

NO. A06-0394

State of Minnesota
In Supreme Court

Voicestream Minneapolis, Inc.,
d/b/a T-Mobile,

Respondent,

v.

RPC Properties,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF THE FACTS

On April 29, 2005, Appellant and Respondent entered into a Memorandum of Understanding in Settlement of Dispute (the "Settlement Agreement") under which Respondent was required, among other things, to remove and relocate specified equipment located on the roof of Appellant's building. RA35 at ¶ 4(3). Respondent's equipment was located on what was referred to as Portion D and Portion B of the roof. RA34-RA35 at ¶ 4(1)(3). Portion D is the western most portion of the roof and Portion B is the eastern most portion of the roof. *Id.* The equipment was to be removed from Portion D to enable this portion of the roof to be replaced due to Appellant's underlying claim that Portion D was leaking. *Id.* Appellant did not claim that Portion B of the roof was leaking and the Settlement Agreement made no reference to any problem with Portion B of the roof. RA34-RA36.

Although the Settlement Agreement did not provide a period of time within which the equipment was to be removed and relocated, Appellant served a notice of motion and motion requesting the following relief from the district court:

1. Ordering Plaintiff [Respondent] to remove and to relocate its antennae arrays as agreed in the Memorandum of Understanding in 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 [Appellant] 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 money 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.

RA1-RA2. In support of its request, Appellant submitted an Affidavit of Charles Kadrie, principle of Appellant, and an Affidavit of Lawrence Crosby, counsel for Appellant.

RA3-RA30.

Prior to the motion hearing, Appellant's counsel was informed that the removal and replacement was scheduled to begin on September 12, 2005. RA33 at ¶ 8; RA48. Despite the fact that the equipment was scheduled to be removed and relocated, Appellant chose to proceed with its motion. Therefore, Respondent submitted an Affidavit of Jeffrey B. Peterson, Construction Manager for Respondent, and an Affidavit of Tamara O'Neill Moreland, counsel for Respondent, explaining the delay in moving the equipment. RA31-RA50. Respondent informed the district court that relocation was scheduled to begin on that day, weather permitting. RA50 at ¶ 4.

In response, only seven days prior to the hearing, Appellant submitted a Supplemental Affidavit of Charles Kadrie in which Appellant alleged damages incurred as the result of Respondent's delay. RA51-RA57. According to this affidavit, Appellant's claimed damages arose from the continued leaking of the roof, specifically Portion D. RA52 at ¶ ¶ 8-10. Absent from that affidavit was any actual evidence that the claimed damages were the result of leaking from Portion D of the roof and any actual evidence connecting the alleged damages to the claimed delay by Respondent. Appellant also submitted an Affidavit as to Attorneys' Fees. RA58-RA60.

The district court heard Appellant's motion on September 22, 2005. The district court did not in any way prohibit or limit the parties from presenting evidence at the motion hearing. See, Tr. Appellant did not submit any further evidence by way of documents or testimony supporting its position. Id. Instead, Appellant's counsel summarized Appellant's request as follows:

All we're asking for is—we're asking for damages, we're asking for a hearing where we can have witnesses and documentary testimony on account of the damages that RPC has suffered when T-Mobile simply didn't move. Again, that's all we're asking for.

Id. at p. 5. The district court summarized Appellant's requested relief as follows:

The Court will take the matter under advisement. It appears the enforcement part of the request which triggered this hearing is no longer necessary. So what you're really asking for at this point is an opportunity to present to the Court any damages that may have been incurred as a result of the delay?

Id. at p. 9. Appellant's counsel responded affirmatively to the district court's question.

Id.

On September 29, 2005, the district court filed an Order granting the following relief:

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.

RA61-RA62. The district court also issued a Memorandum in which it explained its decision. RA62-RA63. The district court stated:

The court finds that the delay of five months after a settlement agreement was reached is not a reasonable delay and the court does not want to speculate that it may have been longer, had it not been for the defendant bringing this motion. Therefore, the court finds that defendant is entitled to reasonable attorney's fees for the necessity of having to bring this motion to enforce the settlement.

RA63. The district court did not award Appellant any additional relief and did not provide Appellant the opportunity for a second hearing. RA61-RA63.

In response to the district court's request in Paragraph 2 of its Order for an affidavit setting forth attorneys' fees and costs, Appellant submitted an Affidavit of Lawrence Crosby Related to Attorneys Fees Award and Other Matters. RA64-RA71. In that affidavit, Appellant requested attorneys' fees and costs in the amount of \$2,550.

RA64-RA65 at ¶ 3. In addition, Appellant's counsel asserted that the district court did not respond to the issue of consequential damages. RA65 at ¶ 4. Appellant stated:

I had requested a hearing on the merits as to these damages. The Affidavit of Charles Kadrie submitted at the time of the previous motion hearing described these losses. A hearing would allow the Court to examine the witnesses identified by Charles Kadrie in order to determine whether the damages flowed from the breach of the settlement agreement or were too remote. 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. The affidavit also attached two affidavits from tenants in the building as evidence of Appellant's claimed damages. Id. at ¶ 5; RA69-RA71.

Counsel for Respondent then sent a letter to the district court objecting to Appellant's submission. RA72-RA73. Respondent objected to the affidavit as it related to the request for attorneys' fees and costs because the affidavit did not comply with the requirements of Minn. Gen. R. Prac. 119.02 and objected to the use of Appellant's submission as a second opportunity to request relief not awarded in the district court's Order. Id. Respondent explained that in order to be awarded any damages, Appellant would need to provide evidence of the following:

- 1) any damages claimed occurred after the Settlement Agreement (it appears that RPC is seeking reimbursement for property damage which was included in the original action);
- 2) any claimed damages were the result of T-Mobile's actions (evidence in T-Mobile's possession demonstrates that the roof leaked prior to T-Mobile's occupancy); and
- 3) that any damage was submitted to RPC's insurance and denied as required by the Lease between the parties.

RA72.

In response, Appellant submitted a Second Affidavit of Lawrence Crosby Related to Attorneys Fees Award and Other Matters. RA74-RA77. In this affidavit Appellant's counsel provided further information related to Appellant's attorneys' fees and costs and alleged three additional breaches of the Settlement Agreement never raised in the original motion to enforce the Settlement Agreement. RA74-RA75 at ¶¶ 1-8. Appellant's counsel also again requested a hearing on consequential damages: "I continue to ask the Court to allow RPC Properties, Inc., and Mr. Charles Kadrie the right to prove up their consequential damages here. If this is not the Court's decision, I need to know this definitively." RA75 at ¶ 9.

Respondent responded to this new submission by Affidavit of Tamara O'Neill Moreland. RA78-RA92. Respondent's submission refuted the alleged three additional breaches of the Settlement Agreement. RA78-RA80 at ¶¶ 3-5. In addition, Respondent again objected to Appellant's continued attempt to request relief not awarded by the district court in its previous Order and reminded the district court that prior to an award of any damages, Appellant would need to provide evidence of the following:

- 1) Any damages claimed by RPC occurred after the Settlement Agreement. It appears that RPC is seeking reimbursement for property damage which was included in the original action and subject to the terms of the Settlement Agreement.
- 2) Any damages claimed by RPC were the result of T-Mobile's actions. Evidence in T-Mobile's possession demonstrates that the roof leaked prior to T-Mobile's occupancy in November 2000 and has continuously leaked. Specifically, documents demonstrate that Suites 615, 630 and 650, the Suites identified by Mr. Crosby in his submissions, have continuously leaked. Suite 630 even experienced leakage prior to T-Mobile's occupancy. True and correct copies of documents produced by RPC evidencing the leakage into Suites 615, 630 and 650 are incorporated herein and attached hereto as Exhibit A [RA83-RA88].
- 3) Any damages were submitted to RPC's insurance and denied before RPC requested payment from T-Mobile, as required by the Lease between the parties.

RA80-RA81 at ¶ 6.

Appellant then submitted yet another affidavit entitled Responsive Affidavit of Lawrence Crosby Related to the Affidavit of Tamara O'Neill Moreland, Counsel for T-Mobile. RA93-RA95. Appellant again submitted testimony by its counsel regarding the alleged three additional violations of the Settlement Agreement not raised in its motion.

RA93-RA94 at ¶¶ 2-4. Appellant's counsel then alleged, for the first time, that eastern portion of the roof (Portion B) leaks but provided absolutely no evidence in support of the allegation. RA94 at ¶ 5. In addition, Appellant provided no information supporting the damages Appellant previously claimed due to the alleged leaking of Portion D of the roof. RA93-RA94. Instead, Appellant simply stated:

It would also be helpful if the Court would clarify its position as to whether T-Mobile [RPC] has the right to present evidence as to the damages caused by the delay on the part of T-Mobile or whether the award of attorneys fees is sufficient. For the record, there has been no determination by the Court as to the appropriate amount of attorneys fees.

RA94 at ¶ 9.

In response, Respondent submitted an Affidavit of Jeffrey B. Peterson and an Affidavit of Tamara O'Neill Moreland again addressing the newly claimed breaches. RA96-RA100. Respondent again stated that "T-Mobile continues to object to Mr. Crosby's use of these submissions as an additional opportunity to request additional amounts not awarded in the Court's September 29, 2005 Order." RA100 at ¶ 5.

On December 15, 2005, after receiving the unsolicited submissions, the district court issued an Order providing Appellant the following relief:

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.

RA101. No further relief was granted to Appellant and Appellant did not receive the requested additional hearing. Id.

Despite the fact that Appellant prevailed on its motion, Appellant sought relief from the Court of Appeals challenging:

(1) the adequacy of the district court's order because it does not expressly state its reasoning for denying consequential damages; (2) the district court's denial of appellant's request for an additional evidentiary hearing; and (3) the denial of a consequential damages award.

Voicestream Minneapolis, Inc., d/b/a T-Mobile v. RPC Properties, Inc., 2007 WL

509621, *1 (Minn. Ct. App. Feb. 20, 2007). The Court of Appeals affirmed the district court's decision, determining that: 1) Appellant was not entitled to an additional hearing to establish consequential damages because the proper time and venue to present such evidence was at the motion to enforce hearing; and 2) the record did not establish that the Appellant's alleged damages were actually caused by Respondent's breach. Id. at *3-4.

In addition, the Court of Appeals ruled that the district court did not err by not affirmatively denying Appellant's request for consequential damages or an additional hearing on consequential damages. The Court of Appeals determined that the district court's silence on the issue was deemed a denial:

Because appellant expressly and repeatedly made the court aware of its request for consequential damages or an evidentiary hearing on consequential damages and the district court expressly acknowledged these requests, we deem the district court's silence as a denial of appellant's request for consequential damages. Although we might prefer further explanation of the district court's decision, the lack of such an explanation is not reversible error.

Id. at *2.

This Court has granted further review only of the Court of Appeals' decision that the district court was not required to affirmatively rule on Appellant's request. Accordingly, the Court of Appeals' decision that: (1) Appellant is not entitled to an additional hearing on consequential damages because "the proper time and venue for appellant to present such evidence was at the hearing on September 22, 2005"; and (2) the record "does not establish that appellant's alleged damages were caused by respondent's breach" are not subject to reversal. *Id.* at *3-4. Therefore, the only relief available to Appellant is remand to the district court to affirmatively deny Appellant's request for consequential damages or an additional hearing on consequential damages.

ARGUMENT

The issue on appeal has been phrased throughout this appeal process as whether the district court committed reversible error by failing to affirmatively deny Appellant's request for consequential damages or an evidentiary hearing on consequential damages. It is important to note, however, that during the district court process, Appellant never actually requested the award of consequential damages, instead continually requesting an additional hearing to prove up consequential damages. Nonetheless, the long-standing legal authority in Minnesota dictates that such an affirmative denial was unnecessary on either request and, as such, was not reversible error by the district court.

I. THE DISTRICT COURT WAS NOT REQUIRED TO MAKE WRITTEN FINDINGS DENYING APPELLANT'S REQUEST.

The Minnesota Rules of Civil Procedure only require written findings in actions tried upon the facts without a jury. Minn. R. Civ. P. 52.01. "Findings of fact and

conclusions of law are unnecessary on decisions on motions pursuant to Rules 12 [motion for judgment on pleadings] or 56 [summary judgment] or any other motion except as provided in Rules 23.08(c) [motion for attorneys' fees] and 41.02 [involuntary dismissal].” Id. (emphasis added). See, Johnson v. Johnson, 304 Minn. 583, 584, 232 N.W.2d 204, 205-206 (Minn. 1975). In this case, the district court heard a motion to enforce the Settlement Agreement. The Rules do not require that the district court make written findings in its decision on a motion to enforce a settlement agreement. In fact, the Rules specifically provide that written findings are unnecessary. Therefore, the absence of written findings on the district court’s denial of consequential damages or a hearing on consequential damages does not constitute reversible error.

II. THE DISTRICT COURT WAS NOT REQUIRED TO AFFIRMATIVELY DENY ALL REQUESTS MADE BY APPELLANT.

Appellant attempts to avoid Minn. R. Civ. P. 52.01 by arguing that despite the fact that written findings were not required, the district court was required to affirmatively state that it denied Appellant’s request for consequential damages or an additional hearing on consequential damages. Long-standing decisions of this Court, however, clearly support the proposition that the district court was not required to affirmatively deny all requests made by Appellant. As early as 1953, this Court was confronted with the issue of whether a district court’s decision had sufficient detail and determined: “[w]here, on appeal, it appears that the issues have been decided, we are not required to reverse simply because the decision below might well have gone into greater detail.” Alsdorf v. Svoboda, 239 Minn. 1, 10, 57 N.W.2d 824, 830 (Minn. 1953). In 1968 this

Court determined that the district court's silence as to an affirmative defense was a denial of the defense: "The absence of a finding of laches in the findings of fact, conclusion of law, and order for judgment as made by the trial judge in a case such as this one, where the affirmative defense has been pleaded, is equivalent to a finding that laches did not exist." Sanvik v. Maher, 280 Minn. 113, 115, 158 N.W.2d 206, 208 (Minn. 1968) (citing Alsdorf v. Svoboda).

This Court affirmed this early precedent by its ruling in Hughes v. Sinclair Mktg., Inc., 389 N.W.2d 194 (Minn. 1986), determining that a district court's failure to award requested damages constituted a denial of the amount requested. In that case, respondents requested, among other forms of relief, attorneys' fees in the amount of \$47,495.25 plus the application of a 1.5 multiplier. Id. at 200. The district court simply awarded \$50,395.25 in attorneys' fees, determining that this amount was reasonable with no specific mention of the multiplier. Id. This Court affirmed the district court's award stating:

From the wording 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. We find that the trial court did not commit an abuse of discretion in denying the request for a multiplier.

Id.

The Court of Appeals has long followed the direction set forth in these cases. In Robert W. Carlstrom Co. Inc. v. German Evangelical Lutheran St. Paul's Congregation of the Unaltered Augsburg Confession at Jordan, 662 N.W.2d 168 (Minn. Ct. App. 2003) the district court awarded damages without explanation. The Court of Appeals

determined: “[i]t appears the district court adopted with little comment the damages sought by respondent. But based on this record, we cannot conclude the district court abused its discretion when awarding damages.” Id. at 174. Similarly, in Kroning v. Kroning, 356 N.W.2d 757, 760 (Minn. Ct. App. 1984), the Court of Appeals determined: “[a]lthough the trial court did not make a specific finding on this issue, we assume, from the nature of the relief granted by the court, it considered and rejected this argument”. See, Cleys v. Cleys, 363 N.W.2d 65, 72 (Minn. Ct. App. 1985) (silence deemed a denial which was not clearly erroneous in view of the tardiness of the claim).

The United States Court of Appeals for the Eighth Circuit also follows this long-standing law. In Bolt, Beranek and Newman, Inc. v. McDonnell Douglas Corp., 521 F.2d 338 (8th Cir. 1975), cert. denied, 423 U.S. 1073 (1976), the defendant/appellee argued that the district court (Eastern District of Missouri) erred because it made no ruling on the issue of fraud or on its request for attorneys fees. In regard to the issue of fraud, the court stated:

The defendant urges that that discretion was abused because the trial court made no ruling on the issue of fraud. Mere failure to rule on that issue, standing alone, however, is not objectionable for “...(t)he trial court need not make specific findings on all facts and evidentiary matters brought before it, but need find only the ultimate facts necessary to reach a decision in the case...” United States v. F.D. Rich Co., Inc., 439 F.2d 895, 899 (8th Cir. 1971).

Id. at 344. In regard to defendant’s cross-appeal of the award of attorney fees, the court stated:

We find no merit to the defendant’s implication that the trial court made no ruling on its request for attorney fees. The

request was made and was not granted, despite the court's award of costs. Under the circumstances, the denial of the award was clear.

Id. at 344, fn. 8.

A. An Affirmative Decision Is Not Required On Each Request For Relief.

Appellant's argument that the district court must affirmatively making a decision on each item of relief requested is directly contrary to the legal authority on point. In Sanvik, this Court determined that the absence of a finding on the defense of laches is equivalent to a finding that laches did not exist. Sanvik, 280 Minn. at 115, 158 N.W.2d at 208. Similarly, in Bolt, the federal district court made no ruling on the claim of fraud or the request for attorneys' fees and the Eighth Circuit determined that the court did not need to rule on each of these issue but, rather, only needed to reach a decision in the case. Bolt, 521 F.2d at 344. Therefore, even if Appellant made a request on a separate and distinct claim, the district court did not err by denying this request by silence. And Minn. R. Civ. P. 52.01 states that the district court need not provide any findings explaining this denial.

B. The Record Demonstrates That Appellant's Request For An Additional Hearing Was Considered And Denied By The District Court.

It is also clear from Appellant's submissions, statements made at the hearing and the district court's Memorandum, that the district court considered and denied Appellant's request for an additional hearing on consequential damages. Appellant clearly requested an additional hearing on consequential damages and the court clearly understood this request. In Appellant's Notice of Motion and Motion it requested that the

court award it “money damages, to be established in a subsequent hearing...” RA2 at

¶ 2. At the hearing, Appellant’s attorney summarized Appellant’s request as follows:

All we’re asking for is—we’re asking for damages, we’re asking for a hearing where we can have witnesses and documentary testimony on account of the damages that RPC has suffered when T-Mobile simply didn’t move. Again, that’s all we’re asking for.

Tr. at p. 5. The district court summarized Appellant’s requested relief as follows:

The Court will take the matter under advisement. It appears the enforcement part of the request which triggered this hearing is no longer necessary. So what you’re really asking for at this point is an opportunity to present to the Court any damages that may have been incurred as a result of the delay?

Id. at p. 9. Appellant’s attorney responded affirmatively to the district court’s question.

Id. The district court then issued an Order awarding Appellant attorneys’ fees but not granting it the requested additional hearing. RA61-RA62.

After the district court’s decision, Appellant made three additional submissions in support of its request for an additional hearing on consequential damages. In the first submission Appellant stated:

I had requested a hearing on the merits as to these damages. The Affidavit of Charles Kadrie submitted at the time of the previous motion hearing described these losses. A hearing would allow the Court to examine the witnesses identified by Charles Kadrie in order to determine whether the damages flowed from the breach of the settlement agreement or were too remote. 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.

RA40 at ¶ 4. In its second submission Appellant stated: “I continue to ask the Court to allow RPC Properties, Inc., and Mr. Charles Kadrie the right to prove up their

consequential damages here. If this is not the Court's decision, I need to know this definitively." RA75 at ¶ 9. In its third submission, Appellant stated:

It would also be helpful if the Court would clarify its position as to whether T-Mobile [RPC] has the right to present evidence as to the damages caused by the delay on the part of T-Mobile or whether the award of attorneys fees is sufficient. For the record, there has been no determination by the Court as to the appropriate amount of attorneys fees.

RA94 at ¶ 9. Clearly, these unauthorized submissions requested an additional hearing.

In response, the district court issued an Order granting \$2,550 "for work regarding breach of settlement agreement in this case." RA101. Again, the district court denied Appellant's request for an additional hearing on consequential damages.

Appellant's requested relief, statements made by Appellant at the motion hearing and all of Appellant's subsequent submissions, made clear that Appellant was requesting that the district court grant it an additional hearing regarding consequential damages. It was clear from the district court's statements at the motion hearing that the district court understood Appellant's request. It is also clear from the district court's Orders that this relief was not granted. As in Hughes, it can be concluded from this information that the district court did consider Appellant's request for an additional hearing on consequential damages in its determination, but simply did not award such relief.

Appellant attempts to distinguish Hughes from this case, claiming that in Hughes the request for the multiplier was part of the request for the base amount of attorneys' fees while, in this case, the district court failed to make a decision on the separate issue of consequential damages. Appellant's Brief at p. 8. This purported distinction lacks merit.

In Hughes, the appellant requested damages that included both attorneys' fees and costs incurred and the application of a multiplier, which clearly exceeded actual fees and costs incurred without any noted authorization to do so. Therefore, the multiplier was not actually a request for attorneys' fees and costs but rather a request for damages in excess of attorneys' fees and costs, a claim separate from actual attorneys' fees and costs incurred. Therefore, there is no distinction between Hughes and this case where actual attorneys' fees and costs were awarded but a further request for an additional hearing on damages was denied by silence. In addition, as previously noted, this Court has determined that a district court may deny a separate defense by silence. Sanvik, 280 Minn. at 115, 158 N.W.2d at 208. Similarly, the Eighth Circuit has determined that a district court need not make a specific denial on a separate claim. Bolt, 521 F.2d at 334.

Further, it is important to note that Appellant was never entitled to an additional hearing. The Rules for both dispositive and non-dispositive motions require that the moving party submit at least twenty-eight days prior to the motion hearing "[a]ny affidavits and exhibits to be submitted in conjunction with the motion." Minn. Gen. R. Prac. 115.03(a)(3); 115.04(a)(3). Therefore, the Rules create an affirmative duty on the moving party to submit all of its evidence in advance of the motion hearing. Minn. Gen. R. Prac. 115.08 also prohibits witness testimony at motion hearings "except under unusual circumstances." If the moving party seeks to present witness testimony at a motion hearing, it must comply with the following specific requirements:

Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and

addresses of the witnesses which that party intends to call at the motion.

Minn. Gen. R. Prac. 115.08. If Appellant wanted to produce witness testimony in support of its motion, it was required to get the district court's consent prior to the motion hearing and notify Respondent in advance of the motion hearing. Appellant wholly failed to comply with the Rules. The district court did not abuse its discretion by not affirmatively denying Appellant's unwarranted request.

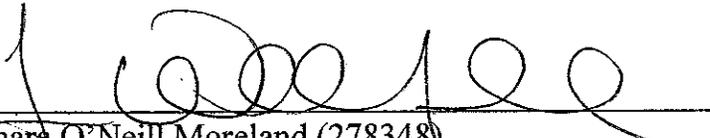
C. **Appellant's Request For Consequential Damages Was Never Actually Raised By Appellant.**

Regardless of how the issue has been presented on appeal, Appellant had no right to an award of consequential damages without the requested hearing. Appellant freely admits that it did not establish a right to consequential damages. In its Notice of Motion and Motion, Appellant requested "money damages, to be established in a subsequent hearing..." RA2 at ¶ 2. In its first unauthorized submission Appellant stated: "I have requested a hearing on the merits as to these damages...A hearing would allow the Court to examine the witnesses identified by Charles Kadrie in order to determine whether the damages flowed from the breach of the settlement agreement or were too remote." RA65 at ¶ 4. In its second unauthorized submission Appellant requested the opportunity to "prove up their consequential damages". RA75 at ¶ 9. Clearly, even Appellant understood that it had not established damages short of the requested hearing. Since Appellant never actually requested an award of consequential damages, Appellant could not have been entitled to an award of consequential damages, regardless of the district court failure to specifically state that this non-requested relief was denied.

CONCLUSION

For the reasons stated herein, this Court should affirm the Court of Appeals and district court's decision denying Appellant's request for consequential damages or an additional hearing on consequential damages.

Dated: 6/20/07



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