



June 24, 2009

The Honorable Charles A. Porter
Fourth Judicial District
Government Center; 300 S. 6th Street
Minneapolis, MN 55487

Re: *Brown v. Browne*, Civil Case No. 27-CV-09-2277

Dear Judge Porter:

This responds to Mr. Schooler's recent letter asking to "strike" Plaintiffs' reply memorandum. Mr. Schooler objected to Plaintiffs pressing the issue of a protective order, because Plaintiffs had not filed all of the civil motion paperwork. Now, defendants make their motion by letter.

The Court told counsel not to brief the facts in written closing argument – just argument. Defendants ignored that, and instead filed a document containing 20+ pages of "facts," citing to selectively-filed portions of trial transcript. The transcript, if paid for by the defendants, should be filed so that the Court has access to the entire transcript if it wants to see it.

Further, without any notice, or any motion, defendants moved, in their "responsive" closing argument, essentially, for summary judgment on 2 claims that were not at issue in the preliminary injunction hearing (intentional interference with contract and breach of fiduciary duty¹). James A. Moore requested that he not be required to attend the preliminary injunction hearing, if his clients' conduct was not at issue. Mr. Moore asked Plaintiffs to indicate the issues (which we did- §317A.751), and he relied on that articulation by not litigating during the hearing. The City Defendants had no opportunity to weigh in on any torts alleged, and the City Defendants are alleged to have aided and abetted those torts. Defendants should not now be allowed to move for summary judgment in closing argument, as it prejudiced both Plaintiffs, and other defendants.

¹ Plaintiffs indicated before the hearing that breach of fiduciary duty may arise as a subset of 317A.751, but that the claim in and of itself was not being pursued at the hearing.

JILL CLARK, P.A. ATTORNEY AT LAW

If defendants are allowed to move to strike Plaintiffs' reply memorandum on the basis of a letter, then defendants should realize that Plaintiffs are entitled to the same. Plaintiffs therefore move to strike the fact section of defendants' closing argument because defendants' disregarded the instructions of the Court.

Finally, Mr. Schooler's letter claims that Plaintiffs' Reply Memorandum need not be considered because Plaintiffs did not cite to the transcript. There is *no* requirement that parties cite to transcripts in closing argument. Further, are defendants claiming that Plaintiffs were to review the transcript of 10 days of hearing, and file a Reply Memorandum, within 2 days?

On the issue of the timing of the Reply Memorandum, Plaintiff counsel calendared that for June 22, 2009. If that was an error, then Plaintiff counsel takes responsibility for that. Plaintiffs leave it to the Court to decide whether to review their Reply.

Respectfully,

Jill Clark

JEC/slf

c: Opposing Counsel (2); Original to Civil Filing