____

5. What amount of money will fairly and adequately compensate Jerry Moore for damages reasonably certain to occur in the future, directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." for:

a. Future harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Loss of future earning capacity? $_____

[Answer Questions 6 and 7 regardless of your answers to Questions 1-5.]

6. Did John Hoff intentionally interfere with Jerry Moore's employment contract?

Yes
Yes or No

7. Did John Hoff interfere with Jerry Moore's prospective employment advantage?

Yes
Yes or No

[If your answer to Questions 6 and/or 7 were "Yes," then answer Question 8.]

8. What amount of money will fairly and adequately compensate Jerry Moore for damages caused by interference with a contractual relationship and/or prospective advantage for:

a. Loss of benefits of the contract or the prospective relationship? $ 35,000

b. Other losses directly caused by the interference? $ 0

c. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference? $ 25,000

[redacted]
Foreperson

Jurors concurring sign here:

1._____ 4._____

2._____ 5._____

3._____ 6._____

Dated: _____ at _____ o'clock ___.m. at Minneapolis, Minnesota.

State of Minnesota
Hennepin County

District Court
Fourth Judicial District

Court File Number: **27-CV-09-17778**
Case Type: Contract

Notice of Entry of Judgment

PAUL ALLEN GODFREAD
100 SOUTH FIFTH ST
SUITE 1900
MINNEAPOLIS MN 55402

Jerry L Moore vs Donald W R Allen, John Hoff a/k/a Johnny Northside and John Does 1-5

You are hereby notified that a judgment has been entered in the above entitled matter.

Judgment Information	
Entered Date	**April 13, 2011**
Debtor(s)	**John Hoff, Also Known As Johnny Northside.**
Creditor(s)	**Jerry L Moore**
Monetary Award:	
Monetary Amount:	$60,000.00

A true and correct copy of this notice has been served by mail upon the parties. Please be advised that notices sent to attorneys are sent to the lead attorney only.

Note: Costs and interest will accrue on any money judgment amounts from the date of entry until the judgment is satisfied in full.

Dated: April 13, 2011

Mark S. Thompson
Court Administrator
Hennepin County District Court
300 South Sixth Street, C-3
Minneapolis MN 55487-0332
612-348-3169

State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: **27-CV-09-17778**
Case Type: Contract

Notice of Entry of Judgment

PAUL ALLEN GODFREAD
100 SOUTH FIFTH ST
SUITE 1900
MINNEAPOLIS MN 55402

In Re: Jerry L Moore vs Donald W R Allen, John Hoff a/k/a Johnny Northside and John Does 1-5

You are notified that judgment was entered on April 13, 2011 pursuant to the Order filed April 7, 2011. .

Dated: April 13, 2011

Mark S. Thompson
Court Administrator

Hennepin County District Court
300 South Sixth Street, C-3
Minneapolis MN 55487-0332
612-348-3169

cc: Donald W R Allen
JILL ELEANOR CLARK
JOHN P BORGER
V-Media Development Corporation Inc

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendants	Court File No.: 27-CV-09-17778 **DEFENDANT HOFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY FOR A NEW TRIAL**

INTRODUCTION

Plaintiff Moore brought this action for defamation and tortious interference with contract and prospective advantage. A jury returned a verdict stating that Defendant Hoff's statements were not false and therefore not defamatory but Hoff had nonetheless tortiously interfered with Moore's employment contract and expectation of continued work with the University of Minnesota. This verdict is inconsistent and contrary to established law in Minnesota where liability for tortious interference claims cannot be based upon true statements.

Because the law and evidence can only lead to a ruling for Defendant, judgement as a matter of law is appropriate. In the alternative, a new trial is appropriate for the following reasons: (1) that the jury's award was swayed by emotion, (2) certain character evidence was improperly excluded, (3) the jury instructions include a plain error which caused the inconsistent verdict, and (4) that the verdict is contrary to law and unsupported by evidence.

I. HOFF IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW BECAUSE TRUE STATEMENTS CANNOT BE THE BASIS OF TORTIOUS INTERFERENCE.

The verdict returned by the jury was inconsistent. While the jury found that Hoff's statements were not false (a factual finding), it incorrectly concluded that Hoff had interfered with Moore's contract and prospective advantage. Whether a statement is true or false is a question of pure fact and the jury's finding on that issue should not be disturbed. However, without evidence of some behavior other than communicating a true message, Plaintiff's tortious interference claims fail as a matter of law.

A. Judgment for Hoff as a Matter of Law is Appropriate Under Rule 50.01 of the Minnesota Rules of Civil Procedure.

A motion for judgment as a matter of law raises a purely legal question, *Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn. 1983) the motion must be granted where, as here, "there is no legally sufficient evidentiary basis for a reasonable jury to find for that [non-moving] party. . . ." Minn. R. Civ. P. 50.01(a). Rule 50.02 calls for judgment as a matter of law when "a jury verdict...is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007); *see also Kidwell v. Sybaritic, Inc.*, 749 N.W.2d 855, 869-70 (Minn. App. 2008) (reversing denial of judgment as a matter of law). In ruling on the motion, the Court may: (1) allow the verdict to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law. Minn. R. Civ. P. 52.02.

B. Plaintiff's Tortious Interference Claims Cannot Succeed Because the Jury Found That Hoff's Statements Were True.

In order for a tortious interference claim to be successful, a plaintiff must show that the interference alleged was improper. *R.A., Inc. v. Anheuser-Busch, Inc.*, 556 N.W. 2d 567, 571 (Minn. App. 1996). Minnesota courts have consistently held that truthful statements cannot constitute *improper* interference, and have adopted the Restatement

(Second) of Torts § 772 (1979) in regards to tortious interference claims and the use of truthful statements. *Glass Service Co. Inc. v. State Farm Mut. Auto Ins. Co.,* 530 N.W. 2d 867, 871 (Minn. App. 1995); *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.2d 329, 337 (8th Cir. 2003). Section 772(a) states in relevant part:

> "One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person ... truthful information."

Plaintiff had the burden to show that Hoff's alleged interference was improper or wrongful. Because the Jury returned its verdict stating that Hoff's statements were not false, the element of wrongfulness in the tortious interference claim cannot be met as a matter of law. Plaintiff failed to produce any evidence of wrongful behavior or any evidence of actions taken by Hoff other than communicating true statements or opinions. In fact, Plaintiff failed to show that Hoff's actions were in any sense the cause for the University of Minnesota to take any adverse employment action against the Plaintiff.

Without evidence of wrongful behavior, Plaintiff's tortious interference claims are essentially an attempt to take another bite at the defamation claim. Minnesota courts have held that the law of defamation controls where other tort claims are based on allegedly defamatory statements. *See Wild v. Rarig,* 302 Minn. 419, 447, 234 N.W.2d 775, 793 (1975). Here Plaintiff is attempting to reframe the same behavior as different torts. Plaintiff had opportunity to provide evidence of other behavior that was wrongful, but did not. Under *Wild*, if Plaintiff cannot successfully prove defamation, he cannot as a matter of law succeed under a theory of tortious interference.

Because the jury concluded that Hoff's statement was true and there was no evidence of any other supposed interference, there can be only one legal conclusion: that there was no tortious interference with contracts or prospective advantage when the

University of Minnesota discontinued its working relationship with the Plaintiff.

C. Plaintiff's Tortious Interference Claims Are Barred By the First Amendment

Even if this Court were to disagree with the view from the Restatement of Torts that truthful statements cannot form the basis of tortious interference claims, the First Amendment would bar Plaintiff's recovery. "Speech does not lose its protected character. . . simply because it may embarrass others or coerce them into action." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982). Moore's past involvement with mortgage fraud was an issue of concern in his neighborhood of North Minneapolis because of his role as the former Executive Director of the affected neighborhood's community council as well as his involvement in the local scene. This is exactly what Hoff's blog posts highlighted. This Honoroble Court declared that Moore was a limited purpose public figure. The jury found that Hoff's statements were true, and therefore they are protected by the First Amendment.

Recently, the Supreme Court of the United States stated: "The Free Speech Clause of the First Amendment— 'Congress shall make no law . . . abridging the freedom of speech'— can serve as a defense in state tort suits." *Snyder v. Phelps,* __U.S. ___ (2011) (No. 09-751, Decided March 2, 2011); *See also Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46 (1988) (no liability for intentional infliction of emotional distress for statements about a public figure without proving elements of defamation). Were this Court to allow the verdict to stand, Hoff would be punished for exercising his right to truthfully discuss issues of public concern, public figures and the use public funds. Hoff's speech is Constitutionally protected because it contains true statements and opinions about a limited purpose public figure in regards to topics that are of public concern (i.e., mortgage fraud). Moore had been employed by the University, a government institution, to

investigate mortgage fraud, Hoff and others in the neighborhood were rightly concerned. Hoff had a right to write about these issues and therefore, Plaintiff's tortious interference claims must therefore fail as a matter of law.

D. The Evidence Cannot Support a Finding of Tortious Interference as there Was No Evidence Showing Hoff's Statements Were the Cause of Moore's Termination.

Even though Plaintiff's claims must fail as a matter of law because Hoff's statements were found to be true by a jury, they must also fail because Plaintiff did not produce sufficient evidence to show that Hoff's statements were the cause of Plaintiff's termination. It was undisputed that Moore's position was temporary. All of the evidence from Moore's former employer, the University of Minnesota, indicates that Moore's held a temporary position and was no longer needed. There was no testimony or documentary evidence indicating that Hoff's writing was the cause of the Moore's employer to discontinue its employment relationship with Moore. On the contrary, both Moore's termination letter (Ex. 103) and credible testimony from Makeda Zulu-Gilespie indicate that Hoff was not a factor that caused the relationship between Moore and the University of Minnesota to end.

In Plaintiff's closing argument he suggested that it was possible that the University of Minnesota would not readily disclose the true reasons for Moore's termination. Plaintiff concedes that the timing of Hoff's blog post may be coincidental. Minnesota appellate courts have overturned verdicts based on inadequate circumstantial evidence. *See e.g. Cokley v. City of Otsego*, 623 N.W.2d 625, 633 (Minn. App. 2001). If the evidence offered could support two inconsistent theories equally, then Plaintiff has failed to prove its theory by circumstantial evidence. *Republic Nat. Life Ins. Co. v. Marquette Bank*, 251 N.W.2d 120, 124 (Minn. 1977) (citations omitted). Here, the evidence supports a finding that Moore's temporary position was simply finished. In fact all the

evidence from the University supports this interpretation. While plaintiff's theory is possible, it was not sufficiently demonstrated by the evidence. It was Plaintiff's burden to show that Hoff actually caused harm to Moore. Because Plaintiff failed to prove the essential elements of tortious interference of contractual relations and prospective advantage, judgment as a matter of law is appropriate.

II. HOFF IS ENTITLED TO A NEW TRIAL BECAUSE THE JURY WAS IMPROPERLY SWAYED BY EMOTION, THE JURY INSTRUCTIONS CONTAINED PLAIN ERROR AND THE VERDICT WAS CONTRARY TO LAW AND UNSUPPORTED BY EVIDENCE.

A. Rule 59.01 Of The Minnesota Rules Of Civil Procedure States The Grounds For Obtaining A New Trial.

A new trial is required where (1) an error identified in Rule 59.01 has occurred (2) resulting in prejudice to the moving party. *See Meagher v. Kavli*, 256 Minn. 54, 62, 97 N.W.2d 370, 376 (1959). Errors listed in Rule 59.01 that are applicable here include the following:

> (e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
>
> (f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;
>
> (g) The verdict, decision, or report is not justified by the evidence, or is contrary to law....

Minn. R. Civ. P. 59.0166. A new trial may be granted on "all or part of the issues" raised by the motion. *Meagher*, 256 Minn. at 62, 97 N.W.2d at 376. Here a new trial is justified for any one of the following reasons.

B. Jury Instructions Contained a Plain Error

The jury instructions contained an plain error that allowed an inconsistent verdict

to be returned. "A court may consider a plain error in the instructions affecting substantial rights that has not been preserved" Minn. Rule Civ. P. 51.04(b). In order to determine whether plain error exists, "[T]here must be (1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn.1998).

Here, the error allowed the jury to return a verdict that is contrary to established law by allowing the jury to conclude that Hoff's statements were true, but that he nonetheless interfered with Moore's contracts and prospective advantage. As discussed above in this Memorandum, Minnesota law does not allow for tortious interference claims to succeed based upon true statements. *See Glass Service*, 530 N.W.2d 867, 871. The error in jury instructions would have the effect of imposing tort liability upon speech that is protected by the First Amendment and would be a substantial impact upon Hoff's rights.

C. The Court Erred in Excluding Character Evidence

The Court erred in excluding documentary evidence relating to Moore's past . The bad character of a plaintiff in a libel action may be shown in mitigation of damages" by presenting evidence of the plaintiff's "general reputation in that respect in the community in which he lives." *Lydiard v. Daily News Co.*, 110 Minn. 140, 145, 124 N.W.2d 985, 987 (1910). Moore's testimony included an emotional response to how Hoff's writing had affected him and his family. Moore's testimony most likely gained the sympathy of the jurors who were unable to assess the full picture of Moore's actual familial situation. Because evidence of Moore's reputation and character was directly relevant, it should not have been excluded. Because it was excluded, Hoff was unfairly prejudiced by the incomplete picture of Plaintiff's reputation presented to the jury.

D. The Jury's Award Is Excessive and the Result of Being Improperly Swayed by Emotion

The award given to Plaintiff by the jury is far in excess of any reasonable damages suffered by the Plaintiff. A Jury award must be based upon evidence of harm and not mere speculation. *Sievert v. First Nat'l Bank in Lakefield*, 358 N.W.2d 409, 414 (Minn. App. 1984). For an award of damages to be "excessive" under Minnesota law, it "must so greatly exceed what is adequate as to be accountable on no other basis than passion and prejudice." *Kinikin v. Heupel*, 305 N.W.2d 589, 596 (Minn. 1981). Moore's contract was temporary and there was little, if any, evidence demonstrating his average earnings or what future earnings he might reasonably expect. Additionally, the University of Minnesota maintained that Moore's contracted services were simply at an end and therefore his likely future earnings from this particular employer was zero. The verdict was the result of an emotional response as there was insufficient evidence to support an award with emotional damages.

* * *

CONCLUSION

This Court must enter judgment as a matter of law in favor of Defendant Hoff on all counts as the jury's factual findings cannot support a judgment for the Plaintiff. Because the jury found Hoff's statement to be true, Minnesota law bars recovery for tortious interference. In the alternative, this Court must order a new trial as there was plain error in the instructions and special verdict form utilized by the jury, character evidence was improperly excluded, the award of damages was the result of an improper appeal to emotion rather than evidence and the verdict is not justified by evidence or law.

Respectfully submitted,

Dated: April 1, 2011

GODFREAD LAW FIRM, PC

By: _____

Paul Godfread (389316)
100 South Fifth Street, Suite 1900
Minneapolis, MN 55402
(612) 284-7325

Attorney for Defendant
John Hoff, a/k/a "Johnny Northside"

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

Dated April 1, 2011

By: _____

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

v.

John Hoff, a/k/a Johnny Northside,

Defendants.

Civil No. **27-cv-09-17778**

Plaintiff's Memorandum of Law in Opposition to Defendant Hoff's post-verdict motions

INTRODUCTION

Defendant Hoff's "post-verdict" motions read like a list of things he wish he had done during the litigation. Without exception, for each of the issues that Hoff now raises, he had over a year to raise them in the litigation, and did not. Even as we neared trial, and the Court graciously gave his new, incoming counsel additional time to file trial pleadings, Hoff failed to: a) file requested jury instructions; b) brief or even raise First Amendment issues; or c) seek to submit evidence that could have helped him dispute Moore's evidence.

Now, Hoff wants a 'do over.'

For the reasons stated below, all of Hoff's motions should be denied.

PROCEDURAL POSTURE AT TIME OF HEARING

Following several days of trial, the jury returned the special verdict form ("SVF" at **Att. A**).

Hoff did not file any "affidavits" with his post-verdict motions. He made legal argument that judgment should be entered in favor of Hoff.

Hoff made several legal arguments without discussing any facts, and Plaintiff contends that Hoff cannot, in some type of "reply" brief, expand arguments that were not briefed fully enough for Moore to be able to defend, or file affidavit(s).

Judgment was entered in favor of Moore.

Hoff sought and received permission to have his motions heard on May 31, 2011.

FACTUAL STATEMENT

Hoff did not allege or submit any new "facts" not already in the transcript-record.

The SVF asked the jury whether one specific statement was false, "**Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Av. N.**" Att. A, p.1 (the "falsity sentence"). That is the sole statement that the jury was asked to decide whether it was false.[1]

The SVF awarded $35,000 for the intentional interference with contract and/or interference with prospective employment advantage. Att. A, p. 2. Thirty-five thousand for "loss of benefits of the contract of the prospective relationship" and twenty-five thousand for "emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference." *Id.*

The SVF did not award anything for "future" damages. *Id.*

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1 False here means that plaintiff did not show by a preponderance of evidence that the statement was false. That is not the same as a finding by the jury that the statement was 'true.'

ARGUMENT

I. HOFF'S MOTIONS SHOULD BE DENIED.

Hoff contends that the jury's verdict was "inconsistent," because a "true" statement cannot form the basis for a claim of tortious interference with contract. Hoff does not directly address it, but may be implying that a claim of interference with prospective employment advantage is also subject to this analysis. Moore here asserts that Hoff's failure to apply his argument to both "interference" claims means he has waived the one.

However, Plaintiff argues in the alternative that even if Hoff had made the argument against both "interference" claims, the argument must fail.

Hoff avoids the evidence adduced at trial

There are various impediments to Hoff's argument, but the most glaring is that Hoff studiously avoids most of the evidence that supports the "interference" claims. The jury heard several days of evidence. Hoff only analyzes the falsity sentence. At no time did Moore ever contend that the falsity sentence was the basis for his interference claims against Hoff.[2]

Although it will be further addressed below, Hoff has an erroneous view of the First Amendment. The principal purpose of the First Amendment is to protect the citizenry *from*

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[2] Because Hoff's memorandum section I focuses on the falsity sentence and whether its lack of falsity finding can be the basis of the interference claims, and because there was significant evidence that the jury could consider that was *not* the falsity sentence, most of Hoff's citations are irrelevant. The interference claims were not based on the same conduct or statements as the claim for defamation. Note that *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991) permitted a promissory estoppels claim against a media defendant to forward, because it was supported by evidence that the newspaper had published a confidential informant's name, and was therefore not based on the same conduct as a defamation claim. *NAACP* is not on point here. In that case, the hardware store argued that nearby boycotters should be liable for the assaults perpetrated by other people. The boycott was deemed First Amendment activity. Whether a boycott is protected by the First Amendment is an issue of fact in each particular case. Numerous boycotts (meaning pressure on someone else to do or not do something) have been found *not* to be protected by the First Amendment.

government. Hoff seems to assert that every single word he says is protected by the First Amendment, *no matter how it is used.* Hoff ignores thousands of years of British and American law, in which words of a defendant have been the basis of liability, either as an admission of conduct, or as an expression of intent.

Moore's use of Hoff's words as evidence of *intent* was completely proper.

Hoff was aware of, but studiously avoided evidence such as:

- Hoff blogged in his June 21, 2009 blog, "In fact my reason for delaying this post about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess." (Exh. 1).
- Don Allen testified that the goal was to get Moore fired, that he sent an email at Hoff's behest, the email threatened a public relations nightmare campaign (and Allen confirmed that was true, that was the intent of it), and that Allen blind-copied Hoff on the email ("Email"); (Exh. 1).
- That Email stated that Allen would wait a short time;
- Within one day[3] of the Email, Dr. McLaurin (who the U of M witness confirmed made the firing decision) sent Moore the termination letter at Exh. 3.
- Then, in his June 23, 2009 blog, Hoff bragged about getting Moore fired. (Exh. 2). Indeed, he posted, "I say that merely 'letting go' of Moore isn't good enough." Hoff's contemporaneous description was *not* that Moore had finished some assignment. Hoff, claiming to be 'in the know,' stated that Moore was "let go."

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[3] Close timing is evidence of causation. *See, e.g., Clark County Sch. Dist. v. Breeden,* 532 U.S. 268, 273 (2001).

This is not an entire recitation of trial evidence, but the above facts are sufficient to show: a) Hoff took *actions* over and above his claimed "journalistic" diatribe to get Moore fired; b) that he intended to get Moore fired; and c) that there was a connection between his actions and Moore's termination.

Although Hoff suggested that there was insufficient circumstantial evidence – that is not accurate. One day between action and result is the strongest possible circumstantial evidence. Of course, in this case, there was also direct evidence (in the form of Don Allen's testimony and documentation).

Further, intent is nearly always proven by circumstantial evidence. Here, the jury had more than circumstantial evidence of intent: the jury could read Hoff's blogging of his mental attitude – which confirmed he intended to get Moore fired and then was proud of it when he did.

The Email from Don Allen is in evidence (as part of Exh. 1) and not one of those statements were determined by the jury not to be false. Indeed, *Hoff requested that any statement made by Don Allen be affirmatively removed from the statements that the jury would consider.*

Further, the Email is contained within Exhibit 1 (June 21 post), and Hoff bragged in Exhibit 2 (June 23 post) that pages from his blog were "waved around" at the U of M just before Moore was fired. There was plenty of evidence of "wrongful behavior" by Hoff – Hoff just refuses to deal with it in his post-verdict motions.

This is not a discussion of all of the evidence adduced at trial that the jury could reasonably consider in reaching its verdict on the interference claims, but it is sufficient.

Finally, defamation law does not trump all other torts. As Hoff concedes, the other torts must be based on the allegedly defamatory statements. Hoff memo page 4. Here, they were not.

Hoff did not ask for relief from the Court

At no point did Hoff ask the Court to have the jury find malice. At no point did Hoff ask, before or during the trial, to dismiss the interference claims based on the theories he now espouses. At no point did Hoff make any legal motions to the Court to clarify any of these issues. Yet Hoff had ample opportunity to do so. His incoming attorney was given additional time to file trial pleadings, but Hoff still did not file jury instructions. Later, the Court required that Hoff at least list the jury instructions from CivJIG by number, which Hoff did. It is too late, now, for Hoff to claim that the trial went forward without his theory being acknowledged.

Indeed, it was the *Court* who raised the issue of public figure status, and put on an evidentiary hearing. At that hearing, Hoff never contended that this was an "issue of public concern" case. That was his time to contend that, not now, after the jury verdict.

Hoff contends that the U.S. Supreme Court just held March 2, 2011 that the First Amendment can serve as a defense in state torts. The *Snyder case* (131 S. Ct. 1207) was a picketing case. And the state tort was intentional infliction of emotional distress. *Snyder* was *not* the first time a state tort had been subjected to a First Amendment analysis. (Indeed, see other cases cited by Hoff.) The issue is that for the defamation analysis to apply, the plaintiff needs to be seeking relief *based on the allegedly defamatory statements*. That is simply not the case here.

Hoff's argument about "cause" is misplaced

Hoff argues at page 5 of his memorandum that Moore did not prove that Hoff was the "cause" of his termination. The jury instruction read:

1. There was a contract
2. John Hoff knew about the contract
3. John Hoff intentionally caused the breach of the contract
4. John Hoff's actions were not justified.

Moore proved all of those elements, and there is sufficient evidence to establish those elements. It is simply not accurate that Zulu-Gillispie testified that Hoff was not a factor. And, the U of M witness did establish that the work was not done (it was ongoing when Moore was let go) and that even if that leg of the project finished, that there were other sections of the project that Moore would have been considered for. This was evidence that Dr. McLaurin's termination letter was *not accurate,* that there was no "change in [the] need for assistance" (meaning, it was not the true reason for the discharge). (This is what Moore argued, not that the U could not "readily disclose" the true reasons.)

No evidence jury was swayed by emotion

The irony of Hoff's argument that the jury was swayed by emotion, is that Moore has a right to discuss his "emotional distress" damages. The fact that the jury agreed he had incurred emotional distress is not the same as a runaway jury losing its head to passion. Twenty-five thousand dollars cannot, by any stretch, be deemed an out-of-proportion amount. Emotional distress damage amounts much higher than this one have been sustained.

Hoff has not put on one fact in support of this argument, nor cited any applicable law.

Lost wages were calculated nearly exactly (Hoff had a chance to show lack of mitigation or other defenses to damages and did not do anything) and 25k emotional distress does not show passion.

No problems with damages evidence

Hoff's argument re character evidence not briefed

Hoff has stated that the Court failed to allow "character" evidence. Moore cannot defend against this argument, which has not been explained. Hoff has not stated which evidence the Court allegedly excluded. For a court to 'exclude' evidence, Hoff must first try to offer it.

The jury calculated lost wages were calculated from Moore's testimony. *Hoff waived his right to put on evidence that Moore did not mitigate his damages, and he did not even cross examine Moore about his wage earnings.* He clearly waived the right to now complain.

CONCLUSION

For all of the above reasons, Plaintiff Jerry Moore respectfully requests that Hoff's post-verdict motions be denied in their entirety.

Dated: May 24, 2011

ATTORNEY FOR PLAINTIFF

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendant	Court File No.: 27-CV-09-17778 **Defendant Hoff's Response to Plaintiff's Opposition to Post-Trial Motions**

Plaintiff's Opposition to Defendant's Post-Trial Motions does nothing to clarify the issues before the Court. Plaintiff now states that Hoff's statements in the June 21st blog post were not the basis of the interference claims, but fails to put forward a coherent alternative theory as to what other evidence would show that Hoff tortiously interfered with Moore's contracts or prospective advantage. We are left to guess whether Plaintiff is suggesting that Hoff is liable for Don Allen's email, blog comments already excluded under 47 U.S.C. § 230 or blog posts written after Moore was terminated. At a minimum, this lack of clarity would be grounds for a new trial, but would most properly support Hoff's Motion for Judgment as a Matter of Law. Plaintiff cannot prevail on a legal theory as vague as the one he now argues.

I. Plaintiff's Opposition Does Not Demonstrate Causality

Plaintiff's Opposition Brief states that the tortious interference claims were not based on Hoff's allegedly defamatory statement, but fails to state any action by Hoff that

could reasonably be the basis of such claims. Plaintiff contends that the evidence that shows wrongful conduct includes the June 21st blog post, Don Allen's testimony about his own email and the June 23rd email. *See Plaintiff's Opp., page 4.* By claiming the June 21st blog post is evidence of wrongdoing, Plaintiff is trying once again to use tortious interference claims to get around a defamation claim. The email written by Allen is evidence of Allen's actions and Plaintiff has already dismissed his claims against Allen. The June 23rd post could be evidence of Hoff's intention if that were at issue, but it does not demonstrate that the University acted on the June 21st post nor that Hoff did anything that would not have already been included in the defamation claim. Plaintiff's examples of evidence do not demonstrate interference by Hoff.

II. Plaintiff's Attorney's Lack of Candor to the Court

Plaintiff's avoidance of putting a finer point on what Hoff did other than write blog posts is telling. Plaintiff's attorney has made and lost similar arguments using tortious interference to expand what is essentially a defamation case. *See Dunham v. Opperman,* 2007 WL 1191599, at *6-7 (Minn. App. April, 24, 2007). Because plaintiff's attorney had first-hand knowledge of Minnesota defamation law she had a duty under Rule 3.3(a)(2) of the Rules of Professional Conduct to disclose or attempt to distinguish this case from others. If she was unaware of the cases discussed before reading the Amicus Brief of MN Pro Chapter, Society of Professional Journalists, she certainly knows now. In filing a Motion to Strike the Amicus Brief and an Opposition to Plaintiff's Post-Trial Motions, Plaintiff's attorney has now had two additional opportunities to clarify or distinguish the current case with established law in Minnesota. In failing do so, Plaintiff's attorney is demonstrating a continued lack of candor which is additional

grounds for a new trial under Rule 59.01(b) of the Minnesota Rules of Civil Procedure.

Conclusion

Plaintiff's Opposition does not demonstrate how Hoff tortiously interfered with contract or prospective advantage. In fact, it highlights Plaintiff's attempts to use these claims as a means to circumvent or expand established defamation law. Even if Hoff intended to have Moore fired, if there is no evidence that Hoff did anything besides writing that Moore was involved with mortgage fraud. This is in fact the defamation claim already rejected by the jury. This Court should therefore grant Defendant Hoff's Motion for Judgment as a Matter of Law or in the Alternative grant his Motion for a New Trial.

Dated: May 26, 2011

GODFREAD LAW FIRM, PC

By: _____

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Attorney for Defendant
John Hoff, a/k/a "Johnny Northside"

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a/ Johnny Northside,

Defendant.

File No. 27-CV-09-17778
The Honorable Denise D. Reilly

MEMORANDUM OF *AMICUS CURIAE* MINNESOTA PRO CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS

Introduction

In this civil lawsuit, a jury returned a special verdict that defendant John Hoff's statement about plaintiff Jerry Moore was not false, but that Hoff nevertheless had intentionally interfered with Moore's employment contract and prospective employment advantage, awarding Moore $35,000 for loss of contractual benefits and $25,000 for "emotional distress or actual harm to reputation."

The dispute involves a statement published on Hoff's online blog. Outside the context of online publications, Minnesota courts long have held that merely providing truthful information cannot provide the basis for an action for tortious interference with contract or with prospective economic advantage, and both federal and state courts have rejected attempts by plaintiffs to evade the requirements of defamation law when the claim essentially is a defamation claim. Because a ruling on this issue could affect its members, the Minnesota Pro Chapter of the Society of Professional Journalists ("MN-SPJ") seeks leave of court to participate as *amicus curiae* in connection with defendant's post-trial motions.[1]

[1] No party authored this memorandum in whole or in part. No person other than the *amicus* made a monetary contribution to the preparation or submission of this memorandum.

Argument

I. The Court Should Allow the Minnesota Pro Chapter of the Society of Professional Journalists to Participate as *Amicus Curiae.*

Rule 129 of the Minnesota Rules of Appellate Procedure provides for submission of briefs *amicus curiae*. Such briefs can "broaden the discussion of important points of law" in pending cases, "inform the court of facts or matters of law that may have escaped its consideration," and "point out to the court practical or legal consequences of a particular decision beyond those involved in the case pending before the court." D. Herr & S. Hanson, APPELLATE RULES ANNOTATED §§129.1 & 129.3, p. 650 (2009). Although less common, *amicus* briefs can serve the same purposes in the district courts.

The Society of Professional Journalists, a voluntary, non-profit organization, was founded as Sigma Delta Chi in 1909. It is the largest and oldest organization of journalists in the United States, representing every branch and rank of print and broadcast journalism, and for more than a century has been dedicated to perpetuating a free press. The Minnesota Pro Chapter has become one of the nation's largest and most active professional chapters since its founding in 1956.

The work of the Society's members centers upon written and broadcast journalism, and increasingly appears online. A legal rule that exposes journalists and anyone else who communicates on the internet to risks of liability for tortious interference based on truthful statements or on a different standard than defamation could impair the free flow of information and vigorous debate on public issues. MN-SPJ has a significant continuing interest in ensuring that Minnesota courts at every level do not

apply such a rule. Statements appearing online should have the same level of protection as other means of mass communication. MN-SPJ has a public interest in assisting this court in analyzing the tradition of legal protections for such speech.

Accordingly, MN-SPJ respectfully moves this court to grant it leave to participate in this action as *amicus curiae*.

II. The Court Should Reject Tortious Interference Liability based upon Providing Truthful Information.

In *Glass Service Co., Inc. v. State Farm Mut. Auto. Ins. Co.*, 530 N.W.2d 867, 871 (Minn. App. 1995), the Minnesota Court of Appeals affirmed summary judgment in favor of the defendant, an insurance company that provided truthful information to its insureds, and rejected the tortious interference claims of the plaintiff, a company that repaired windshields. The court expressly invoked the RESTATEMENT (SECOND) OF TORTS, §772 cmt. b (1979) (no liability for interference on part of one who merely gives truthful information to another). The Eighth Circuit has applied *Glass Service* as settled Minnesota law. *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.3d 329, 337 (8th Cir. 2003.) This court should rule the same way – particularly when the alleged tortious interference arises from an allegedly defamatory statement.

III. When the Claim is Essentially a Defamation Claim, the Court Should Apply the Law of Defamation even if the Plaintiff Labels his Claim One for "Tortious Interference."

A. Plaintiff Cannot Recast his Defamation Claim as a Claim for Tortious Interference with Contact or with Prospective Employment Advantage.

Courts do not allow plaintiffs to evade the requirements of libel law by presenting their claims under a different legal label. Injuries to reputation are defamation-type damages, for which plaintiffs must prove the elements of a defamation claim regardless of

how the claim is labeled. *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 57 (1988); *Mt. Hood Polaris, Inc. v. Martino (In re Gardner)*, 563 F.3d 981, 992 (9th Cir. 2009) ("[W]hen a claim of tortious interference with business relationships is brought as a result of constitutionally-protected speech, the claim is subject to the same First Amendment requirements that govern actions for defamation."); *Beverly Hills Foodland, Inc. v. United Food and Commercial Workers Union, Local 655*, 39 F.3d 191, 196 (8th Cir. 1994) ("At the outset we note the malice standard required for actionable defamation claims during labor disputes must equally be met for a tortious interference claim based on the same conduct or statements. This is only logical as *a plaintiff may not avoid the protection afforded by the Constitution* and federal labor law *merely by the use of creative pleading*." (emphasis added)); *Johnson v. Columbia Broadcasting System, Inc.*, Court File No. CIV-3-95-624, Order filed June 24, 1997, at 4 (D. Minn. 1997) (plaintiff "must satisfy the defamation standard to establish his claim for tortious interference") (copy attached as Exhibit A); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (First Amendment applies to claims for tortious interference with business relations).

The same result applies as a matter of state common law, as the Minnesota Supreme Court established decades ago:

> It seems to us that, regardless of what the suit is labeled, the thing done to cause any damage to [plaintiff] eventually stems from and grew out of the defamation. Business interests may be impaired by false statements about the plaintiff which, because they adversely affect his reputation in the community, induce third persons not to enter into business relationships with him. We feel that this phase of the matter has crystallized into the law of defamation and is governed by the special rules which have developed in that field.

Wild v. Rarig, 302 Minn. 419, 447, 234 N.W.2d 775, 793 (1975). That court and others have applied the principle repeatedly in the following years.[2] No reason exists for this court to depart from that established precedent.

B. This Plaintiff Cannot Recover for Tortious Interference, because the Jury Determined that the Statement was not False.

A defamation plaintiff bears the burden of proving that the allegedly harmful statement was not true. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997) (defamation plaintiff must establish that the alleged statement was false). This plaintiff did not meet that burden; the jury determined that the statement as issue was not false. For the same reasons that plaintiff Moore could not prevail on his defamation claim, he cannot prevail on his claims for tortious

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[2] *See, e.g.*, *MSK EyES Ltd. v. Wells Fargo Bank*, 546 F.3d 533, 544 (8th Cir. 2008) ("Claims arising out of purported defamatory statements, such as tortious interference, are properly analyzed under the law of defamation."); *European Roasterie, Inc. v. Dale*, Civ. No. 10-53 (DWF/JJG), 2010 WL 1782239, at *5 (D. Minn. May 4, 2010) ("Tortious interference claims that are duplicative of a claim for defamation are properly dismissed."); *ACLU v. Tarek Ibn Ziyad Acad.*, Civ. No. 09-138 (DWF/JJG), 2009 WL 4823378, at *5 (D. Minn. Dec. 9, 2009) (same); *Guzhagin v. State Farm Mut. Auto. Ins. Co.*, 566 F.Supp.2d 962, 969 (D. Minn. 2008) (dismissing tortious interference claim with prejudice because "a Minnesota plaintiff is not permitted to avoid defenses to a defamation claim by challenging the defamatory statements under another doctrine"); *Pinto v. Internationale Set, Inc.*, 650 F. Supp. 306, 309 (D. Minn. 1986) ("[I]n Minnesota, a plaintiff cannot elude the absolute privilege by relabeling a claim that sounds in defamation."); *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 310 (Minn. 2007) ("Regardless of the label, appellant's claims are in essence defamation claims . . . , and we find that absolute privilege operates to bar all of the claims at issue on this appeal."); *Pham v. Le*, Nos. A06-1127, A06-1189, 2007 WL 2363853, at *7-8 (Minn. App. Aug. 21, 2007) (unpublished; copy attached as Exhibit B) (applying *Wild v. Rarig* and *NAACP v. Clairborne Hardware*, dismissing tortious interference claim arising from same statements as unsuccessful defamation claim); *Zagaros v. Erickson*, 558 N.W.2d 516, 523 (Minn. App. 1997) (plaintiff asserted claim of "negligent trial testimony"; court followed *Wild* and held that defamation standards and privileges apply to any "claim [that] is essentially relabeling a defamation claim"); *McGaa v. Glumack*, 441 N.W.2d 823, 827 (Minn. App. 1989) ("In Minnesota, one 'cannot evade the absolute privilege by relabeling a claim that sounds in defamation'") (citations omitted).

interference with employment contract and with prospective employment advantage, to the extent that those claims are based upon an allegedly defamatory statement.

* * *

This court should follow the foregoing clear state and federal precedents and reject the plaintiff's attempt to recover under a theory of tortious interference when that claim is based upon the same statement as his failed claim for defamation.

Conclusion

The court should allow the Minnesota Pro Chapter of the Society of Professional Journalists to participate in this action as an *amicus curiae*. In considering defendant's post-trial motions, the court should apply the same rules to publicly accessible online statements that it would to a print version of the same material.

Dated: March 23, 2011

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendant	Court File No.: 27-CV-09-17778 **Notice of Appeal to Court of Appeals** Notice of Filing of Order and Judgment: August 29, 2011

TO: Clerk of the Appellate Courts
Minnesota Judicial Center
St. Paul, MN 55155

Please take notice that the above-named defendant appeals to the Court of Appeals of the State of Minnesota from an order of the court dated August 22, 2011 and filed on August 29, 2011, denying defendant's motion for judgment as a matter of law or a new trial.

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Dated: October 26, 2011