

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
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
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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 to 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: 

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"