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: CORRECTED

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

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

FILED
2011 MAR 11 AM 11:08
By _____
HENNEPIN COUNTY COURT ADMINISTRATOR

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? $_____

ATT. A

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

Foreperson

Jurors concurring sign here:

1._____ 4._____

2._____ 5._____

3._____ 6._____

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