

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

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FOURTH JUDICIAL DISTRICT

DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

**PETER HUXMAN, individually
and on behalf of all those similarly
situated,**

Court File No: CV 07-7807

Plaintiffs,

vs.

**MINNEAPOLIS PARK AND
RECREATION BOARD,**

Defendant.

**ORDER DENYING REQUEST
TO SEEK PERMISSION TO
BRING MOTION FOR
RECONSIDERATION AND
DENYING REQUEST TO REMOVE
AND MEMORANDUM OF LAW**

TO: Karin Peterson, Esq., 206 East Bridge – Riverplace, 10 Second Street N.E., Minneapolis, MN 55413 and Alfred Stanbury, Esq., 2209 St. Anthony Parkway, Minneapolis, MN 55418.

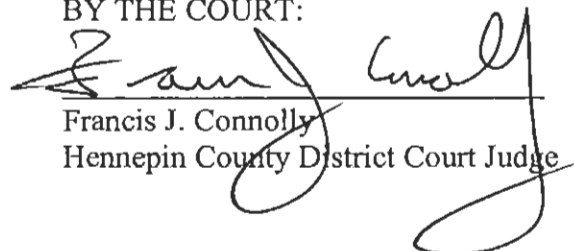
Based upon all the files, records and letters from counsel herein, the Court makes the following decision:

IT IS HEREBY ORDERED:

1. Plaintiff's Request to seek permission to bring a Motion to Reconsider the Court's Order of May 25, 2007, is DENIED.
2. Plaintiff's Motion/Request to Remove the undersigned Judge is DENIED.

Dated: June 22, 2007

BY THE COURT:



Francis J. Connolly
Hennepin County District Court Judge

MEMORANDUM OF LAW

On or about May 25, 2007, the Court issued an Order and Memorandum of Law denying Plaintiff's Motion for a Temporary Injunction. On or about June 13, 2007, Plaintiff sought permission to bring a Motion for Reconsideration pursuant to Rule 115.11 of the General Rules of Practice stating that the Court's decision was "palpably wrong". By letter of June 15, 2007, Defendant stated it opposed the request. Rule 115.11 provides:

Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances.

In this case, the Court in a detailed and lengthy memorandum of law outlined its reasons why Plaintiff's motion for a temporary injunction was denied. The Court believes that decision was correct. Since there are no other compelling reasons, the request for permission to bring a motion for reconsideration is denied.

Plaintiff in the same letter asks the undersigned Judge to recuse himself. Plaintiff asserts that the Court is biased against him. Plaintiff states that the Court's decision was "extraordinarily shallow and blatantly one-sided". Specifically, he alleges that the Court rejected and/or ignored his arguments and that the Court ruled too quickly. Defendant opposes this request. A request to recuse is essentially a motion to remove a judge for cause. For the reasons outlined below the motion/request is denied.

First, as to the speed with which the Court issued its ruling, the Court notes that this was a motion for a temporary injunction in which the Plaintiff was alleging "immediate and irreparable injury". Therefore, the Court issued its opinion on May 25, 2007, precisely because of the need for a swift decision based on the requested relief. In addition, the Park Board was planning to advertise for bids on the project on June 1, 2007, so time was of the essence.

Second, Rule 63.03 provides that a judge who has presided at a motion or any other proceeding of which notice was given, may not be removed except upon an affirmative showing of cause. Bias or prejudice, generally, must stem from an extra judicial source and result in an opinion on the merits on some basis other than what the Judge learned from his participation in the case. In re Estate of Lange, 398 N.W.2d 569, 573 (Minn. Ct. App. 1986).

In this instance, Plaintiff essentially argues that the Court is biased against him because the Court ruled against him. The Court held a lengthy hearing on the record on May 23, 2005. The Court then issued a detailed 14 page opinion in which it set out its rationale for ruling against the Plaintiff. A Court's rulings alone are rarely a valid basis for a bias motion; and may be grounds for appeal, but not removal. Liteky v. U.S., 510 U.S. 540, 555 (1994); see also, U.S. v. Grinnell Corp., 384 U.S. 563, 582 (1966).

In this case, the Court ruled against the Plaintiff based on the record presented to the Court. Moreover, the Court did consider, but ultimately rejected, Plaintiff's arguments. If the Plaintiff believes the decision is incorrect, the remedy is to appeal the decision.

Therefore, the motion/request for removal is denied.

F.J.C.

A handwritten signature in black ink, appearing to be 'F.J.C.', written in a cursive style.