

# STANBURY LAW FIRM P.A.

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CRIMINAL AND CIVIL LITIGATION AND TRIALS

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June 15, 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:

Pursuant to Minn. Gen. R. Prac. 115.11, I write to request leave to move for reconsideration of Your Honor's dismissal of Count I of plaintiff's Complaint (copy attached as Exhibit 1). Please make this letter part of the record. Your Honor's decision is palpably wrong.<sup>1</sup>

To begin, I should like to think that by now Your Honor would better understand the facts and factual chronology since they were set out so carefully in plaintiff's memorandum of law and in all of plaintiff's previously filed memoranda of law. *E.g.*, Your Honor has no basis for finding that plaintiff brought his contempt motion "while the work was in progress" in early November 2005-- unless a motion is "brought" when a notice of motion is served, which, of course, it is not. Installation of the drain grate on plaintiff's property was completed on November 8, 2005, whereas plaintiff's memorandum of law, affidavit, and proposed order were served and filed on November 10, 2005. *See* Pl. Mem. at 9 ("Dr. Lam's attorney withheld filing Lam's motion papers until he was able to see if the new drain system were installed in about a week."). Nor does Your Honor have any basis for finding that "plaintiff claims that the bituminous curb was intentionally placed on his property . . ." No such claim can be found in the Complaint because the curb had not been extended at all when the Complaint was drafted and then served on December 13, 2005. What defendants did a year later and Dr. Lam's reaction to it are irrelevant. And it is not even close to correct for Your Honor to find that "[i]n this action, plaintiff claims that the bituminous curb was intentionally placed on his property and alleges that by it being seven to eight inches away from where it should have been located per the 'Agreement,' defendants are in breach of the 'Agreement' and have perpetuated a nuisance." Plaintiff has never claimed that the Agreement was breached because defendants extended or "placed" the curb in a particular way. In fact, the opposite is true. The Agreement was breached when, *inter alia*, the curb was not extended or "placed" in November 2005. *See* Pl. Mem. at 10 ("Dr. Lam commenced the instant case on

<sup>1</sup> "[Courts] are likely to [reconsider decisions] only where . . . or where the earlier decision is palpably wrong in some respect." Advisory Committee Comment -- 1997 Amendments to Rule 115.

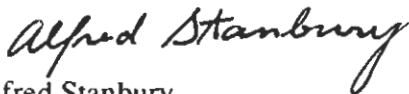
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December 13, 2005, claiming breach of contract and perpetuation of a nuisance after Ramsey County failed to install the drain grate on the paved portion of Lake Johanna Boulevard and failed to extend the bituminous curb to the western edge of Dr. Lam's property." In each instance, it was error for Your Honor to adopt the movants' (i.e., the defendants') version of a disputed fact as true without even giving the non-movant plaintiff's version the benefit of the doubt.

The dismissal of plaintiff's Count I is palpably wrong because Your Honor failed to apply or even discuss the rule of *Hadley v. Baxendale*, 9 Ex. 341, 156 Eng. Rep. 145 (1854). That rule, which is followed in Minnesota, holds that damages recoverable in contract actions are those which arise naturally from the breach OR are those which can be supposed to have been contemplated by the parties when the contract was formed. Where Your Honor has correctly held that in this case no fixed damages can be required for nuisance and since nuisance damages flowed naturally and obviously from the breach, it is wholly inconsistent and thus palpably wrong for Your Honor to grant summary judgment as to Count I because "[t]he record before the court is devoid of any measurement for plaintiff's claimed damages" and "[p]laintiff has simply failed to sufficiently approximate any alleged loss." On the contrary, plaintiff showed that nuisance damages were recoverable under either of the two rules of *Hadley v. Baxendale* and pointed out that whether damages naturally arose from the breach (reasonably foreseeable as a probable consequence) or were contemplated by the parties is a question of fact which depends upon the nature of the contract and the circumstances surrounding its execution. *Franklin Manufacturing Co. v. Union Pacific Railroad Co.*, 311 Minn. 296, 298-99, 248 N.W.2d 324, 326 (1976). Pl. Mem. at 17-18. Your Honor has no authority, inherent or otherwise, to ignore that argument and the fact that Minnesota follows the rule of *Hadley v. Baxendale*. Your Honor's dismissal of plaintiff's Count I must be reconsidered and reversed.

Sincerely,

STANBURY LAW FIRM P.A.



Alfred Stanbury

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