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## FAX COVER SHEET

TO: Civil filing 62348-2131

FAX: C: opposing Counsel

FROM: Jill Clark, Esq.  
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DATE: 2-9-09

RE: Brown v. Brown

PAGES (including this cover sheet): 27 CV-09-

MESSAGE: 2277

Ethylon B. "E.B." Brown, *et al*,  
Plaintiffs,  
v.

Civil Case No. 27-CV-09-2277

**PLAINTIFFS' REPLY MEMORANDUM**

Michael "Kip" Brown, *et al*,  
Defendants.

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Plaintiffs wish to call to the Court's attention, a few facts that dispute the Affidavit of Michael Browne handed out in Court on 2-3-09, as well as a few case cites:

Affidavits supporting reply brief:

Affidavit of Treasurer Bob Scott (he did not resign);

Second Affidavit of Benjamin Myers (the Secretary was not temporary); and

Second Affidavit of Jerry Moore

First Amended Complaint:

Plaintiffs can still amend as of right, and file today their First Amended Complaint. There are few changes, except note a claim of Breach of Fiduciary duty was added (which ties to Paragraph 15 under Parties Plaintiff).

Case citations.

***Misconduct and deceit***

At Court on 2-3, Mr. Goins argued that there was not sufficient evidence of misconduct or deceit to trigger Minn. Stat. §317A.751. Consider,

- It was **deceitful** for directors to trick attendance at a meeting, not notifying that they planned an ouster. Alderstein v. Wertheimer, 2002 WL 205684 (De. Ch. 2002) (Att. A).
- In *Disney*, the Delaware Supreme Court defined director misconduct to include “intentional dereliction of duty, a conscious disregard for one’s responsibilities.” 906 A.2d 27 (Del. 2006). Here, the Defendant-directors planned a secret ouster, changed the agenda at the last minute, and departed severely from the process for removal of Officers, printed in the bylaws.
- A director need not know that his action breaches a fiduciary duty for liability for that breach to lie: gross negligence is sufficient for breach of the duty of care, and no showing of knowledge is required. *See, e.g., Smith v. Van Gorkum*, 488 A.2d 858, 873 (Del. 1985).

***Likelihood of success on the merits***

Consider:

- The Thornhurt Country Club Estates Property Owners Assoc. v. Jones, 2006 WL 2065402 (Pa.Com.Pl. 2006) (Att. B), decision to remove association officers and board members was null and void for failing to follow bylaws regarding such removal;
- Kaufman v. Shoenberg, 33 Del. Ch. 211, 91 A.2d 786 (De. Ch. 1952), [directors] were not empowered to inaugurate radical departures from fundamental policies and methods for conducting the business as prescribed by the directors;

- Members of nonprofit corporation *seeking to remove* corporation board of directors failed to comply with corporation articles and bylaws by withdrawing and suspending directors powers and transferring them to members before taking action to remove incumbent directors and, thus, were not entitled to injunctive and declaratory relief. Glover v. Overstreet, 984 S.W.2d 406 (Ark. 1999).
- Majority shareholder acted illegally in removing minority shareholder from board of directors; majority shareholder actions shortened minority shareholder term as director, in violation of corporation bylaws, and notice of annual directors meeting in which minority shareholder was removed was deceptive insofar as notice did not apprise minority shareholder of purpose of meeting or various actions majority shareholder planned to take. Schirmer v. Bear, 648 N.E.2d 1131 (Ill. App. 2d Dist. 1995);
- Duly elected directors may proceed at law to oust former officers unlawfully usurping authority in attempting to manage business. Helm v. Talmadge, 40 S.W.2d 496 (Mo. Ct. App. 1931).

***Remedy***

Although the Court asked Mr. Peters to put into affidavit form his information that the bills of JACC were being paid, there is new information that only selective bills are being paid, and indeed, these might be being paid out of restricted funds. (See Second Moore Aff.). Therefore, Plaintiffs seek immediate disclosure as to what bills are not being paid, and where the funds came from to pay the bills that are being paid. If a remedy short of receivership is going to work, then Defense counsel need to actively work with Plaintiff counsel to tend to these details.

Although the Bank account was initially frozen as against interloper usage, now, based on documents that have not been disclosed to Plaintiffs, Franklin Bank is paying checks signed by Defendant rogue team. Plaintiffs seek immediate disclosure of what documents were provided to the Bank. It appears that this was done **while this TRO was pending**. (See Second Moore and Myers Affs.)

***Mud Slinging Largely Ignored***

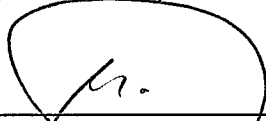
Plaintiffs have largely ignored the mud slinging and self-serving evidence in the Browne affidavit. For each incident described, there are competing facts. (See Second Affs. of Moore/Myers). The Plaintiffs simply urge, that even when there is ugly infighting, the role of the Court is to restore the *status quo*. Stern v. Stern, 1981 WL 17032 (Del. Ch. 1981) (Att. C).

**CONCLUSION**

For all of the foregoing reasons, those in the Complaint, and those in the supporting affidavits, Plaintiffs seek the relief requested in the proposed order.

Dated: February 9, 2009

**ATTORNEYS FOR PLAINTIFF  
JILL CLARK, P.A.**

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

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Ethylon B. "E.B." Brown, *et al*,

Civil Case No. 27-CV-09-2277

Plaintiffs,

**SECOND AFFIDAVIT OF  
JERRY MOORE**

v.

Michael "Kip" Brown, *et al*,

Defendants.

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I, Jerry Moore, being first duly sworn depose and state.

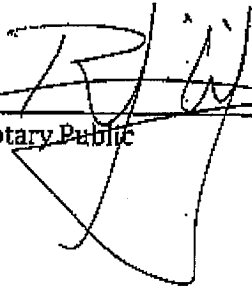
1. I am a plaintiff in this action.
2. No investigation was ever done about the incident that occurred January 12, 2009, and as you can see by the police report, I was struck first. I was never interviewed by JACC or otherwise allowed to tell my story. JACC never found I had engaged in misconduct; the issue simply swept into the January 14, 2009 meeting based on a supplanted agenda.
3. I was Executive Director ("ED") of Jordan Area Community Council for some time, and I know that the funds obtained from some sources are restricted (cannot be used for rent, etc.). By the time of the ouster, JACC had pulled down about 90% of the funds that could be used for rent and the like. I was setting up meetings with the landlord, as JACC did not, at that time, have enough unrestricted funds to pay the rent. It is my opinion, based on what I know, that for Anne McCandless to be paying bills like rent, etc., that she either had to be erroneously utilizing restricted funds (a big problem for JACC - it could lose those sources of funds), or it has to have gotten new funds from the City (like an "advance"). This has not been disclosed to the board, or to the community. Money at this time, from the City, seems suspicious.


4. I am also aware that Anne McCandless is selectively paying bills. JACC's accountant has not been paid.

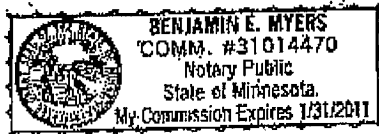
5. I was told by Franklin bank that the rogue team had supplied "documents" that caused it to start to pay on checks again (new signatory cards were accepted by the bank), but I do not know what those documents are. I have requested them, but they have not arrived.

This affidavit of 9 pages is true to the best of my knowledge. However, I may know more about certain subjects than is included here.

Signed and sworn before me  
this 9<sup>th</sup> day of February, 2009.

  
Notary Public

  
Jerry Moore



STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Ethylon B. "E.B." Brown, *et al*,

Civil Case No. 27-CV-09-2277

Plaintiffs,

**SECOND AFFIDAVIT OF  
BENJAMIN E. MYERS**

v.

Michael "Kip" Brown, *et al*,

Defendants.

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Ben Myers being first duly sworn deposes and state:

1. I was not at the January 12, 2009 meeting of JACC due to a car accident.
2. The Minutes of the January 14, 2009 meeting of the JACC Board, attached to the Affidavit of Michael Browne (Defendant), were *not* approved by the board, and the are self-serving in support of the defense. For example, at page 2, first paragraph, the self-serving Minutes claim that M. Browne stated the reason for his motion was that the election of officers was invalid because there were directors voting in that election process who were not authorized to have an extended term. This is not accurate: Browne did *not* state that that day. This appears to be *post hoc*, in an attempt to defend against this legal action. (They know they have to have *some* articulable reason for instantly taking over the Board without following the Bylaws, but this reason does not make sense; if there had to be new elections of officers because the outgoing directors were not to have voted for Officers, by Defendants' own logic, that should have been raised at the *November 2008* meeting. Not January 2009, when it appears the action was taken *not* to a correct a wrong, but indeed, to



please City Officials. The very Minutes of the November 2008 meeting that are attached to the Michael Browne affidavit, show that this vote was taken and no one objected. It seems strange that the Defendants are trying to use this now to justify their actions. Indeed, they show that on a point where the Bylaws are silent, the majority voted to keep the outgoing directors on.) The purported Minutes claim that E.B. Brown asked for nominations for new Chair. This is not accurate. She objected verbally to the process, and refused to participate in the vote. (A lot of verbal objections were made to the various votes by Plaintiffs in this case, and those seem not to have been recorded in these "Minutes.") The self-serving Minutes go on to make further claims that appear to be designed to assist the defendants in this lawsuit. Their accuracy is *not* agreed to. Further, there is no explanation as to why Shannon Hartfield, the Secretary, was not charged with creating these Minutes.

3. Shannon Hartfield was appointed Secretary pursuant to a Bylaws provision because at the November 2008 meeting, no one wanted the job. The Bylaws indicate that in these circumstances, the Secretary serves the entire term. It is simply not accurate what Browne alleges, that Hartfield was "temporary." Suddenly, in January, after the interference of City Officials, there is a clamor to be Secretary. Interesting.

4. Further, I do not agree to the accuracy of the document at Exhibit 8 to the Michael Browne affidavit. Clearly changes have been made to this document, and I have not had the opportunity to scrutinize the original or establish the accuracy of this copy.

5. Further, I am not agreeing to the accuracy of the document at Exhibit 10 of the Michael Browne affidavit.

6. JACC had not investigated any allegations against Executive Director ("ED") Jerry Moore by the time of the January 12, 2009 meeting. There was no attempt to follow the written employment agreement that Jerry Moore had with JACC.

7. At the point that a move was made to immediately remove Jerry Moore in closed session, E.B. Brown, Board Chair, and I, Vice Chair, immediately objected to the process and that the vote should not be held. Ms. Brown objected to the process of the removal, and indicated that Moore's attorney had written a letter cautioning JACC to act with caution (not verbatim). I objected for several reasons, including that the agenda had been prepared by someone other than the Executive committee and that even utilizing that agenda violated the Bylaws (Art. VI, Section 4). I specifically told the Board that JACC would be violating Moore's employment contract doing it this way.

8. To be clear, E.B. Brown and I also objected to the process of removing the officers at the time it was attempted.

9. I talked with the Attorney for Franklin Bank after January 14, 2009, and it took the position that absent a resolution of the board authorizing the bank to change its practices as to who it dealt with (and who were signatories), that it would do nothing. The the account was "frozen" unless I specifically authorized payment of a check.

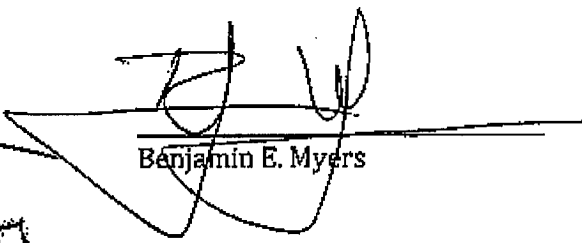
10. Then, after Plaintiffs filed the TRO, I was informed the interloper team had supplied "documents" to the Bank that "satisfied" the Bank that it could change signatories. I have never seen those documents, and was not allowed to see them to date.

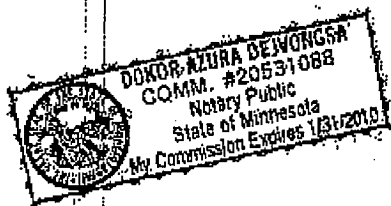
11. It is very strange that Michael Browne finds it necessary to make allegations about Alfred Flowers. I was at the press conference that he is referencing. His side is Don Samuels' side (predictably), and leaves out many facts. Numerous eye and ear witnesses

will testify that Samuels physically moved into Flowers/onto his foot, and Flowers was objecting that Samuels should get off (not necessarily verbatim). Michael Browne's portrayal of this incident is about as fair as his portrayal of the Jerry Moore incident, where a number of eye witnesses say that PJ Hubbard (one of the rogue takeover team) physically assaulted Jerry Moore, and Moore was defending himself. It seems, perhaps, that these were set ups, designed as excuses to try to take over JACC. The real reason is much more likely to be that some politicians want control of JACC before the big money starts to flow.

Signed and sworn before me  
this 9<sup>th</sup> day of February, 2009.

  
Notary Public

  
Benjamin E. Myers



STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Ethylon B. "E.B." Brown, *et al*,

Civil Case No. 27-CV-09-2277

Plaintiffs,

**SECOND AFFIDAVIT OF  
ROBERT "BOB" SCOTT**

v.

Michael "Kip" Browne, *et al*,

Defendants.

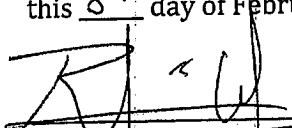
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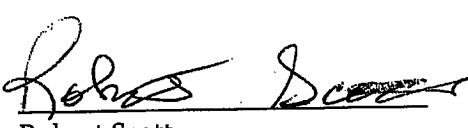
I, Robert Scott, being first duly sworn, deposes and states:

I was elected Treasurer in November 2007 and re-elected Treasurer of JACC in November 2008.

1. After I observed the "take-over" of JACC by the interlopers (Michael Browne, PJ Hubbard, Anne McCandless and Robert Hodson) of JACC on 1/14/09, I said I was disgusted and left. I did not officially or formally resign. I was disgusted, but I have never resigned and still maintain my position as the Treasurer of the Jordan Area Community Council. What Mr. Browne, Mr. Hudson, Ms. McCandles, and PJ Hubbard are doing is wrong and their behavior should be corrected.
2. After I left the 1/14/09 meeting, I received numerous phone calls from Dan Rother (a current Director) wanting me to put a resignation in writing, but I have not done that.

Signed and sworn before me  
this 8<sup>th</sup> day of February   , 2009.

  
Notary Public

  
Robert Scott  
Affiant

