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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1588**

Madison Equities, Inc.,
Appellant,

vs.

SEIU MN State Council, et al.,
Respondents.

**Filed July 24, 2023
Affirmed
Segal, Chief Judge**

Ramsey County District Court
File No. 62-CV-19-8170

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appellant)

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Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the grant of summary judgment dismissing its claims of defamation brought against respondents—two labor organizations and a former employee of appellant.¹ The alleged defamatory statements were included in a blog post and flyer that described complaints filed with the Minnesota Attorney General’s Office (AGO) by current and former employees of appellant. The complaints alleged that appellant had engaged in unlawful wage-payment practices. The district court granted summary judgment in favor of respondents on the ground that the alleged defamatory statements are either true or substantially true. Appellant asserts that the district court erred because it failed to view the evidence in the light most favorable to appellant, ignored material issues of fact, and misapplied the law in determining that use of words such as “massive” and “many thousands” were mere hyperbole and thus not actionable. Appellant also challenges the denial of its motion to compel respondents to disclose the identities of the individuals who filed complaints with the AGO.

By notice of related appeal, respondents assert that the district court lacked subject-matter jurisdiction over appellant’s claims because they are preempted by the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169 (2018).

We affirm.

¹ Appellant’s lawsuit included a claim for tortious interference with business relations, which the district court also dismissed on summary judgment. Appellant did not appeal the dismissal of the claim.

FACTS

Respondent Christopher Lewis worked as a security officer in several of the commercial buildings owned or managed by appellant Madison Equities, Inc. Lewis had concerns about Madison's wage-payment practices and, through an intermediary, was put in contact with a representative of respondent Service Employees International Union Local 26 (Local 26).² The Local 26 representative suggested that Lewis contact a state agency to investigate whether Madison was engaging in wage theft.

Lewis and several other current or former employees of Madison then filed complaints with the AGO alleging that Madison underpaid them in violation of Minnesota law. The complaints asserted that Madison avoided paying time-and-one-half for overtime work by paying the employees through different companies. The security officers occasionally worked at different buildings, allegedly with different owners, but claimed that all the buildings and the companies who paid them were ultimately owned or managed by Madison, and that their supervisors remained the same no matter where they worked.

The AGO served a Civil Investigation Demand (CID) on Madison. The CID stated that "the Attorney General has reasonable grounds to believe that Madison Equities and/or the M.E. Property Companies have failed to pay their workers—including but not limited to security guards—all wages required by state and federal law, including overtime wages." The CID sought the production of certain time and pay records of Madison's workers.

² Local 26 is an affiliate of respondent SEIU MN State Council (the council). The parties agree that Local 26 and the council are "labor organizations" as defined in the NLRA, 29 U.S.C. § 152(5).

Madison moved for a protective order in district court to quash or limit the scope of the CID. The matter ultimately was considered by the Minnesota Supreme Court. The court determined that “the Attorney General had a reasonable basis to believe wage laws were violated and the information sought [was] reasonably relevant to the investigation of suspected violations of those laws,” and the court thus affirmed the denial of Madison’s motion.³ *Madison Equities*, 967 N.W.2d at 676.

Five days after the AGO issued the CID, Local 26 prepared a press release about the complaints and investigation by the attorney general. The council posted the release as a blog post on its website. The headline of the blog post read: “Massive Wage Theft Scheme Alleged at Downtown St. Paul Buildings Run by Madison Equities.” Around the same time, Local 26 prepared and distributed a flyer that stated “Employees of Madison Equities could be at risk for Wage Theft” and “In the last month, several employees have filed claims over Thousands of Dollars in wages owed due to unpaid Overtime hours.”

In its complaint in this case, Madison alleged it was defamed by four statements in the blog post and two statements in the flyer. The complaint included only portions of the statements; quoted below are the statements in full (statements 1 through 4 are from the blog post and statements 5 and 6 are from the flyer):

Statement 1: “Massive Wage Theft Scheme Alleged at Downtown St. Paul Buildings Run by Madison Equities.”

³ In doing so, however, the supreme court narrowed the scope of the term “worker” as used in the CID to include only hourly workers. *Madison Equities, Inc. v. Off. of Att’y Gen.*, 967 N.W.2d 667, 668, 676 (Minn. 2021).

Statement 2: “Saint Paul security officers have brought wage theft complaints to the office of the Minnesota Attorney General around an alleged wage theft scheme that took thousands of dollars of wages from workers.”

Statement 3: “The complaint alleges th[at] Madison Equities had employees work 40 hours under one company and then had them ‘work’ for a different ‘company’ for time that should have been overtime time-and-a-half pay.”

Statement 4: “The complaint alleges that workers were unpaid by many thousand[s] of dollars.”

Statement 5: “CAUTION Employees of Madison Equities could be at risk for Wage Theft!”

Statement 6: “In the last month, several employees have filed claims over Thousands of Dollars in wages owed due to unpaid Overtime hours.”

Respondents asserted as an affirmative defense that federal *Garmon* preemption deprived the district court of subject-matter jurisdiction over the claims. *See San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959) (holding that state jurisdiction “must yield” when the underlying conduct involves certain labor-related conduct subject to federal regulation). They moved for judgment on the pleadings, claiming that the district court lacked subject-matter jurisdiction because Madison’s claims were preempted by the NLRA. The district court denied the motion. Respondents pursued an interlocutory appeal, and this court affirmed. We advised, however, that the issue of *Garmon* preemption could be reconsidered after the record was developed. *Madison Equities, Inc. v. SEIU MN State Council*, No. A20-0668, 2021 WL 1082040, at *7 (Minn. App. Mar. 22, 2021), *rev. denied* (Minn. June 15, 2021).

In March 2022, respondents moved for summary judgment. Madison opposed the motion and filed a motion to compel disclosure of the identities of the individuals who had

filed complaints with the attorney general. At least five individuals filed wage-theft complaints with the attorney general, but Lewis was the only complainant known to Madison.

The district court granted respondents' summary-judgment motion and denied Madison's motion to compel. In its order granting summary judgment in favor of respondents, the district court again determined that Madison's claims are not preempted by the NLRA and determined, as relevant here, that Madison's defamation claims failed as a matter of law. In its order denying the motion to compel, the district court advised that it would "issue a memorandum setting forth the basis for this decision within the prescribed time," but the district court never issued a memorandum.

DECISION

In our analysis, we first address respondents' preemption defense and then address the two issues asserted by Madison—that the district court erred when it granted summary judgment on Madison's defamation claim and abused its discretion in denying Madison's motion to compel.

I. The district court did not err in determining that *Garmon* preemption does not apply.

The United States Supreme Court has long held that causes of action under state law are presumed to be preempted by the NLRA if the conduct at issue is arguably protected or prohibited by the NLRA. *Garmon*, 359 U.S. at 245; *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 389-90 (1986). As we explained in our opinion on the interlocutory appeal:

Under *Garmon*, state causes of action are presumptively preempted if they concern conduct that is actually or “arguably” protected under section 7 or prohibited under section 8 of the NLRA. *Belknap, Inc. v. Hale*, 463 U.S. 491, 498, 103 S. Ct. 3172, 3177 (1983); *Garmon*, 359 U.S. at 245, 79 S. Ct. at 780. Section 7 of the NLRA protects the rights of employees to organize. 29 U.S.C. § 157; see *Midwest Pipe [Insulation, Inc. v. MD Mech., Inc.]*, 771 N.W.2d [28,] 31 [Minn. 2009)] (discussing section 7). Section 8 prohibits unfair labor practices by employers and labor organizations. 29 U.S.C. § 158.

Madison Equities, 2021 WL 1082040, at *2. Whether federal law preempts state law is a legal question that this court reviews de novo. *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 428 (Minn. 2014).

In our opinion, we identified the relevant conduct at issue as “speech criticizing Madison’s wage practices, which was made public by labor organizations.” *Madison Equities*, 2021 WL 1082040, at *4. We affirmed the district court on the ground that respondents failed to “identify a provision within section 7 or section 8 of the NLRA that arguably protects or prohibits their public dissemination of statements regarding Madison’s alleged wage theft.” *Id.* at *7. We concluded that the district court was therefore correct in its determination that appellant’s claims under state law were not preempted. *Id.* at *4-7. We allowed, however, that “a more fully developed record might support a different conclusion,” and that our opinion on the interlocutory appeal “should not be read to foreclose reconsideration of the issue by the district court once the record is developed.” *Id.* at *7.

After reviewing respondents’ submissions on this issue, we conclude that respondents failed to present additional evidence that would justify reconsideration. Our

prior opinion thus remains controlling in this case, and we reject respondents’ appeal of the district court’s preemption ruling. *Cf. Peterson v. BASF Corp.*, 675 N.W.2d 57, 65 (Minn. 2004) (“Law of the case is a rule of practice that once an issue is considered and adjudicated, that issue should not be reexamined in that court or any lower court throughout the case.”), *cert. granted, judgment vacated on unrelated grounds*, 544 U.S. 1012 (2005).

II. The district court did not err in granting summary judgment on appellant’s defamation claims.

On appeal from the grant of summary judgment, this court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in applying the law. *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A genuine issue of material fact exists when there is sufficient evidence that could lead a rational trier of fact to find for the nonmoving party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Madison argues that the district court erred in granting summary judgment in favor of respondents on its claims of defamation. To prevail on a defamation claim, a party must establish that

(1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff’s reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

Larson v. Gannett Co., 940 N.W.2d 120, 130 (Minn. 2020) (quotation omitted).

True statements are not defamatory. *McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013) (explaining that “[t]he plaintiff has the burden of proving falsity in order to establish a successful defamation claim”). Statements that are “substantially true,” or “supportable interpretations of ambiguous underlying situations,” are also not defamatory. *Hunter v. Hartman*, 545 N.W.2d 699, 707 (Minn. App. 1996) (quotation omitted), *rev. denied* (Minn. June 19, 1996); *see also McKee*, 825 N.W.2d at 730 (noting that “[i]f the statement is true in substance, minor inaccuracies of expression or detail are immaterial”). In addition, statements that are “not sufficiently factual to be susceptible of being proved true or false,” such as hyperbole and opinion, cannot form the basis for defamation liability. *Hunter*, 545 N.W.2d at 706 (quotation omitted).

Madison argues that the six statements contained within the blog post and flyer constitute defamation per se. In its complaint, however, Madison quoted only portions of the statements, omitting the balance that provides important context. For example, in the allegation relating to statement 1, the complaint asserts: “The False Post states that Madison Equities is engaged in a ‘massive wage theft scheme.’” The full statement reads: “Massive Wage Theft Scheme Alleged at Downtown St. Paul Buildings Run by Madison Equities.” In its complaint allegation, Madison thus omitted the portion indicating that the wage-theft scheme is *alleged* to be occurring.

Madison’s allegations concerning statements 2, 3, and 4 similarly contain only sentence fragments. To help put the statements in context, below is the entirety of the paragraph in which the statements appear. The portion quoted as actionable in Madison’s complaint is in bold, with numbering added for ease of reference:

Saint Paul security officers have brought wage theft complaints to the office of the Minnesota Attorney General around [2] **an alleged wage theft scheme that took thousands of dollars of wages from workers**. The complaint alleges th[at] [3] **Madison Equities had employees work 40 hours under one company and then had them “work” for a different “company” for time that should have been overtime time-and-a-half pay**. The complaint alleges that [4] **workers were unpaid by many thousands of dollars**.

(Emphasis added.)

Statements 5 and 6 are from the flyer and, as quoted earlier in this opinion, provide: “Employees of Madison Equities could be at risk for Wage Theft!” (statement 5); and “In the last month, several employees have filed claims over Thousands of Dollars in wages owed due to unpaid Overtime hours” (statement 6).⁴

The district court determined that statements 3 and 5 are not actionable as defamation because the undisputed facts demonstrate that they are true statements. The district court similarly determined that statements 1, 2, 4, and 6 are not defamatory because the undisputed facts demonstrate that they are substantially true.

We proceed in our analysis by noting several factors that apply to our review of all six statements. First, the statements all employ qualifying terms when referring to Madison’s wage-payment practices, stating that wage theft is *alleged* in complaints or

⁴ The district court noted that none of the statements are attributable to respondent Lewis. In its complaint, Madison alleged that Lewis is liable for defamation as to statements 5 and 6 because he helped distribute the flyers. Because we affirm summary judgment on the ground that the statements are not false, we need not analyze separately the question of Lewis’s liability. The district court similarly did not engage in a separate analysis and neither party briefed this issue on appeal.

claims filed by employees or that employees of Madison “*could* be at risk for wage theft.” (Emphasis added.) None of the statements assert that Madison *committed* wage theft.

Second, we take account of the context surrounding the alleged defamatory statements. See *Schlieman v. Gannett Minn. Broad., Inc.*, 637 N.W.2d 297, 304 (Minn. App. 2001) (noting “the general principle that courts must interpret the defamatory-meaning element of a defamation action in light of the context surrounding the alleged defamatory statements”). The statements appeared on the website of and in a flyer put out by a labor union—the SEIU—and concern worker complaints about the wage-payment practices of an employer.⁵ In this context, the reader of these statements would expect a pro-labor viewpoint and advocacy that might contain a certain amount of hyperbole. Cf. *Fox Sports Net N., LLC v. Minn. Twins P’ship*, 319 F.3d 329, 337 (8th Cir. 2003) (citing *Hunter*, 545 N.W.2d at 706-07) (noting that the context of the challenged statement—a press release announcing the initiation of a lawsuit—“makes clear that the purpose of the writing is . . . to state [the writer’s] case to the public” and may render the statement protected hyperbole).

Finally, we note the supreme court’s ruling that “the Attorney General had a reasonable basis to believe” Madison violated “wage laws” in its opinion relative to the attorney general’s CID. *Madison Equities*, 967 N.W.2d at 668. It is against this backdrop that we now review the individual statements.

⁵ The flyer included the following at the bottom: “SEIU Local 26: Representing 8,000 working Minnesotans.”

Statement 1

In challenging the district court’s determination that statement 1—“Massive Wage Theft Scheme Alleged”—is substantially true, Madison argues that the district court failed to view the evidence in the light most favorable to it. Madison points out that, according to Lewis’s deposition testimony, “only a small group claimed Madison owed them overtime.” Madison contends that, when viewed in the light most favorable to it, a claim by a small group does not equate to a “massive wage theft scheme” and that the district court thus erred by determining that the statement is substantially true. Madison also argues that, because the district court denied its motion to compel discovery of the identities of the other four complainants, it was not able to depose these complainants and determine whether the statement accurately characterized the nature of their complaints filed with the AGO. Madison contends that the district court, therefore, could not conclude that the statement is substantially true.⁶

The record, however, contains an affidavit from an assistant attorney general that supports respondents’ characterization of the employee complaints as alleging wage theft and that the scope of the theft was potentially quite large. *See The American Heritage Dictionary of the English Language* 1080 (5th ed. 2018) (defining the word “massive” as “[l]arge or imposing, as in quantity, scope, degree, intensity, or scale”). The affidavit states

⁶ Madison also alleges that the district court ignored genuine issues of material fact. Madison, however, fails to identify any such facts except for its denial that it violated any wage laws. But the alleged defamatory statements do not assert that Madison actually violated any wage laws, just that employees filed complaints alleging such violations. Thus, Madison’s claim does not raise an issue of fact that goes to the basis for the grant of summary judgment.

that an individual, identified as Employee B, spoke with the AGO in August 2019 and “estimated that Madison Equities employs approximately 60-70 security guards but that this payment practice has likely affected hundreds of employees.” And while Madison may dispute that it engaged in any unlawful wage-payment practices, Madison at most speculates that the affidavit may not accurately describe the complaints. Such speculation does not create a genuine issue of material fact. *See Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 197-98 (Minn. 2020) (“Speculative assertions are insufficient to create a genuine issue of material fact on a motion for summary judgment.”).

As to Madison’s assertion that it was denied the ability to depose the unidentified complainants, we note that Madison sat on its rights and failed to bring a timely motion to compel discovery of the identity of the complainants, as we explain in section III below. Moreover, Madison had the opportunity to conduct full discovery of the respondents—Lewis, Local 26, and the council.

We therefore conclude that the evidence in the record supports that the alleged wage theft was “large” in scope or scale. In this context, the use of the word “massive” fits easily within the category of nonactionable figurative or hyperbolic speech and we discern no error in the district court’s conclusion that the statement is substantially true.

Statements 2, 4, and 6

Madison maintains that the district court also erred in construing statements 2, 4, and 6, which relate to assertions that the claims against Madison were worth thousands of dollars, as substantially true. Madison argues that “[r]espondents published these phrases

without knowing the amount claimed by the other employees” and that Local 26 “did not conduct any calculation of the claimed owed overtime wages.”

While Madison may be correct that respondents were unaware of and could not calculate precise amounts for the quantity of unpaid wages, the undisputed facts in the record nevertheless support the district court’s determination that the claims are substantially true. According to the affidavit of the assistant attorney general, one individual—identified as Employee A—“alleged that he was entitled to, but did not receive, large amounts of overtime premiums that he was owed under both Minnesota and federal overtime laws.” And, as noted above, the affidavit of the assistant attorney general states that Employee B estimated that Madison’s “payment practice has likely affected hundreds of employees” and “provided the AGO with example paystubs where he worked more than 120 hours in a two week pay period for companies under the Madison Equities umbrella but” was not paid time-and-one-half for the 40 hours of overtime the employee worked in that pay period. In the affidavit, a third individual—identified as Employee C—“reported that he worked 50-60 hours per week but he was paid [by] two different paychecks and never received overtime” pay for the 10 to 20 hours worked in excess of 40 hours.⁷ Accordingly, Employee A indicated that he was owed “large amounts of overtime premiums” and Employees B and C alleged that they worked 20 to 40 hours of overtime per two-week-pay period but were paid only straight time, not overtime pay. Even if the employees were paid only at the minimum-wage rate, it would not take long for their claims

⁷ The affidavit also summarizes similar complaints made by two additional employees, but those complaints were filed after the blog post.

alone to be in the “thousands of dollars,” not including any of the other employees whom the complainants alleged were subject to the same wage-payment practices. We thus conclude that the statements are “supportable interpretations.” *Hunter*, 545 N.W.2d at 707. Accordingly, the district court did not err in determining that statements 2, 4, and 6 are substantially true.

Statements 3 and 5

Finally, the district court concluded that statements 3 and 5 are true. The undisputed evidence in the record supports that conclusion. Statement 3 merely summarizes the complaints filed with the AGO. And statement 5 provides that employees *could* be at risk of wage theft, not that they *are* at risk of wage theft. The accuracy of these statements is supported by the deposition testimony of Lewis and the union representatives, and the affidavit of the assistant attorney general. In addition, at the time the flyers containing statement 5 were posted, the attorney general had already issued and served the CID on Madison, which stated that “the Attorney General has reasonable grounds to believe that Madison Equities and/or the M.E. Property Companies have failed to pay their workers—including but not limited to security guards—all wages required by state and federal law, including overtime wages.” And, as noted above, the supreme court held in the case brought by Madison seeking a protective order quashing the CID, that “the Attorney General had a reasonable basis” for such a belief. *Madison Equities*, 967 N.W.2d at 668. Given the context and the undisputed evidence in the record, we discern no error in the district court’s conclusion that the statements are not actionable.

III. The district court did not abuse its discretion in denying Madison's motion to compel.

Finally, Madison argues that the district court abused its discretion in denying Madison's motion to compel the identities of the current and former employees who filed complaints with the AGO and failed to issue a memorandum explaining its reasoning. The district court has broad discretion over discovery issues and will not be reversed absent a clear abuse of that discretion. *Underdahl v. Comm'r of Pub. Safety (In re Comm'r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007).

To the extent Madison argues that the district court's denial of the motion to compel should be reversed because the district court failed to explain its reasoning, Madison cites no authority supporting that argument. And, even though the district court failed to explain its reasoning in a memorandum, there appears to be a straightforward justification for the district court's denial of the motion.

Respondents argued to the district court and in their brief to this court that Madison's motion to compel was untimely. The district court's scheduling order set April 25, 2022, as the deadline to complete discovery and May 23, 2022, as the deadline for serving and filing both nondispositive and dispositive motions. And, under Minn. R. Civ. P. 16.02, scheduling orders are not to "be modified except by leave of court upon a showing of good cause." Madison did not file its motion to compel discovery until June 3, after the deadline to file nondispositive motions had passed. Moreover, Madison never filed a motion to extend either deadline nor did it offer "good cause" for the delay in bringing its motion to

compel as required by Minn. R. Civ. P. 16.02.⁸ On this record, we discern no abuse of discretion by the district court in its denial of the motion to compel.

Affirmed.

⁸ In this regard, it appears that respondents notified Madison in writing that they would not disclose the identities of the individuals on March 25, 2022, and Lewis, citing advice of counsel, refused to disclose the identities during his deposition on April 13, 2022. Madison was therefore aware that respondents would not disclose the identities prior to the close of both fact discovery and the deadline to file motions but did not file the motion to compel until June 3, 2022—after both deadlines passed.