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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF KANDIYOHI | EIGHTH JUDICIAL DISTRICT
Case Type: Civil Other/ Miscellaneous

Steve Quest,

Plaintiff,

v.

Nicholas Rekieta and Rekieta Law, LLC,

Defendants.

Court File No. 34-CV-23-12
Honorable Judge Stephen J. Wentzell

RESPONSE TO REQUEST FOR SANCTIONS

COME NOW Defendants, by and through counsel of record, with a response in opposition to Plaintiff's motion for sanctions.

By way of background, the parties discussed the then-forthcoming anti-SLAPP motion (prior to its filing) by teleconference. Decl. Randazza ¶ 5. That teleconference resulted in a consent motion to amend the scheduling order (doc. 74), prepared and filed by Plaintiff's counsel, which states: "The parties mutually agreed that the 60-day deadline provided by Minn. Stat. § 554.09 shall be extended to July 28, 2025." (Doc. 74 ¶ 6.) There was no ambiguity in the stipulation. It contemplated an extension of the statutory deadline that an anti-SLAPP motion must be filed "[n]ot later than 60 days after a party is served … *or* at a later time on a showing of good cause." MSA § 554.09. And that stipulation was for and in consideration of Defendants' counsel "graciously agree[ing] to stipulate that all deadlines in the scheduling order should be extended by 120 days." (Doc. 74 ¶ 5; see also Decl. Randazza ¶ 5.) This Court granted that motion in full, including the subject stipulation. (Doc. 76.) It was upon that stipulation, which was blessed by order of this Court, that Defendants and their counsel were under the impression that the anti-SLAPP motion would be timely if it was filed on or before July 28, 2025.

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Far from seeking to delay the proceedings, Defendants filed the anti-SLAPP motion *one and a half months earlier than the stipulated and Court-approved deadline*. (Doc. 88) (filed June 11, 2025). After Plaintiff cried foul, Defendants withdrew the motion, without prejudice, to allow a fair opportunity for discovery. (Doc. 120.) That moots Plaintiff's countermotion for sanctions. (Doc. 118.)

Plaintiff is not satisfied, of course. He insists that sanctions are warranted for the *filing* of the motion (which, it can't be overemphasized, he agreed to in the first place to secure a discovery extension); and that sanctions are warranted because of a failure to appear at a scheduling conference. Neither ground is availing. The hearing was a "proceeding" that got stayed by operation of the agreed-upon filing of an anti-SLAPP motion. And if the statutory framework for an anti-SLAPP motion "expressly does not apply to the Plaintiff's claims," as Plaintiff claims (Doc. 118, at 5), then it logically must follow that the very same statutory framework "expressly does not apply" as to permit sanctions. (Id.) As Plaintiff refuses to withdraw his countermotion, the Court should deny Plaintiff's motion for sanctions in full. In fact, it would be proper to award fees-shifting for having to respond to this inconsistent and abusive motion but the Defendant will take the high road, with no anticipation that the Plaintiff will ever follow suit.

1.0 Purported Scheduling Conference Sanctions

Defendants' failure to attend the hearing is no basis for sanctions because the hearing was stayed by operation of the anti-SLAPP motion. As a matter of law, Defendants were not required to attend, so they cannot be sanctioned for having done nothing wrong. As the Court is aware, the following sequence of events occurred:

- On June 2, the Court set a scheduling conference to be held on June 18.
- On June 11, Defendants filed an anti-SLAPP motion.
- Also on June 11, the Clerk scheduled the anti-SLAPP motion for hearing on July 14.
- During the conference on June 18, in the absence of Defendants, Plaintiff set the hearing for the same date that the Clerk had already set it.

Plaintiff's sanctions request is futile and unnecessarily multiplies proceedings. As Plaintiff

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himself argues, "pursuant to Minn. Stat. 554.10, the Defendants have *achieved* an automatic and indefinite stay of these proceedings pending the resolution of their anti-SLAPP motion." (Doc. 118, at 3) (emphasis added). The automatic stay meant there should have been no conference.

Plaintiff is now complaining that the parties should have attended a conference that, by operation of statute, was cancelled. Ostensibly, the scheduling conference was needed to schedule the anti-SLAPP motion for hearing. *But a hearing had already been scheduled for July 14.* Plaintiff's motion offers no justifiable basis for sanctions, and must be denied.

2.0 The anti-SLAPP motion was meritorious and advanced for its statutory purpose

Plaintiff's next asserted ground for sanctions is that it was meritless and filed solely to delay. Neither is the case: the anti-SLAPP motion was firmly grounded in merit and was advanced for its statutory purpose.

The anti-SLAPP motion is firmly grounded in law. *See Maddox v. Dep't of Hum. Servs*., 400 N.W.2d 136, 139 (Minn. App. 1987). As Plaintiff himself argues, sanctions would be warranted when Defendants' counsel fails in its "affirmative duty to investigate the factual and legal underpinnings of a pleading…." *Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. Ct. App. 1998), citing *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990). At bar is not a failure of undersigned counsel's duty to investigate the legal underpinnings of the anti-SLAPP motion, but a disagreement among adverse parties in the interpretation of an internally-inconsistent statute.

The Minnesota legislature passed a statute that provides "This article is *effective* the day following final enactment *and applies to a civil action pending on* or commenced on or after that date." Laws of Minnesota 2024, chapter 123, article 18, section 17 (emphasis added). Under the plain text of the statutory framework for the anti-SLAPP motion, it was "effective" on May 25, 2024 and "applie[d]" to all civil actions "pending on" that date. Because this action was "pending on" June 11, 2025 (which "on or after" May 25, 2024), the anti-SLAPP statute applied under its plain terms

Yet Plaintiff ignores this section completely, preferring to cite to another section which says that the law does "not affect a cause of action asserted before May 25, 2024, in a civil action..." Minn. Stat. § 554.19. If "does not affect" means "does not apply to" (the Legislature could have used those

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words, if that was what they meant), then Plaintiff's preferred statutory language could be interpreted to conclude that the statute did not authorize the anti-SLAPP motion.

It seems problematic that a party would seek sanctions, while attempting to mislead the court by knowingly omitting contrary statutory authority. *See* Minn. R. Prof. C. 3.3, cmt. [4] ("A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities"). This is especially so when there is not only a fair argument as to the Defendants' interpretation of the law, but it seems that the better argument is indeed the Defendants' argument.

Assuming *arguendo* that the Plaintiff's proffered interpretation was reasonable, Plaintiff has only revealed a statutory ambiguity. That ambiguity must resolve in Defendants' favor. See MSA § 645.16, which states: "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." When there is ambiguity, it is resolved by considering the following factors:

(1) the occasion and necessity for the law;
(2) the circumstances under which it was enacted;
(3) the mischief to be remedied;
(4) the object to be attained;
(5) the former law, if any, including other laws upon the same or similar subjects;
(6) the consequences of a particular interpretation;
(7) the contemporaneous legislative history; and,
(8) legislative and administrative interpretations of the statute.

With the exceptions of (7) and (8), it seems that the Legislature declared its anti-SLAPP intent through MSA § 554.17, which provides: "Sections 554.07 to 554.19 must be *broadly construed* and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or Minnesota Constitution." (emphasis added). The Legislature sought to protect First Amendment rights, and to do so in broad strokes. It was doing so because after the prior Minnesota anti-SLAPP law had been struck down, abusive lawsuits (like this one) proliferated in Minnesota, which needed to be remedied.

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If the Legislature sought to cure the problem of abusive lawsuits, then why would they use divergent statutory text which, under one interpretation, would prohibit all abusive lawsuits but, under another, would grandfather in *pending* abusive lawsuits? The Legislature leaves us neither textual clues nor legislative history to support that inference; nor has any court, agency, nor law review article nor even legal commentator suggested any. This internal inconsistency and conflict appears to be a matter of first impression, and it puts this Court in the unenviable position of explaining–without any direction offered by Plaintiff–why abusive lawsuits should be unfettered or strictly barred solely depending on how quickly a plaintiff raced to the courthouse. It seems that the tie should go to the runner, as it were – hence the expressed legislative intent to "broadly" construe the statutes as to protect the First Amendment rights of all victims of lawfare.

Consider next Plaintiff's unclean hands. Plaintiff filed a consent motion for sanctions on June 2, 2025, wherein through negotiations to secure his discovery extension, his attorney explicitly agreed to extend the deadline to the anti-SLAPP through July 28, 2025. (Decl. Randazza ¶ 5; Doc. 74 ¶¶ 5-6.) If Plaintiff believed an anti-SLAPP motion could not be filed, then Plaintiff should not have stipulated to the filing of one. He cannot now complain in good faith when such was filed.

On May 28, Attorneys Hardin and Randazza met and conferred on the motion to amend the scheduling order, and *specifically discussed* the fact that Defendants intended to file an Anti-SLAPP motion under the new law, and that the date for filing would be extended to July 28, 2025. (Decl. Randazza ¶ 5.) Yet now, Mr. Quest expects this Court to believe that he is shocked that the motion he expressly agreed to was actually filed, and then goes on to great lengths to make it appear as if he could never have imagined such an outcome. Plaintiff should be estopped from capitalizing on what is, at most, a differing interpretation of the statute among legal adversaries where his lawyer explicitly agreed that it would be proper to file such a motion by negotiating the deadline to file that motion.

Nor was the motion filed solely for purposes of delay. As sole proof, Plaintiff points to his own belated service of discovery requests. Those were not within Defendants' control. The Motion was filed only after Plaintiff himself explicitly agreed that it could be filed, and it was filed promptly thereafter – not even using the majority of the time granted. (Doc. 74) (filed May 29, 2025). The

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Plaintiff agreed, explicitly, that an anti-SLAPP could be filed by July 28. (Doc. 74 ¶ 6.) It was filed on June 11. (Doc. 88.) If Defendants really sought to cause maximal delay, it seems a poor execution to file the contemplated motion 47 days early.

And it hardly seems improper for the Defendants to seek the benefit of Minnesota law, which Plaintiff successfully argued governed in the first place. Plaintiff is simply wrong in claiming Defendants failed to schedule a hearing—the Court's own record reflects otherwise. Moreover, as it is being withdrawn, it effects no delay. Simply put, the anti-SLAPP was not a dilatory tactic. As it is neither frivolous nor dilatory, sanctions cannot enter under Minn. Stat. 554.16(2).

Nor does Plaintiff's countermotion follow its own tortured logic. If, as Plaintiff contends, the anti-SLAPP law does not apply to this action; what authority substantiates Plaintiff's request? Surely it is not the very statutory framework which Plaintiff vociferously contends cannot apply in the first place. If the Plaintiff's analysis is incorrect, then the anti-SLAPP law applies. If the plaintiff's analysis is correct, then the statutory basis for his motion "expressly does not apply" (Doc. 118, at 5). Which is it, does the Act apply or not? The Plaintiff wants it to not apply when it might hurt him, but it should apply if it provides the opportunity to try and seek sanctions? The statutes either apply, which made the anti-SLAPP motion well-grounded; or they do not, which precludes the basis for Plaintiff's requested fees. Either way, no sanctions are permissible. The internal inconsistency in a motion filed clearly for posturing is unbecoming.

If Plaintiff's motion is instead brought under Rule 11.03, the Court should take notice that Plaintiff chose to not issue a 21-day safeharbor letter. See Minn. R. Civ. P. 11.03(a)(1) (a motion for sanctions "shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service … the challenged document … is not withdrawn or appropriately corrected.")

Last, the Court should take notice that the parties through counsel conferred on this issue. Attorney Randazza suggested a stipulation for the Court to construe the anti-SLAPP motion under motion for summary judgment standards instead of under the statutory framework that Plaintiff now equivocally contends can only apply to motions from his side of the aisle. (Decl. Randazza ¶ 6) While

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Plaintiff's counsel initially expressed approval to that suggestion, subsequent communications indicate that he now refuses. (Id.) Regardless whether the anti-SLAPP framework applies, or if the motion should be construed as a motion for summary judgment, Defendants are entitled to the expeditious termination of Plaintiff's frivolous claims.

3.0 The Substance of the Anti-SLAPP Motion

As a matter of judicial economy, Defendants have decided to withdraw the anti-SLAPP motion at this time. Defendants recognize that Quest wants a fair opportunity for discovery before the motion is decided (as evidenced by his strong protestations). After this discovery is exchanged, if an Anti-SLAPP motion appears to be still appropriate, one will be filed.

The parties have met and conferred on this matter, and the parties agreed that responses to all pending discovery requests shall be due on or before July 7, 2025. (Decl. Randazza ¶ 7.)

Date: June 24, 2025

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ACKNOWLEDGEMENT REQUIRED BY MINN. STAT. § 549.211. SUBD. 1

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat.§ 549.211, if factual contentions and legal arguments contained in this pleading are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Dated: June 26, 2025 */s/Matt Kezhaya*