

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Mari Kautzman, David Dourgarian,
TempWorks Management Services, Inc., a
Minnesota Corporation, TempWorks
Software, Inc., a Minnesota
Corporation, ARA, Inc., a Minnesota
Corporation,

Plaintiffs,

v.

James David Stemm,

Defendant and
Counterclaimant,

v.

Casey Kraus, Chris Hauge, Susan Wurst,
Sydney Hirst, Leah Prudhomme, and
Elizabeth James,

Counterclaim Defendants.

Court File No: **62-CV-18-6090**
Judge Richard H. Kyle, Jr.

**FIRST AMENDED
COUNTERCLAIM**

For his First Amended Counterclaim in the above-described matter, Defendant and Counterclaimant James David Stemm (“Defendant and Counterclaimant” or “Stemm”), an individual, states and alleges as follows:

COUNTERCLAIM

As and for his First Amended Counterclaim against Plaintiffs David Dourgarian, TempWorks Management Services, Inc., a Minnesota Corporation, TempWorks Software, Inc., a Minnesota Corporation, ARA, Inc., a Minnesota Corporation and

Counterclaim Defendants Casey Kraus, Chris Hauge, Susan Wurst, Sydney Hirst, Leah Prudhomme, and Elizabeth James, Stemm states and alleges as follows:

1. Although Stemm was aware Plaintiffs and others called him “crazy” in connection with judicial proceedings, and the like, until the discovery in this matter last month revealed emails published by Plaintiffs and their agents to people in the temporary staffing industry, Stemm was not in the possession of the facts from which to conclude he had an actionable claim against Plaintiffs and others for defamation.

2. That Plaintiffs were involved in a separate lawsuit with JG Staffing, who is *not* connected with Stemm, which lawsuit Plaintiffs won, after which time the documentation shows Plaintiffs decided the best way to deal with Stemm was to go on offense, portraying Stemm in the same light as JG Staffing. Plaintiffs put out a press release (publicized as well as sent to prospect clients) that “ties” Stemm to JG Staffing (having been found guilty of fraud, breach of contract, theft, etc.) and Todd Barnes (they highlight an unfavorable court case he was involved in. The November 2016 press release stated:

Documents produced during the discovery phase of litigation tie JG Staffing, Inc. to the operation of web domain “Beware Of TempWorks.” The domain is owned by Florida resident David Stemm, who together with Texas businessman Todd Barnes, refer to themselves as “victims” of TempWorks. Barnes is the registered owner of Cibolo Creek Capital, LLC, which conducted over \$100,000 of banking transfers with a JG Staffing entity during the pendency of the litigation. A \$110,027.07 default judgment was entered in Alabama against Mr. Barnes in 2014, in favor of Birmingham factoring firm Momentum Capital Funding, LLC, in a case involving allegations of theft and fraud.

3. That at all times material hereto, Casey Kraus (“Kraus”) was employed by Plaintiff TempWorks Management Services, Inc., a Minnesota Corporation, Plaintiff TempWorks Software, Inc., a Minnesota Corporation, Plaintiff ARA, Inc., a Minnesota Corporation, or another related company (collectively “TempWorks”).

4. That on July 6, 2015 Kraus, who is sought to be added to this matter as a Counterclaim Defendant, told Cormac Fox, “This is the person who I told David he shouldn’t lend money to,” and “When we refused to fund him, he has not done a single days work on his business since.”

5. That on July 21, 2015 Kraus told Dawn Guckien, “He [Stemm] filed suit against us as he didn’t have fund[s] to pay his employees,” and “Shortly before he went live, he was exhibiting behavior that was alarming to me and we decided he was not the best person to loan money to from a funding perspective.”

6. That on November 19, 2015 Kraus told bcollet@atriumpersonnel.com and Elizabeth James, “We decided to end our relationship with him due to us not being comfortable with lending him money through our funding division. Unfortunately for us, we did have a signed contract prior to deciding to end our relationship with him and legally we were obligated to perform. He did win a lawsuit against us for damages he sustained by not having funds that we were to provide for him to cover his payroll and he has had it out for us ever since.”

7. That on April 7, 2016 Kraus told Ashley Millan, “We signed contracts and we decided, based on continued conversations with him, that he was mentally unstable and someone we shouldn’t loan money to” and “However, as you can tell where he has

devoted the last 4 years of his life to try and cause us harm, we made the right choice as to not loan him money.”

8. That on April 25, 2016 Kraus told Thomas Perry, “Yeah, he is crazy. His name is David Stemm. About 4 years ago he signed up for our PEO services. Right before we were going to start loaning him money, we made the decision to not do so because we did not think it would have been a wise investment.... As you can tell, it was a good choice,” and “His full time job is trying to tell people not to do business with us.”

9. That on April 27, 2016 Kraus told chris@wichtastaffing.com, “I spoke with Jason Gomez from my team and wanted to see if you would speak with me via phone regarding David Stemm’s website you saw. I understand your hesitation in regards to continuing to speak with us. However, you must understand the increased risk that a company faces when loaning money to other individuals in amounts in the millions.”

10. That on October 14, 2016 Kraus told Arturo Cruz and C. Perez, when referring to Stemm, “We have a professional extortionist who tried to hold us ransom for \$100,000 to not do his smear campaign.”

11. That on October 30, 2016 Kraus told Heidi Isley, “A gentleman named David Stemm who is a professional extortionist that sued us when we breached a funding agreement because we were unwilling to loan money to a person of that character (unfortunately we realized this after signing a contract)” and “After we declined to pay him an additional \$100,000 he wanted, that was not awarded by the court, he started the bewareoftempworks domain immediately and is connected to every company that has filed suit since.”

12. That on November 14, 2016 Kraus told Guy Hulen, “In terms of what cost us your business previously, I would like to let you know that we just won a lawsuit against a known associate of David Stemm that awarded us just shy of \$1,000,000.00.”

13. That after obtaining a verdict against an unrelated party in October 2016, Plaintiffs issued a press release about that Defendant and Stemm being related. Kraus continued referring to Stemm as an “extortionist.”

14. That on November 30, 2016 Kraus asked Ezra Rhoden whether there was an “update” regarding further discussion with Kraus “or David Dourgarian regarding our professional extortionist and his website?” and “The company we won against is an associate of David Stemm, the professional extortionist that runs the site you have found.”

15. That on September 9, 2015 Chris Hauge (“Hauge”), an employee of TempWorks, and an individual who is sought to be added to this matter as a Counterclaim Defendant, told Louise Triance, “we have a very pissed off us client who didn’t pay his funding bills so we closed him down, nothing to worry about. He needs a hobby.”

16. That on May 20, 2016 Hauge told James Nyssen, Andrew Cooper and Vicky Nyssen, “We executed contracts but before he went live we felt he exhibited unstable behavior that would be unfit for us to loan money to.”

17. That on October 30, 2015 Susan Wurst (“Wurst”), an employee of TempWorks and an individual who is sought to be added to this matter as a Counterclaim

Defendant, told Lee Brandt, “There are two reviews out there under us from people who were never actually customers of ours. They are Stemm and EIT.”

18. That on March 29, 2016 Wurst told Mike Brannock, “Actually a funding client we learned was crazy ... we broke contract with him when we realized we were probably going to lose our shorts funding him.”

19. That on May 8, 2016 Sydney Hirst, an agent of TempWorks (advertiser) and an individual who is sought to be added to this matter as a Counterclaim Defendant, told Kinzy Janssen, “I know David Stemm has created fake profiles in the past, so this very well could be him again.”

20. That on June 7, 2017 Leah Prudhomme, an employee of TempWorks and an individual who is sought to be added to this matter as a Counterclaim Defendant, told Katie Johns and Connie Webb, “We actually have one malicious commenter David Stemm from 2015 that we have been vindicated in a lawsuit with and his posts should be removed along with a handful of his supporters. He has malicious Facebook pages and social media accounts against us and is on a mission to malign our company with vicious reviews, attacks and online social media posts, bashing us. Due to the lawsuit, we would like his comments removed on your site.”

21. That on November 14, 2016 David Dourgarian, a Plaintiff in this lawsuit, told Wurst, “He continuously suggests that needs ‘more than the judgement in exchange for non- disparagement.’”

22. That on December 5, 2017 Elizabeth James, who is sought to be added to this matter as a Counterclaim Defendant, told Adrian Dominguez and Nathan Peters, “In

short, this person was looking to utilize TempWorks not for software (which is what we discussed today) but for funding services” and “The end result is that TempWorks decided not to provide them with the funding they wanted, as we saw too much risk, which resulted in the website you mentioned.”

DEFAMATION

23. Stemm hereby realleges paragraphs 1- 22 of his Counterclaim as if fully set forth herein.

24. The reputation of Stemm was damaged by the false and defamatory statements published by Plaintiffs and Counterclaim Defendants.

25. Plaintiffs and Counterclaim Defendants knew or should have known that they made false statements about Stemm.

26. Plaintiffs and Counterclaim Defendants knew or should have known that they made defamatory statements about Stemm.

27. Plaintiffs and Counterclaim Defendants published these statements in an unprivileged publication to third parties.

28. Plaintiffs and Counterclaim Defendants published these statements with ill will, or reckless disregard for the truth or falsity of the publication.

29. Plaintiffs’ and Counterclaim Defendants’ published statements were materially inaccurate.

30. Plaintiffs’ and Counterclaim Defendants’ published statements were false.

31. Plaintiffs’ and Counterclaim Defendants’ published statements are not true.

32. Plaintiffs' and Counterclaim Defendants' publications of these statements harmed the business reputation of Stemm.

33. Plaintiffs' and Counterclaim Defendants' publications of these statements caused Stemm to lose business.

34. Plaintiffs' and Counterclaim Defendants' published statements were not made in good faith.

35. Plaintiffs' and Counterclaim Defendants' published statements were not made on proper occasion.

36. Plaintiffs' and Counterclaim Defendants' published statements were not made from a proper motive.

37. Plaintiffs' and Counterclaim Defendants' published statements were not based on reasonable or probable cause.

38. Plaintiffs' and Counterclaim Defendants' published statements were made with malicious intent.

39. Plaintiffs' and Counterclaim Defendants' published statements were made recklessly and wantonly with intent to injure Stemm.

40. Plaintiffs' and Counterclaim Defendants' published statements were false and disparaged the professional capabilities of Stemm.

41. Plaintiffs' and Counterclaim Defendants' published statements were generally defamatory because they exposed Stemm to public hatred, ridicule, and contempt.

42. Plaintiffs' and Counterclaim Defendants' generally false and defamatory statements caused damage to Stemm's reputation.

43. Plaintiffs' and Counterclaim Defendants' defamatory publications have caused Stemm to lose business, both current and future.

44. Since Plaintiffs and Counterclaim Defendants engaged in many acts of defamation that harmed Stemm, Plaintiffs and Counterclaim Defendants are liable to Stemm in an amount in excess of \$50,000.00, the exact amount to be proven at trial, for their acts of defamation.

WHEREFORE, Defendant and Counterclaimant prays for the following relief:

1. That Plaintiffs' Complaint be dismissed with prejudice.
2. That Defendant and Counterclaimant be awarded all of its costs, and disbursements in defending this matter, including reasonable attorneys' fees.
3. That Defendant and Counterclaimant be awarded an amount of damages in excess of \$50,000.00, the exact amount to be proven at trial, for their acts of defamation.

4. For such other relief as the Court deems just and equitable.

GEORGE E. ANTRIM, III, PLLC

Dated: March 29, 2019

By: /s/George E. Antrim, III
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ACKNOWLEDGMENT

The party(ies) upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledge(s) that sanctions may be imposed for violation of Minn. Stat. §549.211 (Minnesota Rules of Civil Procedure and Minn. Stat. §549.211 and §524.1-304).

By: /s/George E. Antrim, III
George E. Antrim, III, #120534