

STANBURY LAW FIRM P.A.

PRACTICE CONFINED TO
CRIMINAL AND CIVIL LITIGATION AND TRIALS

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June 23, 2007

Hon. Joanne Smith
Ramsey County District Court
1530 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102

Re: Dr. Ba Lam v. County of Ramsey, Minnesota, *et al.*
Ramsey County District Court Case No. C8-02-012545
BY FAX AND REGULAR MAIL

Dear Judge Smith:

I write in opposition to defendants' attorney's request for leave to move for reconsideration of Your Honor's Order denying summary judgment as to plaintiff's Count II (copy attached as Exhibit 1). Please make this letter part of the record. A court will grant a request for leave to move for reconsideration only upon a showing of compelling circumstances. Minn. Gen. R. Prac. 115.11 (emphasis added). In the Advisory Committee Comment -- 1997 Amendments to Rule 115, it is said: "Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. . . . **Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. . . .**" (Citations omitted and emphasis added.)

Because he cannot, defendants' attorney has not provided Your Honor with any compelling reasons to grant leave to move for reconsideration of the decision denying summary judgment as to plaintiff's claim for perpetuation of a nuisance, and, in arguing that "plaintiff has been paid for all his damages, past, present and future pursuant to paragraph 4 of the Settlement Agreement," defendants' attorney is seeking an opportunity to present an argument that could have been raised in their summary judgment motion argument but was not. Moreover, as an argument it is beyond absurd. Paragraph 4 of the Agreement and Release says nothing more than this: "Defendants shall pay Plaintiff the sum of Two Thousand One Hundred (\$2,100.00) Dollars, within fourteen (14) days from the date this agreement and stipulation are signed by Plaintiff and returned to Defendants. The check shall be made payable to: Dr. Ba Lam and Stanbury Law Firm P.A. . . ."

Obviously, nothing is said in that Paragraph 4 about past, present, and future damages, and the \$2,100 was not even damages but instead represented plaintiff's recovery of his costs. In putting the agreement on the record in *Lam I*, defendant MacMillan, the *Lam I* defendants' attorney, testified in pertinent part as follows: "The final issue is there will be a payment of \$2,100 dollars to the plaintiff for his costs of this matter." Exhibit 2 to Affidavit of Alfred Stanbury dated May

Member: UNITED STATES SUPREME COURT BAR • MINNESOTA STATE BAR • UNITED STATE BAR FOR THE DISTRICT OF MINNESOTA • UNITED STATES BAR FOR THE EIGHTH CIRCUIT COURT OF APPEALS • UNITED STATES BAR FOR THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT • UNITED STATES BAR FOR THE COURT OF VETERANS APPEALS • UNITED STATES TAX COURT BAR • UNITED STATES BAR FOR THE COURT OF INTERNATIONAL TRADE

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7. 2007 (March 30, 2005 Hearing Tr., p. 3) (emphasis added).

For defendants' attorney to contend that "plaintiff has been paid for all his damages regardless of the basis for the claim" is, as I said, beyond absurd. And for defendants' attorney to say that "plaintiff has no proof to show that the misplacement of the drain grate caused him additional harm" while failing once again to even mention the rule of *Hadley v. Baxendale* is to admit that he has not even read my June 15, 2007 letter requesting leave to move for reconsideration despite professing to oppose it.

Where plaintiff is not claiming for intentional infliction of emotional distress, whether he can show physical manifestations of injury is irrelevant and the case of *Woyke v. Tonka Corp.*, 420 N.W.2d 624 (Minn. Ct. App. 1988), is inapposite. Defendants' argument to the contrary could have been raised in their summary judgment motion argument but was not. And unlike my June 15, 2007 letter requesting leave to move for reconsideration, defendants' attorney has not shown or even tried to show that Your Honor's decision as plaintiff's Count II was palpably wrong in some respect. He has simply asked for leave to move for reconsideration of that decision, and that, of course, is not how it is done.

Sincerely,

STANBURY LAW FIRM P.A.


Alfred Stanbury

cc: Dr. Ba Lam
David Dietz, Esq. (by fax and regular mail)