

NO. A06-394

STATE OF MINNESOTA

In Supreme Court

VOICESTREAM MINNEAPOLIS, INC.,
d/b/a T-Mobile, a Delaware Corporation,

Respondent,

vs.

RPC PROPERTIES, INC.,
a Minnesota Corporation,

Appellant.

**BRIEF AND APPENDIX OF APPELLANT
RPC PROPERTIES**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

Whether the District Court has an obligation to make an affirmative determination on an issue expressly raised by a party in its motion papers?

The Court of Appeals held that a district court's silence in regard to requested relief may be deemed a denial of such relief.

Hughes v. Sinclair Mktg., Inc., 389 N.W.2d 194 (Minn. 1986);

In re Simpkins, 599 N.W.2d 170 (Minn. App. 1999);

Minnesota Statutes § 546.27, Subd. 1(a)

STATEMENT OF THE CASE AND FACTS

T-Mobile initiated suit in Ramsey County requesting an injunction after RPC Properties demanded that T-Mobile remove its cellular telephone transmission equipment and its antenna arrays from the RPC rooftop. (Complaint)¹ RPC Properties answered and counterclaimed, asserting that T-Mobile had defaulted in the terms of its lease by damaging the roof surface on which T-Mobile's equipment had been placed and then by refusing to repair the damaged roof. (Answer and Counterclaim)

The District Court entered a temporary restraining order enjoining RPC Properties from removing T-Mobile's equipment from the roof.

Per the Court's Order, the parties engaged in mediation and settled the remaining issues. The terms of the agreement were set forth in a Memorandum of Understanding in Settlement of Dispute dated April 29, 2005. (Exhibit A to the Affidavit of Lawrence Crosby dated August 23, 2005; Exhibit A to the Affidavit of Tamara O'Neill Moreland dated September 13, 2005) As part of this Agreement, T-Mobile agreed to move its equipment from the roof surface to allow repairs to be made to the roof. *Id.* The agreement did not specify when the equipment had to be moved.

Four months after the parties executed the settlement agreement, T-Mobile's

¹ While the entire record of documents exchanged between the parties and the Court is too voluminous to be reprinted in the Appendix on the present matter, Appellant believes that a review of the post-settlement submissions would be helpful to establish the uncertainty surrounding the procedural posture of the case.

equipment remained on the roof of RPC Properties' building; and repairs could not be made until the equipment was moved. (Affidavit of Charles Kadrie dated August 23, 2005)

On September 22, 2005, RPC Properties brought a motion requesting the following relief:

1. Ordering Plaintiff to remove and to relocate its antennae arrays as agreed in the Memorandum of Understanding Settlement of Dispute dated April 29, 2005, within five days and, if Plaintiff fails to relocate its antennae arrays within this five-day period, allowing Defendant to terminate its lease with Plaintiff and permitting Defendant to dispose of the antennae arrays as Defendant sees fit and to seek appropriate damages under the contract(s) with Verizon/T-Mobile.
2. Awarding Defendant monetary damages, to be established in a subsequent evidentiary hearing, for Plaintiff's breach of the Memorandum of Understanding in Settlement of Dispute dated April 29, 2005.
3. For such other relief as the Court is pleased to grant including attorneys fees and costs.

A-11-12.

On September 29, 2005, the Court issued the following Order:

1. The Defendant's motion to enforce the settlement agreement is hereby GRANTED.
2. The Defendant's motion for attorney's fees and costs for the necessity of bringing this motion is hereby GRANTED. Defendant's counsel shall provide the court with an affidavit setting forth attorney's fees and costs in which the court will make a separate order awarding reasonable fees and costs.
3. The attached Memorandum is made a part of this Order pursuant to Minnesota Rules of Civil Procedure 52.02.

A-1-2. The Order did not respond to the issue of consequential damages.

Counsel for RPC Properties then submitted an affidavit itemizing the attorney fees and costs incurred and asking for a hearing to examine the witnesses in order to determine whether the damages flowed from the breach or were too remote. (Affidavit of Lawrence Crosby Related to Attorneys Fees Award and Other Matters dated October 25, 2005) Counsel's affidavit also stated, "I ask that the Court clarify this issue and advise Counsel for the respective parties whether the Court has decided or not decided to schedule such a hearing. *Id.* at ¶ 4. Appellant included two affidavits from its tenants to support its claim of damages. (Affidavit of Douglas Milowski dated October 17, 2005; and Affidavit of Tom Babcock dated October 13, 2005)

T-Mobile submitted a response objecting to RPC Properties' request. (October 26, 2005, letter from Tamara O'Neill Moreland to the district court.) No response at all came from the Court; and RPC Properties subsequently submitted additional documentation and another request for a hearing. (Second Affidavit of Lawrence Crosby Related to Attorneys Fees Award and Other Matters dated November 9, 2005) T-Mobile opposed this second request for a hearing. (Affidavit of Tamara O'Neill Moreland dated November 10, 2005). This prompted a response from counsel for RPC Properties, Inc. (Responsive Affidavit of Lawrence Crosby Related to the Affidavit of Tamara O'Neill Moreland, Counsel for T-Mobile dated November 23, 2005), which led to a final pair of affidavits from counsel for T-Mobile. (Affidavit of Tamara O'Neill Moreland dated

December 2, 2005, and Affidavit of Jeffrey B. Peterson dated December 2, 2005)

On December 14, 2005, the Court issued the following Order:

1. That pursuant to the Court order dated September 29, 2005, Defendant is hereby awarded costs and disbursements in the amount of \$2,550.00 for work regarding breach of settlement agreement in this case.

A-4 Judgments on the two Orders were entered on December 28, 2005. A-2 and A-4.

RPC Properties then appealed this matter to the Minnesota Court of Appeals.

(Notice of Appeal) The Court of Appeals affirmed the District Court and RPC

Properties filed a Petition for Review of Decision of Court of Appeals with this Court.

On April 25, 2007, this Court issued an Order granting review of the decision of the

Court of Appeals as to the need for an affirmative ruling from the district court. A-13.

ARGUMENT

The District Court has an obligation to make an affirmative determination on an issue expressly raised by a party in its motion papers.

The Court of Appeals held that “a district court’s silence in regard to requested relief may be deemed a denial of such relief.” A-8. In support of this proposition, the Court cited *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194 (Minn. 1986). As will be explained below, reliance on this case is misplaced.

The issue before this Court goes to the very core of the judicial system. On September 22, 2005, RPC Properties brought a motion before the District Court requesting three separate and distinct items of relief. The Minnesota Court of Appeals

has defined a motion as “an application to a court or judge for [the] purpose of obtaining a rule or order directing some act to be done in favor of the applicant.” *In re Simpkins*, 599 N.W.2d 170, 172-73 (Minn. App. 1999) (citing Black's Law Dictionary 1013 (6th ed. 1990)). In addition, Minn. R. Civ. P. 7.02(a) states, “An application to the court for an order shall be by motion . . .”; *see also LeRoy v. Marquette Nat. Bank of Minneapolis*, 277 N.W.2d 351, 353 (Minn. 1979) (A motion is an application for an order.).

Black's Law Dictionary defines an Order as a “direction of a court or judge made or entered in writing, and not included in a judgment, which determines some point or directs some step in the proceedings.” Black's Law Dictionary 1096 (6th ed. 1990).

When a party brings a motion before the court, the party is applying for an order. This order “determines some point or directs some step in the proceedings.” Failure to make a determination on an issue raised before the court on a motion disrupts the process and leaves the parties unsure of their present procedural standing.

In addition, Minnesota law states, “Except as provided in paragraph (b), all questions of fact and law, and all motions and matters submitted to a judge for a decision in trial and appellate matters, shall be disposed of and the decision filed with the court administrator within 90 days after such submission . . .” Minn. Stat. § 546.27, Subd. 1(a). The threatened penalty for failure to comply with this section is that the judge will not be paid. RPC Properties does not argue that the judge should not be paid because he did not rule on its request for consequential damages. Rather, RPC Properties asks that

the district court judge be required to actually decide issues placed squarely before the Court by the parties.

Rule 52.01 of the Minnesota Rules of Civil Procedure does not resolve the issue: “Findings of fact and conclusions of law are unnecessary on decisions on motions pursuant to Rules 12 or 56 or any other motion except as provided in Rules 23.08(c) and 41.02.” Minn. R. Civ. P. 52.01. This rule does not abrogate the need for a court to make a decision regarding the requested relief.

RPC Properties believes that this a fair request and does not run afoul of the allowances set forth in Rule 52.01 of the Minnesota Rules of Civil Procedure. As the Supreme Judicial Court of Massachusetts has stated, “The only obligation of a judge in an action at law is to pass upon pertinent requests for rulings of law seasonably presented and to decide the case.” *Adamaitis v. Metropolitan Life Ins. Co.*, 295 Mass. 215, 215, 3 N.E.2d 833, 833 (1936) (citing *Davis v. Boston Elevated Railway*, 235 Mass. 482, 494-495 (Mass. 1920)). Acknowledging the rule that the district court is under no obligation to issue findings of fact and conclusions of law when deciding on a motion, the district court must still make a decision.

The Minnesota Supreme Court’s decision in *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194 (Minn. 1986), fails to provide sufficient guidance. In *Hughes*, the Supreme Court stated, “From the working of the respondents’ petition and the district court’s order, we conclude that the court did consider a multiplier in its determination of

reasonable attorney fees.” *Id.* at 200. In *Hughes*, the respondent asked for attorney fees and the application of a 1.5 multiplier when calculating the amount of the attorney fee award. *Id.* The district court awarded attorney fees but did not use the multiplier requested by the respondents. *Id.*

In the present matter, while the court awarded attorney fees, there was silence on the issue of consequential damages. In *Hughes*, the prevailing party requested attorney fees, and the district court did award attorney fees, The court only did not use the requested multiplier. The issue was affirmatively decided. The whole matter was encapsulated within the context of attorney fees.

In the present matter, RPC Properties made three specific requests for relief. The Court expressly ruled on two of the issues raised. Nothing was said as to the third issue. There was no blanket denial of all other requested relief. Such a ruling would have resolved the unsettled issue and closed the matter.

A requirement that district court judges make express decisions on matters placed before them, and in controversy, is not onerous. It is not even necessary to address each specific issue raised before the court. The court could grant certain requests and categorically deny the remaining requests raised by the moving party.

The silence from the Court on the issue of consequential damages caused RPC Properties to be uncertain as to how this specific issue was resolved. As a result of this uncertainty, considerable time and effort has been expended by both parties on an issue

which may or may not have been denied by the Court.

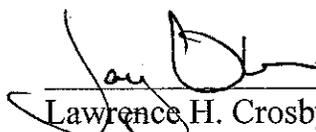
To this day, counsel is uncertain as to how the district court ruled on the issue of consequential damages.

CONCLUSION

Appellant RPC Properties, Inc., respectfully requests that this matter be remanded back to the District Court for an express determination on RPC Properties' request for consequential damages. Counsel also asks that this Supreme Court issue an order to the district court that it decide every issue presented.

Dated: May 25, 2007

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