STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT
CASE TYPE: Other Civil

Ethylon B "E.B." Brown, Benjamin E. Myers, Robert "Bob" Scott, Shannon Hartfiel, Robert Wilson, William J. Brown, Dokor Dejvongsa, Steve Jackson, DeEtte Davis, Tamara Hardy, Lafayette Butler, Jernel McLane, Frank Essien, Kenya Weathers, and Jerry Moore,

Plaintiffs,

v.

Michael "Kip" Browne, P.J. Hubbard, Robert Hodson, Anne McCandless, Don Samuels (in his individual and official capacities), Barbara Johnson (in her individual and official capacities), Michael Martin (in his individual and official capacities), City of Minneapolis, Minnesota, Stacy Sorenson, an Unknown Minneapolis "City Attorney John Doe Defendant #1," and John Does 2-5,

Defendants.

Court File No.: 27-CV-09-2277

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS

INTRODUCTION

Plaintiffs sued Defendants Michael "Kip" Browne ("Browne"), P.J. Hubbard ("Hubbard"), Robert Hodson ("Hodson"), and Anne McCandless ("McCandless"), in their capacity as officers and directors for the Jordan Area Community Council ("JACC"), and Stacy Sorenson,[1] in her capacity as an employee for the Minneapolis Neighborhood Revitalization

[1] Plaintiffs' proposed Second Amended Complaint dismisses all claims against Sorenson, adds JACC as a Defendant, and removes Frank Essien as a plaintiff. On November 18, 2009, this Court granted Plaintiffs' motion for leave to file a second amended complaint. As of the date this motion was filed, however, Plaintiffs have not filed the proposed Second Amended Complaint. As explained further below, should Plaintiffs' proceed to file their latest Complaint, Defendants are still entitled to summary judgment.

Program ("NRP"), alleging an illegal corporate takeover of JACC. Plaintiffs' claims are based upon the lawfully-taken actions at the January 14, 2009 board meeting where the full board—including Plaintiffs E.B. Brown, Robert Wilson, Steve Jackson, and Ben Myers—voted, in writing, whether to: (1) terminate Plaintiff Jerry Moore for his assault on a JACC member and board member, and (2) re-open officer elections. Both written votes passed by a majority of board members.

This Court has twice heard—and denied—Plaintiffs' requests for injunctive relief. Despite having the opportunity to present all their evidence and legal theories during a nine-day evidentiary hearing, the voluminous record fully demonstrates that Plaintiffs' legal claims have no factual or legal support and that Defendants are entitled to judgment as a matter of law.

Moreover, on October 22, 2009, the Jordan neighborhood held its annual meeting and elected five new board members. At the subsequent board meeting, the board elected its new executive officers. Accordingly, this lawsuit is moot because there is no case or controversy left for the Court to decide. Further proceedings, including discovery and trial, are unnecessary as there is no injury that the Court can redress.

Additionally, it was evident from the outset of this lawsuit that Plaintiffs' claims were made in bad faith. Defendants, therefore, provided Plaintiffs with notice of their intent to request Rule 11 sanctions and reimbursement of attorney fees in a "safe harbor" letter served upon Plaintiffs' counsel on February 13, 2009, in accordance with Minn. Stat. § 549.211.[2] Plaintiffs

[2] Defendant's safe harbor letter states: "Besides ignoring the Rule 11.01 signing requirement in Minn. Stat. § 549.211(2), individual Plaintiffs have a long and documented history of instituting non-meritorious strike suits including temporary restraining orders and suing individual Defendants for defamation and other pretended claims. Defendants intend to demonstrate, if required, that these lawsuits are a misuse of power and were part of a campaign to bully any opposition to the former leadership of the JACC Board, several of whom are plaintiffs in this lawsuit. The actions and other litigation further establishes bad faith intent in these present

failed to withdraw their baseless claims. The lengthy evidentiary hearing only confirmed Defendants' assertion of bad faith as Plaintiffs did nothing to prove facts supporting their claims; rather, testimony elicited from Plaintiffs demonstrates that it was Plaintiffs – not Defendants – whose actions were improper. Plaintiffs filed this lawsuit without any factual or legal support for their allegations; Plaintiffs' bad faith conduct calls for Rule 11 sanctions.[3]

The material facts are undisputed. The actions taken by JACC's board of directors – including Defendants Browne, Hubbard, McCandless, and Hodson – on January 14, 2009 were lawful, and in accordance with the JACC bylaws. Moreover, this lawsuit is now moot. Accordingly, Defendants respectfully request that the Court grant its motion for summary judgment, dismiss Plaintiffs' claims with prejudice, and award sanctions in the form of reasonable attorneys' fees and costs to the Defendants.

claims." (Duginske Aff., Ex. A.)

[3] The Minnesota Appellate Courts uniformly hold that a request for conduct-based attorney fees made under Rule 11 or Minn. Stat. § 549.211 that arises out of the conduct of a party in a District Court proceeding must be presented to the District Court at a stage in the proceeding with a deterrent affect of the applicable rule and statute will be advanced. *See, e.g., Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 519 (Minn. Ct. App. 2007) (compliance with safe harbor provisions of the Rule and the statute is mandatory); *Mahoney & Emerson v. Private Bank*, No. A08-1571, 2009 WL 1852789 (Minn. Ct. App., June 30, 2009) (reversing district court award of Rule 11 bad faith sanctions where the notice and safe harbor provisions of Minn. Stat. § 549.211 were not strictly followed) (Duginske Aff., Ex. C.) Defendants have complied with the strict requirements of Minn. Stat. § 549.211(2).

STATEMENT OF THE ISSUES

1. Whether JACC's annual election of board of directors on October 23, 2009 renders this lawsuit moot?

2. Whether Defendants Browne, Hubbard, McCandless, and Hodson breached their fiduciary duties to JACC and its members?

3. Whether Defendants Browne, Hubbard, McCandless, Hodson, or proposed Defendant JACC, unlawfully terminated Jerry Moore thereby breaching and/or interfering with his contract?

4. Whether Plaintiffs' lawsuit was brought in bad faith?

IDENTIFICATION OF THE RECORD

1. Complaint
2. First Amended Complaint
3. Answer to First Amended Complaint
4. Order dated March 3, 2009, denying Plaintiffs' Motion for a Temporary Restraining Order
5. Evidentiary Temporary Injunction Hearing Transcript and Exhibits
6. Defendants' Post-Hearing Memorandum of Law
7. Order dated July 10, 2009, denying Plaintiffs' Motion for a Temporary Injunction
8. Order dated November 18, 2009, granting Plaintiffs' motion to serve and file the proposed Second Amended Complaint
9. Affidavit of Tara Reese Duginske, with attached exhibits
10. Affidavit of Dorothy Titus
11. Affidavit of Vladimir Monroe

STATEMENT OF UNDISPUTED FACTS

The Rules dictate that "any evidence received upon a motion for a temporary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at trial. Minn. R. Civ. P. 65.02 (emphasis added). The nine day evidentiary record includes all the evidence necessary to demonstrate that Plaintiffs' claims fail as a matter of law.

A. JACC's State of Affairs Preceding the October 2008 Annual Election

1. JACC's Finances

a. During Phase One NRP Funding, JACC Allocated 2.8% of Revenue to Administrative Costs

JACC is one of 72 Minneapolis neighborhood non-profit organizations. (Miller Tr. at 118).[4] From 1992 – 2002, during Phase I funding, JACC received an estimated $6.6 million. (*Id.* at 123). In that time, JACC spent 100% of the NRP funds on housing programs. (*Id.* at 123). JACC's administrative costs during Phase I funding totaled 2.8% of the total $6.6 million investment. The remaining 97.2% funding was distributed for programs related to improving housing conditions in the Jordan neighborhood. (*Id.* at 124-25). Robert Miller, director of NRP for over 18 years, characterized the JACC board during Phase I funding as "superb." (*Id.* at 125.)

b. Under Myers Leadership, JACC Allocated 91% of Revenue to Administrative Costs

In 2003, the Minneapolis City Council passed a resolution limiting neighborhood non-profit organization's administrative costs to 20% of the total allocation for Phase II funding. (*Id.* at 126.) Miller sent a memorandum with the City Council resolution to JACC on September 10,

[4] (__ Tr. at __) refers to the identity of the Witness and the Trial Transcript cite.

2003. (*Id.* at 126-27; Df. Ex. 147.)[5]

Executive Director Moore admitted that he was aware that the industry-wide standard for non-profit organizations is to limit administrative costs to 20% on the high end, with most "folks around 13-14%." (Moore Tr. at 10-11.) Former Board Chair Myers admitted having "no idea" what industry standards or Minnesota law governs non-profit financial operations. (Myers Tr. at 64.) Plaintiffs even introduced a spreadsheet prepared by JACC accountant Judy Gallas which demonstrates that from 2006-2008, 91% of JACC funds were spent on administrative costs rather than program costs. (Pl. Ex. 18.) Miller's testimony corroborated Gallas' calculations. (Miller Tr. at 131, 139, 158.) Myers admitted that he would have no basis to disagree with Gallas' calculations. (Myers Tr. at 67.)

Further, Myers admitted that he oversaw the decision to commit over 30% of JACC's annual budget to Moore's $60,000 per-year salary, which also included 49 vacation days and unlimited blackberry privileges. (*Id.* at 68-69.) Myers denied that this was "excessive." (*Id.*) Miller testified that no other similarly-situated executive director is paid $60,000 with six weeks of paid vacation. (Miller Tr. at 178-79) ("there is no position of any executive director close to this one at this level").

2. Myers Board Ignored Non-Profit Obligations To Produce Financial Records To Board Members

It is undisputed that Minnesota non-profit organizations receiving public funds have an obligation to provide board members, officers, and members of the non-profit entity access to financial records. (Miller Tr. at 134; Cooper Tr. at 12-13; E.B. Brown Tr. at 126.) JACC board member Daniel Rother and JACC member Dennis Wagner both repeatedly requested access to JACC's financial records in 2007-08. (Df. Ex. 164; M. Browne Tr. at 119-121.) When Myers

[5] Evidentiary Temporary Injunction Hearing exhibits are cited as (Pl. Ex. __) or (Df. Ex. __).

and Moore ignored these demands, a formal grievance was filed. (Df. Ex. 164, ¶ 4.) Robert Cooper of the Minneapolis Community Planning and Economic Development Agency ("CPED"), who hears grievances for the Minneapolis neighborhood non-profit organizations, validated Wagner's grievance and concluded that JACC did not provide the financial information appropriately requested by its members.[6] (Df. Ex. 185; Cooper Tr. at 11-13.) In response to the grievances, Myers sent a letter to the board informing them that the board was not going to take any action on Wagner's grievances. (M. Browne Tr. at 122). After Rother and Wagner's repeated demands were ignored, Rother made a public demand at a board meeting in August 2008.[7]

Former board chair E.B. Brown admitted that JACC had an obligation to provide financial documents to Rother; admitted that his written request was perfectly acceptable; and admitted that the financial records were not provided until *after* the grievance was validated by Cooper. (E.B. Brown Tr. at 126, 131; Df. Ex. 164, ¶ 4.)

Cooper testified that from 1985 until October of 2007, JACC had one grievance filed through its mandatory grievance process. (Cooper Tr. at 8.) By comparison, during the tenure of the Myers Board, nineteen grievances were filed against the Board itself. (*Id.* at 7-8). Charles T. Lutz, the deputy director of CPED issued a letter dated November 10, 2008, validating four of the Wagner grievances and threatened to cancel the citizen participation contract with JACC if it

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[6] Cooper further testified that JACC did not conduct the mandated internal grievance procedure as required by NRP regulations. (Cooper Tr. 12:7-19.)

[7] It should be noted that in response to Rother's public demand for financial documents, Moore filed a restraining order against Rother on August 25, 2008. (Df. Ex. 164, ¶ 6.) Importantly, Moore misrepresented his relationship with Rother in the petition by failing to identify Rother as his employer. (*Id.* at ¶ 7.) Following a November 2008 hearing, Judge Ann McKieg concluded that Moore's allegations did not demonstrate immediate and sustained harassment and denied the request for a permanent order. (Myers Tr. at 60.)

failed to follow Cooper's grievance findings and recommendations. (Df. Exs. 185, 142.) Despite Lutz's warning, Cooper's findings, and Minnesota non-profit corporations law, no one was provided with access to JACC's financial records until December 19, 2008. (Moore Tr. at 56; Df. Ex. 164, ¶ 8-9.)

3. Moore Interfered With Nominations Committee Resulting In Postponement of Annual Election

Defendant Michael Browne was the chair of the 2008 nominations committee assigned to vet candidates for the October 23, 2008 annual election of JACC board of directors. (M. Browne Tr. at 134.) Moore was not a member of the 2008 nominations committee. (*Id.* at 134.) His role was to carry out the directives of the committee. (*Id.* at 138; Moore Tr. at 71.)

In September 2008, Moore advanced the concept of one-year board terms for certain board members, including Daniel Rother. (Df. Ex. 136.) Browne immediately suspected that Moore's proposed one-year board terms were in retaliation against Rother for requesting financial records. (M. Browne Tr. at 137.) E.B. Brown, Moore and Myers all admitted that the JACC Bylaws unequivocally state that board members serve two-year terms. (Moore Tr. at 64; Myers Tr. at 14; E.B. Brown Tr. at 116.) The only exception to that rule is if board members are appointed by the board chair. (Myers Tr. at 21.) Myers admitted that neither Rother, nor any other Board member slated by Moore for a one-year term, had been appointed by the board chair. (*Id.* at 50.)

In response to Moore's one-year term proposal, Browne requested that Cooper clarify JACC's Bylaws as related to this matter. (M. Browne Tr. at 137; Df. Ex. 138.) Cooper confirmed that the Bylaws mandated two-year terms (rather than one-year terms advanced by Moore) and that an election in violation of the Bylaws would be invalidated. (Cooper Tr. at 14-16.) Cooper copied Moore and Myers on all correspondence relating to Browne's inquiry

regarding the length of board terms. (*Id.* at 17-18.) Nominating committee member and former board chair E.B. Brown admitted that advancing the idea of a one-year board term (in contradiction of the Bylaws) would be improper. (E.B. Brown Tr. at 134-35.)

In addition to promoting one-year terms, Moore further interfered with the nominations committee by unilaterally publishing a slate of candidates that had not been vetted by the committee. (M. Browne Tr. at 134; E.B. Browne Tr. at 67; Pl. Ex. 2.) As a result, on October 23, 2008, the annual election was postponed until January of 2009 by an overwhelming voice vote because of the problems with the nominating process.[8] (Cooper Tr. at 18-19; M. Browne Tr. at 134-36; Moore Tr. at 77; E.B. Brown Tr. at 150.)

B. In Violation of the Bylaws, the Myers Board Extended the Terms for Three Board Members at the November Board Meeting

On November 12, 2008, without any support in the Bylaws, the Board voted to extend the terms of Myers, Dokor Dejvongsa, and Linda Baker, which had expired. (E.B. Brown Tr. at 79; Dejvongsa Tr. at 66.) Notably, Myers, Dejvongsa, and Baker all participated in the vote to extend their own terms. (M. Browne Tr. at 142-44.) No board member cited any authority for extending board terms, nor do the board minutes reflect any authority to extend the two-year term limit set forth in the Bylaws. (*Id.* at 144; Myers Tr. at 14-15; Df. Ex. 169; Dejvongsa Tr. at 66.) In fact, the November 12 board minutes simply note that the Bylaws are "vague" on this issue. (Dejvongsa Tr. at 67.)

Dejvongsa admitted that eight members remained on the board after the expiration of Myers', Dejvongsa's, and Baker's terms. (*Id.* at 67-70.) Dejvonsga further admitted that the Bylaws allowed the board to function from October 2008 until the annual election on January 12,

[8] The Board failed to prepare meeting minutes for the postponed annual election as required by the Bylaws—a common practice for the Myers Board. (M. Browne Tr. at 117-18; 169.)

2009, with only eight members. (*Id.* at 71.) The November 12, 2008 board meeting minutes fail to reference any discussion that the extended terms, and subsequent election of officers, would extend beyond the January 12, 2009 rescheduled annual election. (Df. Ex. 169.)

David Haddy, a non-party in this case, attended the November 12, 2008 meeting as a JACC member. (Haddy Tr. at 30.) Haddy testified that the discussions regarding the officer appointments indicated that the appointments would be temporary. (*Id.* at 30-31.) Indeed, Haddy recalled that Myers "made a big deal" out of how Shannon Hartfiel was taking a "temporary assignment" and there was "no intimation of a permanent assignment." (*Id.*)

C. The January 12, 2008 Annual Election

The nominating committee for the postponed election was reconstituted at the November board meeting, and Browne was once again elected chair. (Df. Ex. 169.) Grievance officer Cooper attended every nominating committee meeting and assisted with the tallying of the votes at the January 12 neighborhood meeting. (Cooper Tr. at 21-24; Df. Ex. 126.) Cooper testified that the January 12, 2009 election was fair and valid. (Cooper Tr. at 25; Df. Ex. 153d.)

Cooper was aware that Plaintiffs allege certain candidates did not make the final slate of candidates for the January 12th election. (Cooper Tr. at 21-23.) But Cooper explained that "there were three folks who didn't respond to [verification] requests and the folks on the nominating committee that were charged with that had documented that throughout the course and so those names did not go forward into the final slate of the candidates." (*Id.* at 22-23.) Cooper agreed that the candidates were appropriately omitted from the final slate of candidates for the election. (*Id.* at 23.) Haddy confirmed that "anyone who was not on the slate did not provide the necessary documentation to be on the slate." (Haddy Tr. at 19.)[9]

[9] Notably, Plaintiffs failed to present testimonial evidence from the candidates that were allegedly excluded from the ballot, despite the fact that one such candidate, Tamara Hardy, is a

E.B. Brown admitted that she had no criticism regarding the manner in which nominations committee chair Kip Browne handled the second nominating committee process. (E.B. Brown Tr. at 109.) In fact, on the night of the election E.B. Brown circulated a letter on her personal stationary congratulating the nomination committee for its efforts. (Df. Ex. 162; E.B. Brown Tr. at 111.)

The January 12, 2009 election has been validated by the city of Minneapolis, NRP, the Minneapolis Police, and all JACC's public and private funders. (Df. Exs. 129, 153d, 153, 153b.) In contrast, Plaintiffs do not have a single third-party entity supporting Plaintiffs' allegations of this lawsuit. No JACC community member, board member, or Plaintiff has filed a grievance with JACC or CPED objecting to the January 12 election. (M. Browne Tr. at 148.)

D. Moore Assaulted Three People at the Annual Election

Although Moore sought to minimize his conduct following the January 12 election, he admitted pushing and hitting a JACC member at the annual election while he was still the Executive Director of JACC. (Moore Tr. at 155-56.) Moore admitted that there was nothing preventing him from retreating and running away from the incident. (*Id.* at 156:12-15.) In fact, Moore admitted that he could have "thrown [his] hands up and, as an employee of JACC who was at a voting function, walked away and said, 'I can't be a part of this.'" (*Id.* at 157:4-8.)

Haddy, Browne, and McCandless (and Wagner by affidavit, Df. Ex. 179) each presented testimony of a far more aggressive and one-sided assault. Browne testified that he personally observed Moore assault Wagner, Megan Goodmundson, and Hubbard. (M. Browne Tr. at 148-152.) Haddy was the only disinterested, non-party board member to testify. Haddy testified that he witnessed Moore strike Hubbard in the face, knocking off his glasses. (Haddy Tr. at 20.)

Plaintiff in this lawsuit.

E. The JACC Board of Directors, Including Browne, Hubbard, McCandless, and Hubbard, Followed the Bylaws When Voting to Amend the Agenda, Terminate Jerry Moore, and Re-Open Officer Elections

E.B. Brown premised her complaint that a "coup d'etat" occurred at the January 14 board meeting solely because a motion was made—and a successful vote followed—to amend and adopt a new agenda. (E.B. Brown Tr. at 154, 174-175.) Although E.B. Brown objected to the board ignoring her instructions to follow the "official agenda," she admitted that board members have the authority to make motions to add, modify, or change the agenda. (*Id.* at 169.) E.B. Brown admitted that this procedure is consistent with Robert's Rules of Order and the Bylaws. (*Id.* at 170.) Myers himself admitted that voting to change the agenda was appropriate and admitted to having done so himself at the December 10, 2008 regularly scheduled board meeting. (Pl. Ex. 8.)

Haddy testified that on January 14, 2009, the full board voted on approving the new agenda. (Haddy Tr. at 28.) Pursuant to the approved new agenda, the full board then voted, in writing, whether to terminate Moore for his misconduct on January 12th – specifically, the assault on a JACC member and board member at a JACC function. (*Id.* at 28-35; Df. Ex. 128.) Thereafter, the board also voted, in writing, whether to re-open officer elections. (Haddy Tr. at 28-35; Df. Ex. 127.) Haddy testified that the newly elected board re-opened officer elections for three reasons: (1) the appointments on November 12 were illegal; (2) the November appointments of officers was only intended to be temporary; and (3) it is standard protocol for the newly elected board to vote for its officers. (Haddy Tr. at 30-32.) Each written vote was passed by a majority of board members. (Df. Exs. 104, 127, 128.)

Contrary to Plaintiffs' unsupported allegations, the election of new officers was not a "removal" of officers; indeed, removal was unnecessary because the November 12 extension of board terms was invalid, as was the election of officers on the same date. (Haddy Tr. at 34.)

F. **Plaintiffs Improperly Represented Themselves As JACC Officers After the January 14, 2009 Board Meeting To Third Parties, Moved JACC Offices Without Authority, and Issued Unauthorized Checks**

Myers admitted representing and holding himself out as the Board Vice-Chair after January 14, 2009, despite the lawful vote electing new officers. (Myers Tr. at 81.) Myers sent a letter to the City of Minneapolis on January 16, 2009 stating "due to recent events the Jordan Area Community Council has been forced to relocate to 1922 25th Ave. N. Minneapolis, MN 55411." (Df. Ex. 131.) Myers also admitted moving JACC's offices without any authority from the board; indeed, the board did not vote, approve, or have knowledge of the move. (Myers, Tr. at 73-75.)

Myers also admitted owing JACC an ongoing fiduciary obligation when he sent the relocation letter on January 16, 2009. (Myers Tr. at 77.) Myers, however, asserted the Fifth Amendment Privilege when asked whether he took any of JACC's missing equipment or if he knew the whereabouts of the equipment "at any time" after January 14. (*Id.* at 77-78.) Importantly, Myers admitted that he kept the JACC checkbook and continued to write out unauthorized checks, despite the results of the officer elections. (Myers Tr. at 79-84; Df. Ex. 152h.)

Similarly, Moore admitted misrepresenting to the Franklin Bank that he was an employee of JACC (despite having been terminated), and provided the bank with a document that similarly misrepresented the elected members of the JACC board. (Moore Tr. at 83; Df. Ex. 167.)

G. **Newly-Elected McCandless Board Discovered Financial Mismanagement**

Following the January 14, 2009 election of new officers, the new JACC Board finally had the opportunity to review the Myers board's finances. (McCandless Tr. at 53, 55.) Simply put, JACC's finances were in complete disarray. (*Id.*)

Executive Director Moore was responsible for paying bills on a "timely basis." (Myers

Tr. at 100; McCandless Tr. at 56.) The examples of Moore's failure to fulfill his basic duties are extensive:

- The McCandless board discovered that JACC's rent was in arrears, totaling $5,000. (*Id.* at 56).
- As of January 14, 2009, The CenterPoint bill was in arrears in the amount of $600. (*Id.* at 57).
- The general liability insurance was overdue and unpaid in the amount of $1,500. (*Id.* at 58).
- The Myers board had failed to pay property taxes for the JACC Probation House. (*Id.* at 79). The McCandless board immediately contacted the Hennepin County Treasurer and paid the $2,500 in delinquent taxes. (*Id.*)
- The Sprint telephone bill was overdue. (*Id.* at 58). Moore had recently purchased a brand new blackberry device using JACC funds and had signed up for a two to three year contract. (*Id.* at 58-59). The McCandless board was required to spend over $800 to cancel that contract. (*Id.*) Moore has never returned the blackberry purchased with JACC funds. (*Id.* at 59).
- The McCandless board learned that the Myers board was not up-to-date in requesting reimbursement for NRP expenses. (*Id.* at 60). Moore had not put in a request for reimbursement since June 2008. (*Id.* at 61). NRP reimbursements are usually requested every 30 days. (*Id.*)

As a result of the overdue NRP expense requests, the checking account at Franklin Bank contained only $33,000 when the McCandless Board took office. (McCandless Tr. at 45.) To allow JACC to continue operating, McCandless contacted Jill Keiner to discuss using funds from the Northside Home Fund. After obtaining authority from Keiner, the current Board ratified the short-term use of Northside Home Funds in accordance with the discretionary use granted by Keiner. (*Id.* at 62; Def. Ex. 161, ¶ 5.) McCandless also informed Miller at NRP that JACC intended to use Northside Home Fund grant money to pay overhead administrative costs until CPED fulfilled JACC's reimbursement request. (McCandless Tr. at 62.)

In addition to discovering JACC's financial troubles, the McCandless board faced

additional obstacles from Myers and Moore:

- Myers and Moore relocated JACC's offices to the Jordan New Life Church without authorization. (*Id.* at 78).
- The Myers Board changed JACC's post office listing. (*Id.* at 78).
- The Myers Board contacted the Secretary of State and changed the address for its non-profit location. (*Id.*) The Myers Board also changed JACC's address on the non-profit documents with the Attorney General. (*Id.*)
- Moore requested, without reason or authorization, that Xcel execute a stop service order to shut off the electricity at the JACC office. (*Id.* at 57).
- JACC's equipment, including the computers and files, went "missing" after the January 14 board meeting.

Myers admitted that he had no knowledge of the McCandless board neglecting to timely pay bills. (Myers Tr. at 101.) Miller testified that he saw improvement in the McCandless board's management of JACC over the Myers board. (Miller Tr. at 144-145.) Miller further testified that he observed no evidence that the McCandless board mismanaged funds or misspent funds under any guidelines. (*Id.* at 145.)

H. The Newly-Elected McCandless Board Discovered that the JACC Checkbook is Missing

In addition to the missing equipment and files, the McCandless board discovered the JACC checkbook was missing. On January 15, 2009, McCandless called a special board meeting in accordance with the Bylaws. (McCandless Tr. at 65.) The telephonic board meeting was necessitated by the disappearance of the JACC checkbook. (*Id.* at 65-69.) McCandless considered the missing checkbook to be an emergency that required the immediate action of closing the account and changing the signatories. (*Id.* at 67.) Notably, McCandless called Myers prior to conducting the telephonic board meeting to ask him if he knew where the checkbook was. (Haddy Tr. at 38.) Only after Myers responded "no" did the board take action. (*Id.* at 38-39.) Myers, however, admitted that he actually had the checkbook. (Myers Tr. at 79-80.)

Myers further admitted to writing out unauthorized checks from the JACC checkbook after the January 14, 2009 elections. (*Id.* at 79-80; Df. Ex. 152h.)

McCandless knew the Bylaws authorized the board to conduct a special meeting under emergency circumstances. (McCandless Tr. at 68.) She also informed Miller at NRP, who approved of a telephonic meeting. (*Id.*) After conducting a board vote to close the Franklin Bank account and change the signatories, McCandless obtained the approval exceeding a quorum—10 board members.[10] (*Id.* at 68.) The McCandless board subsequently learned that the checkbook was, in fact, improperly in the possession of Myers and that he and Moore had been writing unauthorized checks. (*Id.* at 68-72; Def. Ex. 152h; Haddy Tr. at 39.)

I. This Litigation

On January 28, 2009, Plaintiffs initiated this litigation by filing their complaint and seeking a temporary restraining order. Plaintiffs' motion for a TRO was denied. Order dated March 3, 2009. Plaintiffs thereafter filed their First Amended Complaint and accepted this Court's invitation to schedule a temporary injunction hearing prior to a trial on the merits. After hearing all the evidence in this case, this Court denied Plaintiffs' motion for a temporary injunction. Order dated July 10, 2009. Following the July Order, Plaintiffs have now proposed a Second Amended Complaint which seeks to add JACC as a party, remove Frank Essien as a plaintiff, and remove Sorenson as a defendant. (Duginske Aff., Ex. B.) On November 18, 2009, the Court granted Plaintiffs' motion to serve and file the proposed Second Amended Complaint. Order dated November 18, 2009. Thus far, Plaintiffs have not filed the new complaint.

[10] Notably, E.B. Brown received McCandless' telephone message but chose not return the call for "several days." (E.B. Brown, Tr. 103.)

J. October 2009 Annual Election

Since this litigation began, Defendants Hubbard and Browne's board terms have expired, thus they no longer serve as elected board members. (Titus Aff at ¶ 8.) As the outgoing board chair, Browne remains on the board as an *ex officio* member for the next year. (*Id.*) On October 22, 2009, the Jordan neighborhood held its annual meeting and elected five new board members. (Titus Aff. at ¶¶ 7-8.) Significantly, none of the Plaintiffs attended the meeting nor expressed an interest to the nominating committee that they were interested in running, despite the fact that there were nine open seats. (*Id.* at ¶¶ 4, 8; Monroe Aff. at ¶¶ 8-9.) Moreover, Plaintiffs have failed to attend any of JACC's board meetings since January 14, 2009, with the exception of their brief appearance at the April 8, 2009 meeting where they submitted their notice of written objection to the January board meeting. (Monroe Aff. at ¶ 7.)

On October 29, 2009, the new board met to elect its 2009-2010 officers. (*Id.* at ¶ 11.) The new officers are: Vladimir Monroe, Chair; Michael "Kip" Browne, Vice-Chair; Robert Hodson, Treasurer; and Dave Haddy, Secretary. (*Id.*) Prior to the election of new officers, the board's agenda provided for a discussion of any grievances with the October 22, 2009 annual meeting and elections. (*Id.* at ¶ 12.) No grievances were raised. (*Id.*)

ARGUMENT

I. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED AS MOOT

It is a well established rule that a case is moot if there is no justiciable controversy for a court to decide. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). "A controversy is only justiciable when it involves definite and concrete assertions of right." *Id.* When there is no injury that a court can redress, the case must be dismissed as moot except in certain, narrowly-defined circumstances. *State ex. rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. Ct. App. 2007); *See also Kahn*, 701 N.W.2d at 821 (dismissal of case as moot appropriate if unable to grant effectual relief).

There are two exceptions to the mootness doctrine: (1) if an issue is capable of repetition yet evading review or (2) collateral consequences attach to the otherwise moot ruling. *Kottschade v. City of Rochester*, 760 N.W.2d 342, at 350 (citations omitted). Neither of these exceptions preclude the Court from dismissing Plaintiffs' claims.

The capable-of-repetition-yet-evading-review exception only applies if: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Kahn*, 701 N.W.2d at 821 (citations omitted). Here, Plaintiffs had ample time and opportunity to litigate their claims for relief, including the nine-day evidentiary hearing where Plaintiffs were able to present all their evidence in this case. Moreover, nothing precluded Plaintiffs from seeking re-election to the JACC board, or participating as JACC members in the annual meeting and election. As an effort to increase transparency and remove any doubt that elections are conducted fairly and in accordance with the Bylaws, the 2009-2010 JACC board even included a post-election forum for board members or JACC community members to discuss any grievances with the annual meeting and election.

The recent JACC elections and newly elected directors and officers demonstrate that there is no injury that this court can redress, as Plaintiffs' requested relief would require the Court to disturb the results of not one, but two, valid elections by the JACC general membership, and the later officer elections by the respective boards. The January 2009 and October 2009 elections were conducted in accordance with JACC's Bylaws, and the election results represent the community's preferences. Plaintiffs' claims are moot and dismissal is required. *See Kahn*, 701 N.W.2d at 821 (dismissal appropriate if court unable to grant effectual relief).

II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT

A. Summary Judgment Standard

A motion for summary judgment shall be granted if the evidence shows "there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Min. R. Civ. P. 56.03. A fact is material only when its resolution might affect the outcome of a case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party. *Id.* at 252. Summary judgment serves a "salutary purpose of avoiding useless and time consuming trials." *Home Mut. Ins. Co. v. Snyder*, 356 N.W.2d 780, 783 (Minn. Ct. App. 1984) (citations omitted). Summary judgment is an appropriate procedure to "relieve the court system of the burden and expense of unfounded litigation." *Cook v. Connolly*, 366 N.W.2d 287, 292 (Minn. 1985); *see also City of Savage v. Varey*, 358 N.W.2d 102, 105 (Minn. Ct. App. 1984) (summary judgment is designed to dispose of specious claims in any type of action, including equitable actions).

Once summary judgment is sought, the non-moving party cannot rest on averments or denials in the pleadings. Instead specific facts evidencing a genuine issue for trial must be set forth. Minn. R. Civ. P. 56.05. "[T]here is no genuine issue of material fact for trial when the

non-moving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the non-moving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Rather, the non-movant must come forth with substantial evidence. *Gunderson v. Harrington,* 632 N.W.2d 695, 704 (Minn. 2001). Summary judgment is proper when the non-moving party fails to present specific facts which create a genuine issue of fact. *Hunt v. IBM Mid. Am. Employees Fed. Credit Union,* 384 N.W.2d 853, 855 (Minn. 1986).

B. Counts I and V Fail as a Matter of Law

1. Count I: Illegality and Fraud Pursuant to Minn. Stat. § 317A.751

Count I of the First Amended Complaint seeks relief under Minn. Stat. § 317A.751, which provides:

> Subd. 3: **Action by director or member with voting rights.** A court may grant equitable relief in an action by a director or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:
>
> (1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
>
> (2) the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one ore more members in their capacities as members, directors, or officers;
>
> (3) the members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
>
> (4) the corporate assets are being misapplied or wasted; or
>
> (5) the period of duration as provided in the articles has expired and has not been extended as provided in section 317A.801.

Minn. Stat. § 317A.751, Subd. 3.

Plaintiffs' First Amended Complaint does not allege that the directors of JACC acted fraudulently, illegally or prejudicially as a whole, and Plaintiffs failed to sue JACC or the JACC Board of Directors. The plain language of the phrase "directors or those in control of the corporation" contemplates either the entire board of directors or, at a minimum, enough members to control the board of directors. Yet Plaintiffs only sued four members of the board. The JACC Bylaws, however, require a quorum to take any action. At the January 14, 2009 board meeting, eight voting members were needed to pass any resolutions. Defendants McCandless, Browne, Hodson, and Hubbard alone could not have passed any resolutions; rather, the board voted democratically to terminate Moore and re-open officer elections.

Moreover, the addition of JACC as a party to this litigation does not save Plaintiffs' claims. There is simply *no* evidence that Defendants Browne, McCandless, Hubbard, and Hodson – nonetheless *any* of JACC's board members – acted fraudulently, illegally, or prejudicially. Indeed the evidence reveals that the Defendants, and the JACC board as a whole, followed the bylaws to the letter on January 14, 2009. The full board – including Plaintiffs – voted, in writing, whether to terminate Jerry Moore for his misconduct and to re-open officer elections. (Haddy Tr. at 28-35; Df. Exs. 127, 128.) Although Plaintiffs may not like the result, each written vote was passed by a majority of board members. (Df. Exs. 104, 127, 128.) Dissatisfaction is not a grounds for relief pursuant to Minn. Stat. § 317A.751. Nor is it a basis to allege fraud, illegality, or prejudicial conduct. Plaintiffs have proffered no evidence of fraud or illegal actions by Defendants, or the board as a whole, and consequently summary judgment is appropriate.

2. Count V: Breach of Fiduciary Duty

Plaintiffs' breach of fiduciary duty claim is similarly based upon unsupported allegations of bad faith and illegal conduct, therefore summary judgment is also warranted. Officers of non-profit corporations owe a fiduciary duty to the corporation to act in good faith, in a manner the officer reasonably believes is in the best interest of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Minn. Stat. § 317A.361. In order to establish a breach of fiduciary duty claim, Plaintiffs must show that the officer's actions are "so far opposed to the true interests of the corporation" as to lead to the clear inference that the officer's actions were not influenced by an honest desire to secure such interests. *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 442 (Minn. Ct. App. 2001). There is simply no evidence supporting Plaintiffs' allegations that Defendants have acted in bad faith. Indeed, the evidence establishes that the Defendants have time and again acted in good faith and in the best interest of JACC and its membership. Among other things, Defendants sought to make JACC's finances transparent to its members and ensure that funds are appropriately used to benefit the community. Plaintiffs must present specific facts supporting their allegations of bad faith, and illegal, fraudulent, or prejudicial conduct. Plaintiffs cannot sustain this burden.

3. Plaintiffs' Claims Are Further Barred By the Doctrine of Unclean Hands

Notwithstanding the fact that Plaintiffs' claims have no merit and are unsupported by the voluminous record, Plaintiffs' claims are further barred by the common law doctrine of unclean hands. Unclean hands is an equitable defense that denies the availability of equitable remedies to parties who are guilty of "illegal or questionable" conduct. *Watson Co. v. U.S. Life Ins. Co.*, 258 N.W.2d 776, 778 (Minn. 1977).

For a successful unclean hands defense, a party's conduct must be "unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable." *Creative Commc'n Consultants, Inc. v. Gaylord*, 403 N.W.2d 654, 657-58 (Minn. Ct. App. 1987); *see also Senn v. Youngstedt*, No. C5-02-343 2002 WL 31013044, at *3 (Minn. Ct. App. Sep. 10, 2002) (barring appellant from seeking equitable relief based on appellant's "misconduct" and "improper efforts" to thwart third party's collection of a judgment). There is no denying that Plaintiffs' misconduct and improper efforts created each of the situations that Plaintiffs allege prove defendants breached their fiduciary duties or committed illegal conduct pursuant to Minn. Stat. § 317A.751.

Indeed, it was Moore who interfered with the nominations committee by both advancing the concept of one-year board terms for specific members, despite the fact that the bylaws explicitly state that board members serve two-year terms, and also unilaterally publishing a slate of candidates that had not been vetted by the committee. (Df. Ex. 136; Moore Tr. at 64; Myers Tr. at 14; E.B. Browne Tr. at 67, 116; M. Browne Tr. at 134-135; Pl. Ex. 2.) Moore's misconduct directly contributed to the ultimate postponement of the annual election—by an overwhelming voice vote by JACC members. (Cooper Tr. at 18-19; M. Browne Tr. at 134-136; Moore Tr. at 77; E.B. Brown Tr. at 150.)

Further examples of Plaintiffs' misconduct include: (1) the extension of Myers, Dejvongsa, and Linda Baker's board term, in violation of the Bylaws (Dejvongsa Tr. at 66); (2) Plaintiff Moore's assault on a JACC member and JACC board member (Moore Tr. at 155-157; Haddy Tr. at 20-21); (3) Myers misrepresenting himself as the Board Vice-Chair after January 14, 2009 (Myers Tr. at 81); (4) relocating JACC's offices without board approval (Myers Tr. 73-75); and (5) keeping the JACC checkbook and continuing to write out unauthorized checks

(Myers Tr. at 79-84.) This list of misconduct, of course, does not include the coincidental "disappearance" of JACC's files and office equipment, to which Myers' asserted the Fifth Amendment privilege when questioned about its whereabouts. (Myers Tr. at 77-78.)

As such, Plaintiffs' requested relief is further barred by the doctrine of unclean hands. The Court can rule, as a matter of law, that no genuine issues of material fact exist for Counts I or V, and that Defendants are entitled to judgment as a matter of law. Adding JACC as a party to this lawsuit does not change the result. Summary judgment is warranted.

C. Plaintiff Jerry Moore's Claim For Intentional Interference with a Contract Fails as a Matter of Law

Count II of Plaintiffs' First Amended Complaint alleges intentional interference with the contract. To succeed on this claim, however, Plaintiffs must demonstrate the following factors: (1) the existence of a contract; (2) the alleged wrongdoers knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages. *Furlev Sales and Assocs., Inc. v. N. Am. Auto Warehouse, Inc.*, 325 N.W.2d 20, 25 (Minn. 1982).

Plaintiffs cite to two "contracts" that are alleged to have been interfered with by Browne, McCandless, Hubbard and Hodson: the Bylaws and Moore's employment contract with JACC. First Amended Complaint at 16-17. A contract is a bargained for agreement with consideration. *See* 4 Minn. Prac. CIV. JIG. 20.10. The JACC Bylaws are not a contract pursuant to Minnesota law; rather the Bylaws are a set of rules governing a non-profit corporation.[11] Thus, the only contract that could support Moore's claim is his alleged employment contract.

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[11] For this reason, Count II of Plaintiffs' proposed Second Amended Complaint (alleging generally that Defendants "procured the breach of the Bylaws contract") fails as a matter of law. (Duginske Aff., Ex. B at 15.) This count essentially reiterates Plaintiffs' proposed Second Amended Complaint allegations in Counts I (that Defendants acted illegally pursuant to Minn. Stat. § 317A.751) and V (that Defendants breached their fiduciary duty to JACC and its members). As established above, there is no evidence that Defendants Browne, McCandless, Hodson, and Hubbard "breached" the bylaws, let alone acted illegally or in bad faith.

But Plaintiffs' claim fails before it begins because Minnesota prohibits a cause of action for intentional interference by an at-will employee against a person who has the ability to terminate the employee. *Nordling v. N. States Power Co.*, 478 N.W.2d 498 (Minn. 1991). JACC Board members clearly have the authority to terminate an at-will employee. (Moore Tr. at 22.) Thus, Plaintiffs and Moore are both precluded from suing Browne, McCandless, Hubbard and Hodson individually, or the JACC board as a whole, for intentional interference with contract. Moreover, there is no allegation – much less any evidence – that the JACC board acted beyond the scope of its authority in terminating Moore.

Even if Moore could sue Browne, McCandless, Hubbard and Hodson under Minnesota law, Plaintiffs' claim still fails because there is no evidence supporting the elements of a prima facie claim. The first element requires the existence of a contract. Defendants' post-evidentiary hearing memorandum of law fully explains and defends Defendants' suspicions that the supposed written employment contract produced at the hearing is spurious. Defs' Post-Hearing Mem. at 41-44. For purposes of summary judgment, however, even if the Court assumes, *arguendo*, that Moore's contract is valid, the JACC Board and Defendants Browne, Hubbard, Hodson, and McCandless cannot breach a contract unless each knows of its existence. Like Plaintiff E.B. Brown, who *as board chair* had no knowledge of an employment contract (E.B. Brown Tr. at 95, 104), the McCandless board knew nothing about the alleged contract. (M. Browne Tr. at 154; McCandless Tr. at 105-106, 204-205; Haddy Tr. at 25.) Plaintiffs have the burden of proving that the McCandless board knew of the contract. Plaintiffs' inability to introduce any evidence that Defendants McCandless, Browne, Hodson, and Hubbard – let alone JACC as a whole – had knowledge of Moore's employment contract is fatal to this claim.

Finally, the very terms of Moore's purported contract validate that the JACC board and

could terminate Moore for his improper actions on January 12, 2009, where Moore assaulted a JACC member and JACC board member at the community election. Moore's termination was entirely consistent with ¶ 6(B) of Moore's "contract," which allows immediate termination for, among other things, breach of fiduciary duty, misfeasance, malfeasance, or moral turpitude, so long as the reason for termination is provided. (Pl. Ex. 16). Browne presented Moore with written notice of the grounds for his termination on January 15. (M. Browne Tr. at 148-152; Df. Ex. 145). Moore acknowledged receipt of the letter. (Moore Tr. at 158; Df. Ex. 145). Moore's decision to physically assault a JACC member and board member at a JACC function clearly fits under any or all of the grounds for immediate termination identified in Moore's "contract." Defendants demonstrated that the act of terminating Moore on January 14, 2009 was in good faith, was within the scope of responsibilities, did not constitute willful or reckless misconduct, and was justified. *See Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). The intentional interference with contract claim, either pursuant to the First Amended Complaint or the proposed Second Amended Complaint, can be dismissed as a matter of law.

III. PLAINTIFFS' CLAIMS VIOLATE RULE 11

Rule 11 of the Minnesota Rules of Civil Procedure "provide[s] relief to parties who are victims of bad pleading and abuse of process." *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 849 (Minn. Ct. App. 2001) (quoting *State Bank of Young Am. v. Fabel*, 530 N.W.2d 858, 863 (Minn. Ct. App. 1995)); *see also* Minn. Stat. § 549.211. Under these rules, attorneys have "an affirmative duty to investigate the factual and legal basis for claims and assure that no claim is brought for an improper purpose." *Pratt Inv. Co.*, 636 N.W.2d at 851. In considering whether to impose sanctions, the court must determine whether there was an objectively reasonable basis for making the factual or legal claim. *See Gibson v. Trustees of Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 703 N.W.2d 864, 869 (Minn. Ct. App. 2005). This analysis necessarily

requires an examination of the pre-filing investigation, including consideration of factors such as how much time for investigation was available to the signer and whether the pleading was based on a plausible view of the law. *See Uselman v. Uselman*, 464 N.W.2d 130, 142-43 (Minn. 1990), superseded by statute on other grounds. In the absence of an objectively reasonable basis for making the factual or legal claim, the Court may award sanctions under Rule 11. *See id.*

In this case, all of Plaintiffs' claims (in Plaintiffs' initial Complaint, First Amended Complaint, and proposed Second Amended Complaint) lack both sufficient factual and legal bases, justifying an award under Rule 11. *See Gibson*, 703 N.W.2d at 869 (lack of objectively reasonable basis to make factual or legal claim justifies an award of sanctions). Defendants raised this issue at the outset of this litigation in a Safe Harbor Letter. (Duginske Aff., Ex. A.) Despite Defendants' warning that Rule 11 sanctions would be sought, Plaintiffs continued to pursue this frivolous litigation. The nine-day evidentiary hearing confirmed the unfounded nature of Plaintiffs' claims; yet Plaintiffs now plan to amend their complaint once again in an effort to needlessly prolong this costly lawsuit.

Minnesota courts have imposed sanctions in similar cases. In *Strand v. Nelson*, the court concluded that ten of the eleven claims in plaintiff's complaint were unfounded and that the lawsuit itself was "unwarranted." 380 N.W.2d 906, 909 (Minn. Ct. App. 1986). The court sanctioned the plaintiff and awarded the defendant reasonable attorneys' fees. Similarly, in *Mooney v. Burtness*, the Minnesota Court of Appeals affirmed an award of attorney fees ($62,703.50), plus costs, to a party forced to defend a frivolous demand for injunctive relief where an "air of bad faith surrounded [the plaintiff's] conduct throughout the action." No. CO-97-1724, 1998 WL 218189, at *3-4 (Minn. Ct. App. May 5, 1998) (Duginske Aff., Ex. D.)

In this case, the air similarly reeks of bad faith. Plaintiffs' various Complaints present

nothing more than "imaginative litigation" that contravenes the clear mandate of Minnesota law. *See Radloff v. First Am. Nat'l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 157 (Minn. Ct. App. 1991). Plaintiffs' persistence in pursuing this litigation – based on nothing more than mere dissatisfaction with the board's lawful actions taken at the January 14, 2009 meeting – has required JACC to unnecessarily defend this costly and frivolous suit. Despite ample opportunity to prove their claims, Plaintiffs are unable to present any – much less a scintilla of – evidence demonstrating that Defendants are guilty of any wrongdoing. Sanctions are more than appropriate. *See* Minn. R. Civ. P. 11.03; Minn. Stat. § 549.211.

CONCLUSION

This baseless litigation must end. Since it began, JACC has held its annual meeting and election of directors and officers for 2009-2010. Plaintiffs voluntarily failed to participate in this process, and the Jordan neighborhood has expressed its preferences. Because this Court cannot grant Plaintiffs "effectual relief," this case is now moot. Dismissal is warranted.

Moreover, the record confirms that there are no factual or legal bases for Plaintiffs' claims and Defendants are entitled to judgment as a matter of law. Other than mere dissatisfaction with the lawful actions taken at the January 14, 2009 board meeting, there was no reasonably objective basis for bringing this lawsuit. Regardless of whether Plaintiffs' file their proposed Second Amended Complaint, Plaintiffs' claims remain unfounded and the lawsuit was unwarranted. Sanctions are appropriate.

Defendants, therefore, request that the Court enter judgment in their favor, dismiss Plaintiffs' claims with prejudice, and award sanctions in the form of reasonable attorneys' fees and costs to the Defendants.

Dated: December 17, 2009

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 1 to the party against whom the allegations in this pleading are asserted.

_____
Tara Reese Duginske