

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church)	Case Nos.: CL 2007-248724,
Litigation:)	CL 2007-1235,
)	CL 2007-1236,
)	CL 2007-1238,
)	CL 2007-1625,
)	CL 2007-5250,
)	CL 2007-5682,
)	CL 2007-5683, and
)	CL 2007-5902
)	

**DIOCESE'S REPLY BRIEF IN SUPPORT OF
MOTION FOR PRE-JUDGMENT INTEREST**

Bradfute W. Davenport, Jr. (VSB # 12848)
George A. Somerville (VSB # 22419)
Brian D. Fowler (VSB # 44070)
Troutman Sanders LLP
Post Office Box 1122
Richmond, Virginia 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

Mary C. Zinsner (VSB # 31397)
Troutman Sanders LLP
1660 International Drive
Suite 600
McLean, Virginia 22102
Telephone: (703) 734-4334
Facsimile: (703) 734-4340

Counsel for the Protestant Episcopal Church in the Diocese of Virginia

The Protestant Episcopal Church in the Diocese of Virginia (“Diocese”), by counsel, submits the following reply brief in support of its motion for pre-judgment interest.

The CANA Congregations take the August 10, 2007, hearing out of context. The dialogue with the Court on August 10, 2007, pertained to the individual defendants and their plea in bar on the defense of charitable immunity. *See* Transcript at 13 (the Court stated, “[t]he first matter that I’m going to address today is the Plea in Bar, and specifically, the claim of immunity on behalf of the uncompensated individuals who have been named in the declaratory judgment action”) and 25 (Mr. Davenport stated, “I think you were asking about the non-compensated vestry members We do not seek at this time a money judgment against anybody.”) Thereafter, the Diocese voluntarily dismissed the Vestry and Rectors by Stipulated Order and, although the Court sustained the demurrer to the Diocese’s tort and conversion claims and granted leave to amend, the Diocese chose not to amend. *See* Stipulated Order dated August 28, 2007, and Order dated August 28, 2007, attached as Exhibit A. The Diocese’s claim for the conveyance and transfer of real and personal property wrongfully retained by the corporate defendants remained in the case and the Diocese never agreed that it would not seek a judgment against them.

An award of pre-judgment interest is necessary to make the Diocese whole. The CANA Congregations suggest that awarding pre-judgment interest will exact a penalty and seek to elicit undeserved sympathy for their plight. From the initiation of their Va. Code § 57-9 cases and throughout the pendency of the litigation, the CANA Congregations have been strident in their exercise of exclusive control and dominion over the real and personal property of the Diocese and there has been neither shared use of the church properties nor any overtures to deposit the funds into the Court registry for safekeeping. Financial accounts were used, and in

some cases depleted substantially, in furtherance of the mission and outreach efforts of another church, not affiliated in any way post-vote with the Diocese or The Episcopal Church from which the CANA Congregations had voted dramatically to depart. The CANA Congregations argue incredibly that “before the votes, the Diocese had no right to the money . . .” Opp. at 6. That statement is refuted squarely by this Court’s January 10, 2012, Letter Opinion, and in particular page 104, where the Court held unequivocally that the seven CANA Congregations had no right to depart with the Episcopal churches and personal property. The CANA Congregations could have, but chose not to, disaffiliate and leave everything behind. This is not just a case of an employee quitting his job and keeping his office; it is a case of an employee quitting his job, keeping his office, and continuing to receive a salary and pay expenses from company coffers for five years after he voluntarily quit employment.

As the Supreme Court of Virginia has stated repeatedly, “[n]atural justice [requires] that he who has the use of another’s money should pay interest for it.” *Upper Occoquan Sewage Auth. v. Blake Construction Co.*, 275 Va. 41, 655 S.E.2d 10 (2008) (citations omitted); *Shepard v. Capitol Foundry of Virginia, Inc.*, 262 Va. 715, 722, 554 S.E.2d 72, 76 (2001). By statute and under settled common law, it is right that pre-judgment interest on the liquid sums withheld from the Diocese for five years be awarded. *See Hardey v. Metzger*, No. 2628-07-4, 2008 Va. App. LEXIS 409 (2008) (“prejudgment interest ‘is not awarded as a penalty; it is merely an element of just compensation’”) (citations omitted); 10B Michie’s Jurisprudence, *Interest* § 2 (“The word ‘interest’ is a technical word It imports a compensation taken for the loan or use of money.”).

Throughout the pendency of this litigation, the Diocese has not had access to millions of dollars on deposit, which it could have used for its own mission. The CANA Congregations, in

essence, have had an interest free loan, proceeds of which they have used freely, which they now need to pay back. *See Walker v. Pfeiffer*, No. 1872-99-2, 2000 Va. App. LEXIS 506 (2000) (purpose of pre-judgment interest is to compensate a plaintiff for the loss sustained by not receiving the amount to which he was entitled at the time he was entitled to receive it); *In re: Lambert Oil Co.*, 347 B.R. 508 (W.D. Va. 2006). That the CANA Congregations think an interest rate of 6 percent is too high in light of the economy is a legislative argument for the General Assembly, and not this Court, to consider. While the interest awarded by federal courts is tied by Congress to financial markets, *see, e.g.*, 28 U.S.C. § 1961(a), Virginia's General Assembly has not made that choice.

The CANA Congregations argue that the Court's January 10, 2012, Letter Opinion did not award a principal sum and characterize the funds at issue as "unliquidated." The Letter Opinion is not an order. As directed by the Court in its letter opinion, the Diocese is preparing a final order which will indeed order the CANA Congregations to pay the Diocese the principal sums contained in all deposit and investment accounts, which are indeed liquidated amounts, balances for which are easily identifiable and can be discerned by simple review of statements. *See* Exemplar statements of one CANA Congregation attached as Exhibit B (redacted). In any event, Virginia law permits awards of pre-judgment interest on unliquidated sums. *See, e.g.*, *Beale v. King*, 204 Va. 443, 132 S.E.2d 476 (1963).¹ The fact certain accounts are for designated

¹ The cases cited for the argument that pre-judgment interest is not awarded for "unliquidated" sums are easily distinguishable. In *Skretvedt v. Kouri*, 248 Va. 26, 445 S.E.2d 48 (1994), the Supreme Court affirmed the trial court's refusal to award pre-judgment interest because the terms of the partnership, whose existence was in contention throughout the trial, were not capable of "exact determination" because there were no records kept by the partners. And in *Advanced Marine Enterprises, Inc. v. PRC, Inc.*, 256 Va. 106, 501 S.E.2d 148 (1998), the issue was not the liquidity of the sums owed, as the CANA Congregations suggest, but rather the date the chancellor chose from which the interest should run.

purposes does not make funds unliquidated or mean that they cannot be administered by the Diocese; as the evidence demonstrated at trial, the Diocese manages numerous designated funds.

It is the CANA Congregations, and not the Diocese, who misstate the holding of *Tauber v. Comm. of Va.*, 263 Va. 520, 562 S.E.2d 118 (2002). The Court did not hold in *Tauber* that pre-judgment interest is only appropriate when there is a delay by the court in issuing a decree, as the Congregations suggest; it found no abuse of discretion by the chancellor's award given the "extended duration" of the case and "overwhelming" evidence in the record. *Id.*

Va. Code § 8.01-382 does not contain a bona fide dispute exception and the Virginia Supreme Court has never adopted a "weigh the equities" test. The argument that a bona fide dispute precludes an award of pre-judgment interest is without merit.² In fact, this Court has observed that the weight of authorities is to the contrary. *See Star Technologies, Inc. v. Philips Medical Systems, N.A., Inc.*, 27 Va. Cir. 267 (Fairfax Co. 1991) ("Although Philips makes a strong argument for a 'bona fide legal dispute' exception to be applied, the authorities in Connecticut and Virginia seem to be to the contrary"); *see also Associates Financial Services of America, Inc. v. Allstate Ins., Inc.*, 56 Va. Cir. 487, 492 (Norfolk 2001) (in awarding mortgagee pre-judgment interest on the \$53,000 withheld by the insurer, the court stated that "[t]he Code of Virginia does not require a court to find a defendant's case frivolous or insubstantial to award prejudgment interest"). To hold otherwise would be "to write into the statute [Va. Code 8.01-382] a clause that would deny interest to those successful plaintiffs whose claims were legitimately opposed," *Gill v. Rollins Protective Services Co.*, 836 F.2d 194, 199 (4th Cir. 1987), which Virginia courts cannot do.

² The cases cited by the CANA Congregations do not support their argument. *Reid v. Ayscue*, 246 Va. 454, 436 S.E.2d 439 (1993) did not involve a discussion of bona fide legal dispute; the court held that because there was a delay in entry of a final order due to the death of a judge, prejudgment interest was not warranted.

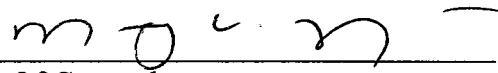
Finally, the CANA Congregations' argument that the equities "weigh" against an award is incorrect factually, for the reasons stated above, and legally. In determining whether pre-judgment interest is appropriate, the Supreme Court of Virginia has never articulated or used the "weigh the equities" standard (for which the CANA Congregations cite to federal decisions only), opting instead for consideration just compensation for use of money and interest follows principal. See *Upper Occoquan Sewage Auth.*, 275 Va. at 63-64, 655 S.E.2d at 22-23; *Hardey v. Metzger*, 2008 Va. App. LEXIS 409 *26-27 (2008) (noting that the usual rule that "interest follows principal" is long and well established).

A request for pre-judgment interest need not be pleaded. The CANA Congregations argue that the Diocese did not request an award of pre-judgment interest in its complaint, and therefore it is precluded from recovering such amounts now. They cite no authority for this proposition and they are mistaken. See, e.g., *Johnson v. Buzzard Island Shooting Club, Inc.*, 232 Va. 32, 348 S.E.2d 220 (1986) ("a court in equity may properly grant appropriate relief not specifically requested"); *West v. West*, No. 0036-95-4, 1995 Va. App. LEXIS 582 (1995) (no error in trial court's award of pre-judgment interest on spousal support arrearage where wife moved for award at hearing). Va. Code § 8.01-382 does not require that pre-judgment interest be pleaded specifically or requested in a Complaint. See generally *French v. Norfolk Southern Railway Co.*, 54 Va. Cir. 360 (Prince William Co. 2001); 10B Michie's Jurisprudence, *Interest* § 13 (with the enactment of § 8.01-382, there is no requirement that interest be pleaded to be awarded "for the interest follows the principal as the shadow does the substance"). This Court frequently awards pre-judgment interest even where a request is not specifically pleaded in a Complaint. See collective Fairfax Circuit Court decisions and pleadings at Exhibit C.

Respectfully submitted,

Dated: February 13, 2012

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

By: 
Of Counsel

Bradfute W. Davenport, Jr. (VSB # 12848)
George A. Somerville (VSB # 22419)
Brian D. Fowler (VSB # 44070)
Troutman Sanders LLP
Post Office Box 1122
Richmond, Virginia 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

Mary C. Zinsner (VSB # 31397)
Troutman Sanders LLP
1660 International Drive
Suite 600
McLean, Virginia 22102
Telephone: (703) 734-4334
Facsimile: (703) 734-4340

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were sent by electronic mail to all counsel, including those named below, on this 13th day of February, 2012, pursuant to the Stipulated Amended Pretrial Scheduling Order and post-trial briefing/procedures Order:

Gordon A. Coffee (gcoffee@winston.com)
Gene C. Schaerr (gschaerr@winston.com)
Steffen N. Johnson (sjohnson@winston.com)
Andrew C. Nichols (anichols@winston.com)
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006

*Counsel for Truro Church, Church of the Epiphany, Church of the Apostles,
The Church at The Falls – The Falls Church, and associated individuals*

George O. Peterson (gpeter@petersonsaylor.com)
Tania M. L. Saylor (tsaylor@petersonsaylor.com)
Michael Marr (mmarr@petersonsaylor.com)
Peterson Saylor, PLC
4163 Chain Bridge Road
Fairfax, Virginia 22030

Counsel for Truro Church and certain associated individuals

Mary A. McReynolds (marymcreynolds@mac.com)
Mary A. McReynolds, P.C.
1250 Connecticut Avenue, N.W., Second Floor
Washington, D.C. 20036-1830

*Counsel for St. Margaret's Church, St. Paul's Church, Church of the Epiphany,
Church of the Apostles, St. Stephen's Church, and associated individuals*

E. Andrew Burcher (eaburcher@pw.thelandlawyers.com)
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192

Counsel for St. Margaret's Church and St. Paul's Church

R. Hunter Manson (manson@kaballero.com)
PO Box 539
876 Main Street
Reedville, Virginia 22539

Counsel for St. Stephen's Church and associated individuals

Scott J. Ward (sjw@gg-law.com)
Timothy R. Obitts (tro@gg-law.com)
Gammon & Grange, P.C.
8280 Greensboro Drive, Seventh Floor
McLean, Virginia 22102

James A. Johnson (jjohnson@semmes.com)
Paul N. Farquharson (pfarquharson@semmes.com)
Scott H. Phillips (sPhillips@semmes.com)
Tyler O. Prout (tprout@semmes.com)
Semmes Bowen & Semmes, P.C.
25 South Charles Street, Suite 1400
Baltimore, Maryland 21201

Counsel for The Church at The Falls – The Falls Church and certain associated individuals

Thomas C. Palmer, Jr. (tpalmer@thebraultfirm.com)
Brault Palmer Grove White & Steinhilber LLP
3554 Chain Bridge Road, Suite 400
Fairfax, Virginia 22030

Counsel for certain trustees of The Church at The Falls – The Falls Church (Episcopal)

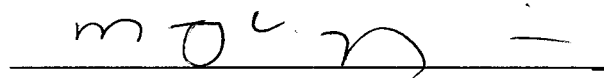
E. Duncan Getchell (DGetchell@oag.state.va.us)
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Counsel for the Commonwealth of Virginia ex rel. Kenneth T. Cuccinelli, in his official capacity as Attorney General

David B. Beers (dbeers@goodwinprocter.com)
Adam Chud (achud@goodwinprocter.com)
Goodwin Procter
901 New York Avenue, N.W.
Washington, D.C. 20001

Mary E. Kostel (mkostel@goodwinprocter.com; mkostel@episcopalchurch.org)
Special Counsel
The Episcopal Church
c/o Goodwin Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001

Heather H. Anderson (handersonlaw@gmail.com)
Heather H. Anderson, P.C.
P.O. Box 50158
Arlington, Virginia 22205
Counsel for The Episcopal Church

A handwritten signature in black ink, appearing to read "m e kostel", is written above a horizontal line.

465753v1

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE:)
)
 MULTI-CIRCUIT EPISCOPAL) CL-2007-0248724
 CHURCH PROPERTY LITIGATION)

FILED IN DIOCESE AND EPISCOPAL CHURCH DECLARATORY

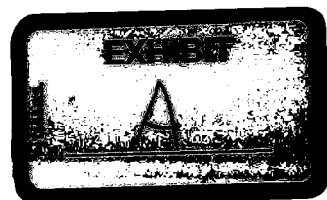
JUDGMENT ACTIONS: *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (No. CL 2007-1236); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (No. CL 2007-1238); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (No. CL 2007-1235); *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (No. CL 2007-1237); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (No. CL 2007-5683); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (No. CL 2007-5682); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (No. CL 2007-5684); *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (No. CL 2007-5362); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (No. CL 2007-5364); *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (CL 2007-5250); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (No. CL 2007-5902); and *The Episcopal Church v. Truro Church et al.*, (No. CL 2007-1625).

STIPULATED ORDER

In resolution of the Pleas in Bar based on Va. Code § 8.01-220.1:1 to the Complaints filed by the Episcopal Church and the Protestant Episcopal Church in the Diocese of Virginia ("Diocese of Virginia"), the parties hereby agree, and the Court accordingly orders, as follows:

1. All claims in every above-captioned case against every Rector and Vestry defendant shall be and hereby are dismissed without prejudice. None of the foregoing individual defendants, all of whom are intended to be identified in Attachment A hereto, shall remain as parties in any of the above-captioned cases.

57
 8-31-07
 TROUTMAN SANDERS



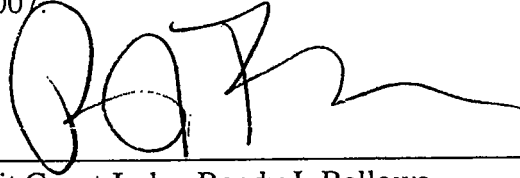
2. All claims against every Trustee defendant in every above-captioned case, including those identified on Attachment B hereto, shall be dismissed without prejudice, except that those Trustee defendants identified in Attachment B hereto shall remain nominal defendants in the above-captioned cases only in their official capacity as to their title interest only and the Complaints shall be deemed amended to name the additional Trustee defendants identified in Attachment B hereto as necessary.

3. All parties to all of the above-captioned cases, including the defendant churches, whether incorporated or unincorporated, and all individual Rector, Trustee, and Vestry defendants identified in Attachments A and B hereto, agree to be bound by the rulings of the Court as to the determination of the property rights of the respective parties. However, nothing herein shall be deemed to limit the rights of any party to appeal any ruling of the Court or to seek a stay, or any other form of relief as to any ruling of the Court, pending appeal.

4. If the Diocese and the Episcopal Church are determined in a final judgment entered in the above-captioned cases to be entitled to immediate ownership and possession of the real and personal property at issue in the above-captioned cases, and if no relief from said final judgment is granted by way of a stay, supersedeas bond or any other form of relief pending appeal, the parties agree that there shall be an orderly transition, and the real and personal property at issue shall be relinquished to the custody and control of the Diocese and the Episcopal Church. It is agreed that any such relinquishment of property shall not make moot any claims defendants may raise on appeal to ownership and control of any property so relinquished.

5. The Clerk is directed to send an attested copy of this order to counsel of record.

Entered this 28 day of August, 2007.



Circuit Court Judge Randy I. Bellows

ENTERED INTO AND ASKED FOR:

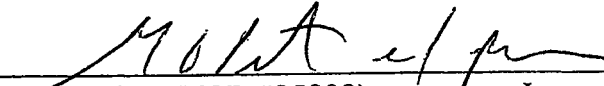
TRURO CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rt. Rev. Martyn Minns, James Oakes, James Wilkinson, Mary Ailes, William Barto, Cynthia Brosnan, Stanton Brunner, Daniel Dearborn, Beth Dorman, Paul Julienne, June Leeuwrik, Daniel Malabonga, C. Kevin Marshall, James Moulton, Mary Springmann, Katrina Wagner, Ernest Wakeham, Megan Walnut, Garth Wilson, Warren Thrasher, Thomas Yates, Tom Ball, Renate Eschmann, Jack Maier, Tony Niles, Ted Wagner

By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

George O. Peterson
SANDS ANDERSON MARKS & MILLER
1497 Chain Bridge Road, Suite 202
McLean, VA 22101
Telephone: (703) 893-3600
Facsimile: (703) 893-8484

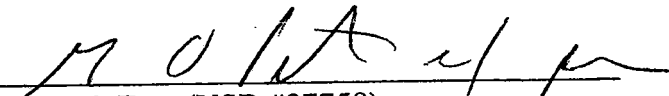
THE CHURCH AT THE FALLS – THE FALLS CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Dr. John W. Yates, II, Thomas Wilson, Carol Jackson, Henry D. Barratt, Jr., Anne Cregger, Don Dusenbury, Larry Medley, Anne Waidman, David Gustafson, Ken Hagerty, Gail Thompson, Roger Turner, John Walter, Elizabeth Law, Ken Brown, Carlton Howard, Peter Gates, Bob Glass, Dan Henneberg, Mick Kicklighter, Steve McFarland, Ruthie McIntosh, Clydette Powell, Evans Rice

By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

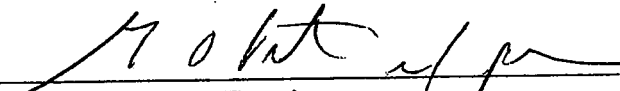
James A. Johnson
Paul N. Farquharson
Scott H. Phillips
Sarah W. Price
SEMMES, BOWEN & SEMMES
250 West Pratt Street
Baltimore, MD 21201
Telephone: (410) 576-4712
Facsimile: (410) 539-5223

THE CHURCH AT THE FALLS – THE FALLS CHURCH

By: 

Scott J. Ward, Esq. (VSB #37758)
Timothy R. Obitts, Esq. (VSB #42370)
Robert W. Malone, Esq. (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023

TRUSTEES OF THE CHURCH AT THE FALLS – THE FALLS CHURCH, *including*
William W. Goodrich, Harrison Hutson, Steven Skancke

By: 

Edward H. Grove, III, Esquire
Brault Palmer Grove White & Steinhilber LLP
10533 Main Street
P.O. Box 1010
Fairfax, VA, 22038-1010

ST. STEPHEN'S CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Jeffrey O. Cerar, Margaret C. Radcliffe, George T. Beckett, Richard C. Goertemiller, Ward M. LeHardy, Helen Elaine E. Price, Craig W. Soule, Howard L. York, George Kranda, James R. Hundley, Jane B. Wrightson

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

R. Hunter Manson (VSB #05681)
P.O. Box 539
876 Main Street
Reedville, VA 22539
Telephone: (804) 453-5600
Facsimile: (804) 453-7055

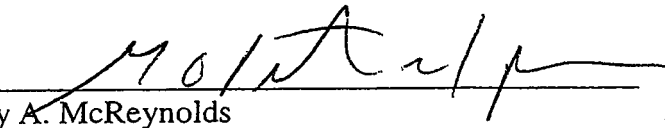
CHURCH OF THE APOSTLES and CHURCH OF THE EPIPHANY and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. David R. Harper, David K. Allison, Mark Robbins, Jerry Baker, Peter Edman, Don Foy, Dick Fuller, Bill Jennings, Ruth Kriz, Tony Moscati, Loren Nystrom, Wilbert Smith, Malcolm Phillips, Pete Buck, George Keitt, Charles Young; The Rev. Robert A. Rauh, Chad Krukowski, Sally McNeely, Ted Gregg, Ralph Morris, Kevin Holmes, Mark Oliphant, Andy Plummer, Scott Reiter, Margaret Stromberg, John Ticer, Murray Black, Fred Woodard, Ross Cummings, Larry Pantzer, David Reed, Jan Welch

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

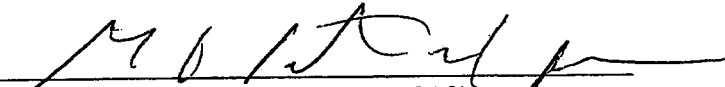
ST. MARGARET'S CHURCH and ST. PAUL'S CHURCH, HAYMARKET and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Neal Brown, Bill Harding, Charles F. Martin, Scott Ankers, Danny Cade, John Ellerbe, Scott Finney, Margaret Mann, Jo Marohn, Chloellen Miller, Michelle Wheeler, Gary Motsek; The Rev. David N. Jones, Ray Bell, Joyce Hellems, Keith Fletcher, Jeannie Heflin, Dennis Osborn, Sean Roberts, Norris Sisson, Robert Smith, William Latham, Bernard McDaniel, Macon Piercy

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

E. Andrew Burcher (VSB #41310)
WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, P.C.
4310 Prince William Parkway,
Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

CHURCH OF THE WORD and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Robin T. Adams, Daniel Thomas, Mariann Lynch, Dwaine Grimes, Kaye Taft, James Aram, Christopher Johnson, Bradley Schoffstall, Susan Hilleary, Jake Kruchten, William Stalcup

By: 

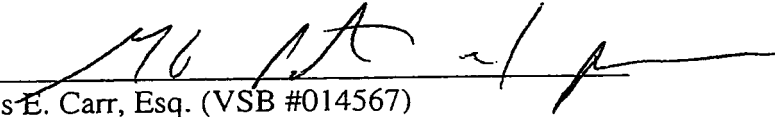
E. Andrew Burcher, Esq. (VSB #41310)
WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

CHRIST THE REDEEMER CHURCH and POTOMAC FALLS CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Mark Sholander, Bob FitzSimmonds, Tanie Guy, Donna Sepulveda Conwell, Jerry Conwell, Harry Furney; The Rev. Jack Grubbs

By: 

Scott J. Ward, Esq. (VSB #37758)
Timothy R. Obitts, Esq. (VSB #42370)
Robert W. Malone, Esq. (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023


CHURCH OF OUR SAVIOUR AT OATLANDS and ASSOCIATED INDIVIDUAL
DEFENDANTS, *including* The Rev. Elijah Brockenbrough White, Daniel L. Bell, Max E.
Mellott, Kay Rugen Franke, Robert Leuthy, Barbara Cox Polen, Edward Schulze, Daniel
R. Clemons

By: 
James E. Carr, Esq. (VSB #014567)
CARR & CARR
44135 Woodbridge Parkway, Suite 260
Leesburg, Virginia 20176
Telephone: (703) 777-9150
Facsimile: (703) 726-0125

THE EPISCOPAL CHURCH

By: Heather H. Anderson / by mcz
Heather H. Anderson, Esq. (VSB #38093)
Adam Braverman, Esq. (VSB #45211)
Soyong Cho, Esq. (VSB #70896)
GOODWIN PROCTER LLP
901 New York Avenue, NW
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444


THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

By: 
Bradfute W. Davenport, Jr. (VSB #12848)
George A. Somerville (VSB #22419)
Joshua D. Heslinga (VSB #73036)
TROUTMAN SANDERS LLP
P.O. Box 1122
Richmond, VA 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

Mary C. Zinsner (VSB #31397)
TROUTMAN SANDERS LLP
1660 International Drive, Suite 600
McLean, VA 22102
Telephone: (703) 734-4334
Facsimile: (703) 734-4340

#339304

A COPY TESTE:
JOHN T. FREY, CLERK

BY: 
Deputy Clerk 8/31/07

Date: _____
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia

ATTACHMENT A

RECTORS AND VESTRY MEMBERS

<p>CHRIST THE REDEEMER CHURCH</p>	<p>Conwell, Donna Sepulveda Conwell, Jerry Fitzsimmonds, Bob Furney, Harry Guy, Tanie Sholander, The Rev. Mark</p>
<p>THE CHURCH AT THE FALLS - THE FALLS CHURCH</p>	<p>Barratt, Henry Brown, Ken Cregger, Anne Dusenbury, Don Gates, Peter Glass, Bob Gustafson, David Hagerty, Ken Henneberg, Dan Howard, Carlton Jackson, Carol Kicklighter, Mick Law, Elizabeth McFarland, Steve McIntosh, Ruthie Medley, Larry Powell, Clydette Rice, Evans Thompson, Gail Turner, Roger Waidman, Anne Walter, John Wilson, Tom Yates, The Rev. Dr. John W.</p>
<p>CHURCH OF OUR SAVIOUR AT OATLANDS</p>	<p>Bell, Daniel L., II, Senior Warden Franke, Kay Rugen Leuthy, Robert Mellott, Max E. Polen, Barbara Cox Schulze, Edward White, The Rev. Elijah Brockenbrough</p>

<p>CHURCH OF THE APOSTLES</p>	<p>Allison, David Baker, Jerry Buck, Peter Edman, Peter Foy, Don Fuller, Dick Harper, The Rev. David R. Jennings, Bill Kriz, Ruth Moscatti, Tony Nystrom, Loren Phillips, Malcolm Robbins, Mark Smith, Wilbert</p>
<p>CHURCH OF THE EPIPHANY</p>	<p>Black, Murray Cummings, Ross Gregg, Ted Holmes, Kevin Krukowski, Chad McNeely, Sally Morris, Ralph Oliphant, Mark Pantzer, Larry Plummer, Andy Rauh, The Rev. Robin Reed, David Reiter, Scott Stromberg, Margaret Ticer, John Welch, Jan</p>
<p>CHURCH OF THE WORD</p>	<p>Adams, The Rev. Robin T. Aram, James Grimes, Dwaine Hilleary, Susan Johnson, Christopher Kruchten, Jake Lynch, Mariann Schoffstall, Bradley Stalcup, William Taft, Kaye Thomas, Daniel</p>
<p>POTOMAC FALLS CHURCH</p>	<p>Grubbs, The Rev. Jack</p>

ST. MARGARET'S CHURCH	Ankers, Scott Brown, The Rev. Neal Cade, Danny Ellerbe, John Finney, Scott Harding, Bill Mann, Margaret Marohn, Jo Martin, Charles F. Miller, Chloellen Wheeler, Michelle
ST. PAUL'S CHURCH	Bell, Ray Fletcher, Keith Heflin, Jeannie Hellems, Joyce Jones, The Rev. David Nickerson Osborn, Dennis Roberts, Sean Sisson, Norris Smith, Robert
ST. STEPHEN'S CHURCH	Beckett, Geroge Cerar, The Rev. Jeffrey O. Goertemiller, Dick Lehardy, Ward Price, Elaine Radcliffe, Margaret Soule, Craig
TRURO CHURCH	Ailes, Mary Barto, William Brosnan, Cynthia Brunner, Stanton Dearborn, Daniel Dorman, Beth Julienne, Paul Leeuwrik, June Malabonga, Daniel Marshall, C. Kevin Minns, The Rt. Rev. Martyn Moulton, James Oakes, James Springman, Mary Wagner, Katrina Wakeham, Earnest Walnut, Megan Wilkenson, James Wilson, Garth

ATTACHMENT B

TRUSTEES

CHRIST THE REDEEMER CHURCH	None
THE CHURCH AT THE FALLS - THE FALLS CHURCH	Goodrich, William W. Hutson, Harrison Skancke, Steven
CHURCH OF OUR SAVIOUR AT OATLANDS	Clemons, Daniel R. (also, incorrectly identified as a vestryman in the Episcopal Church suit) Franke, Kay Rugen White, The Rev. Elijah Brockenbrough
CHURCH OF THE APOSTLES	Buck, Pete Keitt, George Young, Charles
CHURCH OF THE EPIPHANY	Black, Murray Woodard, Fred
CHURCH OF THE WORD	
POTOMAC FALLS CHURCH	None
ST. MARGARET'S CHURCH	Martin, Charles F. Motsek, Gary Wheeler, Michelle
ST. PAUL'S CHURCH	Latham, William McDaniel, Bernard Piercy, Macon
ST. STEPHEN'S CHURCH	Hundley, James R. Krande, George Wrightson, Jane B. York, Howard L.

TRURO CHURCH	Ball, Tom Eschmann, Renate Maier, Jack Niles, Tony Thrasher, Warren Wagner, Ted Yates, Thomas
--------------	---

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE:

MULTI-CIRCUIT EPISCOPAL
CHURCH PROPERTY LITIGATION

)
)
)
)

CL-2007-0248724

FILED IN DIOCESE AND EPISCOPAL CHURCH DECLARATORY

JUDGMENT ACTIONS: *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (No. CL 2007-1236); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (No. CL 2007-1238); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (No. CL. 2007-1235); *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (No. CL 2007-1237); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (No. CL 2007-5683); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (No. CL 2007-5682); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (No. CL 2007-5684); *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (No. CL 2007-5362); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (No. CL 2007-5364); *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (CL 2007-5250); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (No. CL 2007-5902); and *The Episcopal Church v. Truro Church et al.*, (No. CL 2007-1625).

ORDER

This matter came before the Court on August 10, 2007, for a hearing on the Demurrers of the defendants to the Complaints filed by the Episcopal Church ("TEC") and the Protestant Episcopal Church in the Diocese of Virginia (the "Diocese").

UPON CONSIDERATION of the Demurrers, the memoranda submitted by the parties, and the arguments of counsel, and for the reasons set forth at pages 143-47 of the attached portion of the transcript from the August 10, 2007, hearing, which is hereby incorporated into this Order, the Court is of the opinion that the Demurrers should be sustained in part and overruled in part; and it is accordingly ORDERED that the Demurrers are SUSTAINED IN PART and OVERRULED IN PART, as follows:

15 ✓

CL by TROUTMAN SANDERS 8-31-07

1. The Demurrers are sustained as to the relief requested in subparagraph (a) of the Wherefore clauses of each of the Complaints filed by the Diocese (e.g. paragraph 31 at page 11 of the Complaint involving Truro Church).


2. The Diocese shall have leave to amend its Complaint within twenty-one (21) days from the date of entry of this Order. Nothing in this Order shall affect any right which the Diocese may have to file separate complaints asserting tort liability. The Diocese shall notify the defendants in writing on or before seven (7) days after the date of entry of this Order whether the Diocese will file Amended Complaints. If the Diocese files Amended Complaints, the defendants' responsive pleadings and any Counterclaims shall be due twenty-one (21) days from the date of filing of the Amended Complaints. If the aforesaid written notice indicates that the Diocese does not intend to file Amended Complaints, the defendants' answers and any Counterclaims to the original Complaints shall be due twenty-one (21) days from the date of service of the notice. Answers and any Counterclaims to the Complaint filed by the Episcopal Church shall be due twenty-one (21) days from the date this Order is entered.

3. In all other respects, the Demurrers to the Complaints filed by the Diocese and the Episcopal Church are overruled.

4. The Court specifically finds that the Statute of Frauds, Va. Code § 11-2, does not apply to these cases.

5. The Clerk is directed to send an attested copy of this Order to all counsel of record.

Entered this 28 day of August, 2007.



Circuit Court Judge Randy I. Bellows

THE FOLLOWING DEFENDANTS HAVE SEEN AND HEREBY OBJECT TO THE FOREGOING ORDER AND THE COURT'S AUGUST 10, 2007, DECISION TO OVERRULE THE DEMURRER ON THE GROUNDS THAT THE PLAINTIFFS' COMPLAINTS FAIL TO STATE A CAUSE OF ACTION BECAUSE:

1. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT PLAINTIFFS CANNOT PROPERLY PROCEED ON A TRUST-BASED THEORY BECAUSE THE PLAINTIFFS HAVE ALLEGED NO ELEMENTS OF AN EXPRESS TRUST UNDER VIRGINIA LAW AND VIRGINIA LAW DOES NOT RECOGNIZE IMPLIED DENOMINATIONAL TRUSTS IN CONGREGATIONAL PROPERTY.

2. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT PLAINTIFFS HAVE NOT ALLEGED A CONTRACT OR PROPRIETARY INTEREST IN THE CANA CONGREGATIONS' PROPERTIES.

3. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT THE PLAINTIFFS' CLAIMS OF A CONTRACT OR PROPRIETARY INTEREST IN THE CANA CONGREGATIONS' PROPERTIES IS BARRED BY THE STATUTE OF FRAUDS; AND

4. UPON THOSE ADDITIONAL REASONS SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT.

TRURO CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rt. Rev. Martyn Minns, James Oakes, James Wilkinson, Mary Ailes, William Barto, Cynthia Brosnan, Stanton Brunner, Daniel Dearborn, Beth Dorman, Paul Julienne, June Leeuwrik, Daniel Malabonga, C. Kevin Marshall, James Moulton, Mary Springmann, Katrina Wagner, Ernest Wakeham, Megan Walnut, Garth Wilson, Warren Thrasher, Thomas Yates, Tom Ball, Renate Eschmann, Jack Maier, Tony Niles, Ted Wagner

By: 

Gordon A. Coffee (VSB #25808)

Gene C. Schaerr

Steffen N. Johnson

Andrew C. Nichols (VSB #66679)

WINSTON & STRAWN LLP

1700 K Street, N.W.

Washington, D.C. 20006

Telephone: (202) 282-5000

Facsimile: (202) 282-5100

George O. Peterson

SANDS ANDERSON MARKS & MILLER

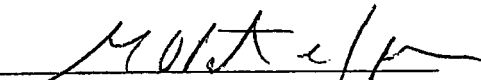
1497 Chain Bridge Road, Suite 202

McLean, VA 22101

Telephone: (703) 893-3600

Facsimile: (703) 893-8484

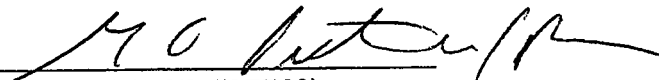
THE CHURCH AT THE FALLS – THE FALLS CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Dr. John W. Yates, II, Thomas Wilson, Carol Jackson, Henry D. Barratt, Jr., Anne Cregger, Don Dusenbury, Larry Medley, Anne Waidman, David Gustafson, Ken Hagerty, Gail Thompson, Roger Turner, John Walter, Elizabeth Law, Ken Brown, Carlton Howard, Peter Gates, Bob Glass, Dan Henneberg, Mick Kicklighter, Steve McFarland, Ruthie McIntosh, Clydette Powell, Evans Rice

By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

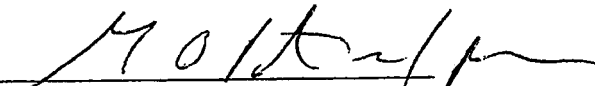
James A. Johnson
Paul N. Farquharson
Scott H. Phillips
Sarah W. Price
SEMMES, BOWEN & SEMMES
250 West Pratt Street
Baltimore, MD 21201
Telephone: (410) 576-4712
Facsimile: (410) 539-5223

THE CHURCH AT THE FALLS – THE FALLS CHURCH

By: 

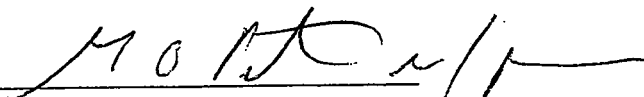
Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023

TRUSTEES OF THE CHURCH AT THE FALLS – THE FALLS CHURCH

By: 

Edward H. Grove, III, Esquire
Brault Palmer Grove White & Steinhilber LLP
10533 Main Street
P.O. Box 1010
Fairfax, VA, 22038-1010

ST. STEPHEN'S CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Jeffrey O. Cerar, Margaret C. Radcliffe, George T. Beckett, Richard C. Goertemiller, Ward M. LeHardy, Helen Elaine E. Price, Craig W. Soule, Howard L. York, George Kranda, James R. Hundley, Jane B. Wrightson

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

R. Hunter Manson (VSB #05681)
P.O. Box 539
876 Main Street
Reedville, VA 22539
Telephone: (804) 453-5600
Facsimile: (804) 453-7055


CHURCH OF THE APOSTLES and CHURCH OF THE EPIPHANY and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. David R. Harper, David K. Allison, Mark Robbins, Jerry Baker, Peter Edman, Don Foy, Dick Fuller, Bill Jennings, Ruth Kriz, Tony Moscati, Loren Nystrom, Wilbert Smith, Malcolm Phillips, Pete Buck, George Keitt, Charles Young; The Rev. Robert A. Rauh, Chad Krukowski, Sally McNeely, Ted Gregg, Ralph Morris, Kevin Holmes, Mark Oliphant, Andy Plummer, Scott Reiter, Margaret Stromberg, John Ticer, Murray Black, Fred Woodard, Ross Cummings, Larry Pantzer, David Reed, Jan Welch

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

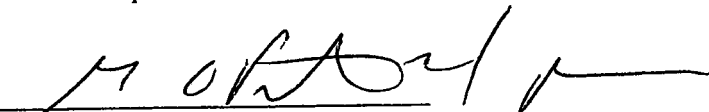
ST. MARGARET'S CHURCH and ST. PAUL'S CHURCH, HAYMARKET and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Neal Brown, Bill Harding, Charles F. Martin, Scott Ankers, Danny Cade, John Ellerbe, Scott Finney, Margaret Mann, Jo Marohn, Chloellen Miller, Michelle Wheeler, Gary Motsek; The Rev. David N. Jones, Ray Bell, Joyce Hellems, Keith Fletcher, Jeannie Heflin, Dennis Osborn, Sean Roberts, Norris Sisson, Robert Smith, William Latham, Bernard McDaniel, Macon Piercy

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

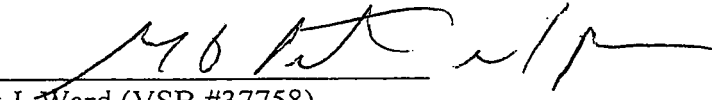
E. Andrew Burcher (VSB #41310)
WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, P.C.
4310 Prince William Parkway,
Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

CHURCH OF THE WORD and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Robin T. Adams, Daniel Thomas, Mariann Lynch, Dwaine Grimes, Kaye Taft, James Aram, Christopher Johnson, Bradley Schoffstall, Susan Hilleary, Jake Kruchten, William Stalcup

By: 


E. Andrew Burcher (VSB #41310)
WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

CHRIST THE REDEEMER CHURCH and POTOMAC FALLS CHURCH and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Mark Sholander, Bob FitzSimmonds, Tanie Guy, Donna Sepulveda Conwell, Jerry Conwell, Harry Furney; The Rev. Jack Grubbs

By: 

Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023

CHURCH OF OUR SAVIOUR AT OATLANDS and ASSOCIATED INDIVIDUAL DEFENDANTS, *including* The Rev. Elijah Brockenbrough White, Daniel L. Bell, Max E. Mellott, Kay Rugen Franke, Robert Leuthy, Barbara Cox Polen, Edward Schulze, Daniel R. Clemons

By: 

James E. Carr (VSB #014567)
CARR & CARR
44135 Woodbridge Parkway, Suite 260
Leesburg, Virginia 20176
Telephone: (703) 777-9150
Facsimile: (703) 726-0125

SEEN and AGREED:

THE EPISCOPAL CHURCH

By: Heather H. Anderson / mcz

Heather H. Anderson (VSB #38093)

Adam Braverman (VSB #45211)

Soyong Cho (VSB #70896)

GOODWIN PROCTER LLP

901 New York Avenue, NW

Washington, DC 20001

Telephone: (202) 346-4000

Facsimile: (202) 346-4444

The following plaintiff has seen and hereby object to the foregoing order as to paragraph 1, sustaining the demurrer in part, for the reasons stated in the plaintiffs' Brief in Opposition and at oral argument:

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

By: M. W. Davenport, Jr.

Bradfute W. Davenport, Jr. (VSB #12848)

George A. Somerville (VSB #22419)

Joshua D. Heslinga (VSB #73036)

TROUTMAN SANDERS LLP

P.O. Box 1122

Richmond, VA 23218-1122

Telephone: (804) 697-1200

Facsimile: (804) 697-1339

Mary C. Zinsner (VSB #31397)

TROUTMAN SANDERS LLP

1660 International Drive, Suite 600

McLean, VA 22102

Telephone: (703) 734-4334

Facsimile: (703) 734-4340

#339307v1

A COPY TESTE:
JOHN T. FREY, CLERK
BY: [Signature]
Deputy Clerk
Date: 8/31/07
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia



BB&T - VIRGINIA

STATEMENT DATE
11-30-06

PAGE 1

458-03-01-00 51301 57 C 001 26 26 03
ST PAULS EPISCOPAL CHURCH
6735 FAYETTE ST
HAYMARKET VA 20169-2916

0608



COMMUNITY INTEREST CHECKING-MM

ACCOUNT NUMBER

0005139050608

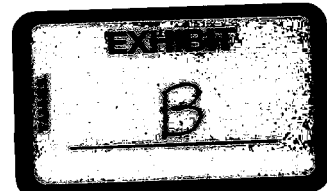
-ACCOUNT SUMMARY-

PREVIOUS BALANCE AS OF 10-31-06		40,207.08
6 DEPOSITS/CREDITS	23,581.09+	
INTEREST PAID	2.31+	
57 CHECKS PAID	33,253.21-	
1 WITHDRAWALS/DEBITS	392.51-	
SERVICE CHARGE	10.00-	
NEW BALANCE AS OF 11-30-06		30,134.76

-CHECKS PAID-

DATE	CHECK NUMBER	AMOUNT	REFERENCE NUMBER	DATE	CHECK NUMBER	AMOUNT	REFERENCE NUMBER
11-28	5863 *****	25.00	5106928189	11-13	5906 *****	395.91	5307417817
11-06	5868 *****	1,209.45	5402663526	11-17	5907	21.95	2904344004
11-03	5872	1,242.95	5401586468	11-30	5908	53.37	2907065703
11-10	5873 *****	75.00	5307247360	11-22	5909	75.00	5207014917
11-02	5875 *****	625.00	2901262525	11-27	5910 *****	56.75	5407314424
11-03	5877	100.00	5401592339	11-24	5913 *****	75.00	2905748412
11-01	5878 *****	687.50	2901053458	11-29	5915	250.00	5107113892
11-07	5882 *****	75.00	5006760372	11-21	5916	35.00	5406636941
11-01	5884	101.00	701912790	11-27	5917	45.49	5407297901
11-13	5885	126.00	5404299726	11-27	5918	100.00	5407288043
11-09	5886	3,685.00	2902783603	11-28	5919	75.00	2906518002
11-03	5887	261.16	2901519921	11-28	5920	85.00	5300231548
11-07	5888	50.54	5007063096	11-22	5921	46.32	2905276374
11-02	5889	40.00	5005356451	11-28	5922	75.00	5407478245
11-03	5890	134.00	2901463329	11-22	5923	500.00	2905585991
11-06	5891	35.00	5402663523	11-24	5924	101.00	705792692
11-08	5892	343.10	5403219190	11-29	5925	295.14	5208107163
11-06	5893	133.52	5402141331	11-29	5926	295.14	5208107164
11-10	5894	249.00	2903009667	11-21	5927	3,452.65	5406833468
11-08	5895	730.00	2902556600	11-20	5928	701.98	5406356825
11-10	5896	295.13	5008026639	11-20	5929	1,209.45	5308213036
11-10	5897	295.13	5008026640	11-20	5930	4,066.22	5308213038
11-03	5898	3,452.65	5005769062	11-29	5931 *****	144.00	2907024074
11-07	5899	701.97	5006713139	11-29	5934 *****	211.55	5300632682
11-06	5900	1,209.45	5402663524	11-30	5936	500.00	2907077104
11-06	5901	3,095.10	5006590471	11-29	5937	80.00	5300614547
11-20	5902	35.93	5307823366	11-30	5940 *****	500.00	2907173927
11-16	5903	140.00	704125676	11-30	5942 *****	161.85	2907319783
11-20	5904	490.86	5307819111				

***** INDICATES A SKIP IN SEQUENTIAL CHECK NUMBERS



Admitted

DSTP-381-04854



BB&T - VIRGINIA

STATEMENT DATE
11-30-06

PAGE 2-L

458-03-01-00 51301 57 C 001 26 26 03
ST PAULS EPISCOPAL CHURCH

0608



COMMUNITY INTEREST CHECKING-MM

ACCOUNT NUMBER 0005139050608

- - - - - OTHER WITHDRAWALS/DEBITS - - - - -

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-06	392.51	DEPOSIT CORRECTION	3400044 5105147269
11-21	10.00	SERVICE CHARGE	

- - - - - DEPOSITS/OTHER CREDITS - - - - -

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-06	4,876.02	DEPOSIT	5105147232
11-06	3,964.72	DEPOSIT	5006590457
11-13	1,810.84	DEPOSIT	5307422379
11-20	5,296.00	DEPOSIT	5308201129
11-20	4,004.70	DEPOSIT	5308213039
11-27	3,628.81	DEPOSIT	5106696270
11-30	2.31	INTEREST PAYMENT	2813613

- - - - - DAILY BALANCE SUMMARY - - - - -

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
11-01	39,418.58	11-10	29,828.66	11-22	29,632.93
11-02	38,753.58	11-13	31,117.59	11-24	29,456.93
11-03	33,562.82	11-16	30,977.59	11-27	32,883.50
11-06	36,328.53	11-17	30,955.64	11-28	32,623.50
11-07	35,501.02	11-20	33,751.90	11-29	31,347.67
11-08	34,427.92	11-21	30,254.25	11-30	30,134.76
11-09	30,742.92				

- - - - - INTEREST SUMMARY - - - - -

INTEREST RATE	.10%
INTEREST PAID THIS STATEMENT PERIOD	2.31
2006 INTEREST PAID YEAR-TO-DATE	29.91

FOR ASSISTANCE, CALL (703) 753-3514 OR FOR BB&T PHONE24, CALL (800)BANKBBT (1-800-226-5228).



BB&T - VIRGINIA

STATEMENT DATE
11-30-06

458-03-01-00 51301 1 C 001 26 26 03
RECTORS DISCRETIONARY FUND
PO BOX 195
HAYMARKET VA 20168-0195

██████████ 9496



COMMUNITY CHECKING-MM

ACCOUNT NUMBER

0005139099496

- - - - -ACCOUNT SUMMARY- - - - -

PREVIOUS BALANCE AS OF 10-31-06		576.47
0 DEPOSITS/CREDITS	.00+	
1 CHECKS PAID	374.52-	
0 WITHDRAWALS/DEBITS	.00-	
SERVICE CHARGE	.00-	
NEW BALANCE AS OF 11-30-06		201.95

- - - - -CHECKS PAID- - - - -

DATE	CHECK NUMBER	AMOUNT	REFERENCE NUMBER	DATE	CHECK NUMBER	AMOUNT	REFERENCE NUMBER
11-10	1280	374.52	2902937721				

- - - - -DAILY BALANCE SUMMARY- - - - -

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
11-10	201.95				

FOR ASSISTANCE, CALL (703) 753-3514 OR FOR BB&T PHONE24, CALL (800)BANKBBT (1-800-226-5228).

BB&T

BB&T - VIRGINIA

STATEMENT DATE
11-30-06

458-03-01-00 51301 0 C 001 30 50 02
ST. PAULS EPISCOPAL CHURCH
TEACHING THE BASICS BUILDING FUND
15026 WASHINGTON ST
HAYMARKET VA 20169-2948

2120

COMMUNITY CHECKING-MM

ACCOUNT NUMBER 0005134122120

-----ACCOUNT SUMMARY-----

PREVIOUS BALANCE AS OF 10-31-06		91,396.00
1 DEPOSITS/CREDITS	2,000.00+	
0 CHECKS PAID	.00-	
0 WITHDRAWALS/DEBITS	.00-	
SERVICE CHARGE	.00-	
NEW BALANCE AS OF 11-30-06		93,396.00

-----DEPOSITS/OTHER CREDITS-----

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-15	2,000.00	PREAUTHORIZED TRANSFER ACCOUNT NUMBER 0005139150033	5139150033 5139150033

-----DAILY BALANCE SUMMARY-----

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
11-15	93,396.00				

FOR ASSISTANCE, CALL (703) 753-3514 OR FOR BB&T PHONE24, CALL (800)BANKBBT (1-800-226-5228).

BB&T

BB&T - VIRGINIA

STATEMENT DATE
11-30-06

458-03-01-00 51301 0 C 001 30 50 02
ST-PAULS EPISCOPAL CHURCH
TEACHING THE BASICS RESERVE FUND
15026 WASHINGTON ST
HAYMARKET VA 20169-2948

2465

COMMUNITY CHECKING-MM

ACCOUNT NUMBER 0005134122465

-----ACCOUNT SUMMARY-----

PREVIOUS BALANCE AS OF 10-31-06	36,296.00
1 DEPOSITS/CREDITS	100.00+
0 CHECKS PAID	.00-
0 WITHDRAWALS/DEBITS	.00-
SERVICE CHARGE	.00-
NEW BALANCE AS OF 11-30-06	36,396.00

-----DEPOSITS/OTHER CREDITS-----

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-15	100.00	PREAUTHORIZED TRANSFER ACCOUNT NUMBER 0005139150033	5139150033 5139150033

-----DAILY BALANCE SUMMARY-----

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
11-15	36,396.00				

FOR ASSISTANCE, CALL (703) 753-3514 OR FOR BB&T PHONE24, CALL (800)BANKBBT (1-800-226-5228).

BB&T

BB&T - VIRGINIA

STATEMENT DATE
11-30-06

458-03-01-00 51301 0 C 001 26 50 02
ST PAULS EPISCOPAL CHURCH
TEACHING THE BASICSACCT
15026 WASHINGTON ST
HAYMARKET VA 20169-2948

00033

COMMUNITY CHECKING-MM

ACCOUNT NUMBER 0005139150033

ACCOUNT SUMMARY

PREVIOUS BALANCE AS OF 10-31-06			3,210.33
1 DEPOSITS/CREDITS		5,000.00+	
0 CHECKS PAID		.00-	
2 WITHDRAWALS/DEBITS		2,100.00-	
SERVICE CHARGE		.00-	
NEW BALANCE AS OF 11-30-06			6,110.33

OTHER WITHDRAWALS/DEBITS

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-15	100.00	PREAUTHORIZED TRANSFER	5134122465
		ACCOUNT NUMBER 0005134122465	5134122465
1-15	2,000.00	PREAUTHORIZED TRANSFER	5134122120
		ACCOUNT NUMBER 0005134122120	5134122120

DEPOSITS/OTHER CREDITS

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
11-30	5,000.00	COUNTER DEPOSIT	5208483929

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
11-15	1,110.33	11-30	6,110.33		

FOR ASSISTANCE, CALL (703) 753-3514 OR FOR BB&T PHONE24, CALL (800)BANKBBT (1-800-226-5228).

- Barclay
- Transfer

SUNTRUST BANK
P O BOX 622227
ORLANDO FL 32862-2227

Page 1 of 2
63/B20/0175/0 /72
8826
11/30/2006



Account Statement



ST PAULS CHURCH CEMETARY FUND
PO BOX 195
HAYMARKET VA 20168-0195

Questions? Please call
1-800-786-8787

LOOKING FOR THE PERFECT GIFT? JUST ASK ABOUT OUR SUNTRUST VISA GIFT CARD.
IT'S A GIFT CARD THAT CAN BE USED EVERYWHERE IN THE UNITED STATES THAT VISA
DEBIT CARDS ARE ACCEPTED.
STOP BY YOUR LOCAL BRANCH, CALL 800.318.0210 OR VISIT SUNTRUST.COM/GIFTCARD.

Account Summary	Account Type	Account Number	Statement Period
	INTEREST CHECKING	0000000008826	11/01/2006 - 11/30/2006

Description	Amount	Description	Amount
Beginning Balance	\$17,905.61	Average Balance	\$17,905.65
Deposits/Credits	\$1.47	Average Collected Balance	\$17,905.65
Checks	\$0.00	Number of Days in Statement Period	30
Withdrawals/Debits	\$0.00	Annual Percentage Yield Earned	.10%
Ending Balance	\$17,907.08	Interest Paid Year to Date	\$13.79

Deposits/Credits	Date	Amount	Description
	11/30	1.47	INTEREST PAID THIS STATEMENT THRU 11/30

Deposits/Credits: 1 Total Items Deposited: 0

Balance Activity History	Date	Balance	Collected Balance	Date	Balance	Collected Balance
	11/01	17,905.61	17,905.61	11/30	17,907.08	17,907.08



MERCANTILE POTOMAC BANK
A DIVISION OF MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY
702 RUSSELL AVE
GAITHERSBURG, MD 20877-2686
888-345-1500

Bank 015
Account 1285
Date 10/27/06

ST PAULS EPISCOPAL CHURCH
6735 FAYETTE ST
HAYMARKET VA 20169-2916



CERTIFICATE OF DEPOSIT

Renewal Notice

Your Certificate of Deposit (CD) described below automatically renewed on the date shown. The new interest rate was determined on the date the CD renewed. To learn your Annual Percentage Yield (APY), please call the bank at 888-345-1500.

RENEWAL DATE	RENEWAL RATE	MATURITY DATE	DEPOSIT BALANCE
10/19/06	3.94000	10/19/07	100,129.32

CDs earn a fixed rate of interest for both cash and non-cash items (for example, checks) from the day of deposit to, but not including, the day of maturity. We use the daily balance method to calculate the interest on your CD. This method applies a daily periodic rate to the principal of your CD each day. The APY assumes interest will remain on deposit until maturity. A withdrawal of interest will reduce the earnings. For CDs with terms less than 12 months, interest is credited at the end of the term. For CDs with terms from 12 through 60 months, interest is compounded and credited quarterly. If you choose to receive periodic interest payments, compounding may not occur.

Step-up CDs are only available on certain CDs with 19 or 33 month terms. All other CDs with a step-up feature will no longer have the step-up feature when renewed. Contact your local banking office for details.

Partial withdrawals of principal may be allowed and may be charged an early withdrawal penalty. CDs automatically renew for the same term at maturity. You may withdraw funds for up to 10 calendar days after the maturity date without penalty. No interest is earned during the 10-day period if the CD is redeemed.

Early Withdrawal Penalty:

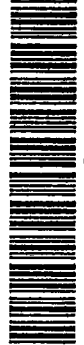
The Bank may impose a penalty if you redeem your CD prior to its maturity. The penalties are three months' interest for CDs with terms of one year or less or six months' interest for CDs with terms of more than one year. In some situations, early redemption of a CD may result in a loss of principal. Early redemption of IRA CDs may require an interest penalty plus a 10% tax penalty imposed by the Internal Revenue Service. Member FDIC.



MERCANTILE POTOMAC BANK
 A DIVISION OF MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY
 702 RUSSELL AVE
 GAITHERSBURG, MD 20877-2686
 888-345-1500

Bank 015
 Account 1286
 Date 10/27/06

ST PAULS EPISCOPAL CHURCH
 8735 FAYETTE ST
 HAYMARKET VA 20169-2916



CERTIFICATE OF DEPOSIT

Renewal Notice

Your Certificate of Deposit (CD) described below automatically renewed on the date shown. The new interest rate was determined on the date the CD renewed. To learn your Annual Percentage Yield (APY), please call the bank at 888-345-1500.

RENEWAL DATE	RENEWAL RATE	MATURITY DATE	DEPOSIT BALANCE
10/19/06	3.94000	10/19/07	20,135.30

CDs earn a fixed rate of interest for both cash and non-cash items (for example, checks) from the day of deposit to, but not including, the day of maturity. We use the daily balance method to calculate the interest on your CD. This method applies a daily periodic rate to the principal of your CD each day. The APY assumes interest will remain on deposit until maturity. A withdrawal of interest will reduce the earnings. For CDs with terms less than 12 months, interest is credited at the end of the term. For CDs with terms from 12 through 60 months, interest is compounded and credited quarterly. If you choose to receive periodic interest payments, compounding may not occur.

Step-up CDs are only available on certain CDs with 19 or 33 month terms. All other CDs with a step-up feature will no longer have the step-up feature when renewed. Contact you local banking office for details.

Partial withdrawals of principal may be allowed and may be charged an early withdrawal penalty. CDs automatically renew for the same term at maturity. You may withdraw funds for up to 10 calendar days after the maturity date without penalty. No interest is earned during the 10-day period if the CD is redeemed.

Early Withdrawal Penalty:

The Bank may impose a penalty if you redeem your CD prior to its maturity. The penalties are three months' interest for CDs with terms of one year or less or six months' interest for CDs with terms of more than one year. In some situations, early redemption of a CD may result in a loss of principal. Early redemption of IRA CDs may require an interest penalty plus a 10% tax penalty imposed by the Internal Revenue Service. Member FDIC.

TFB The Fauquier Bank

Post Office Box 561
 Warrenton, Virginia 20188
 Last statement: October 31, 2006
 This statement: November 30, 2006
 Total days in statement period: 30

Page 1 of 3
 3501
 (43)

*****AUTO**3-DIGIT 201
 3590 0.9620 AT 0.308 15 1 66
 TEACHING THE BASICS
 15026 WASHINGTON ST
 HAYMARKET VA 20169-2948

Direct inquiries to:
 Customer Service, 540-347-2700

The Fauquier Bank
 10 Courthouse Square
 Warrenton, VA 20186



Commercial Checking

Account number	0105363501	Beginning balance	\$23,129.19
Enclosures	43	Total additions:	19,781.51
Low balance	\$360.97	Total subtractions	37,360.71
Average balance	\$8,278.86	Ending balance	\$5,549.99
Avg collected balance	\$7,186.00		

CHECKS

Number	Date	Amount	Number	Date	Amount
3264	11-30	24.95	3304	11-30	87.50
3266 *	11-09	200.00	3451 *	11-02	250.00
3267	11-06	1,056.93	3467 *	11-06	602.45
3268	11-07	454.91	3468	11-27	169.00
3269	11-07	979.14	3482 *	11-13	602.45
3270	11-07	40.90	3491 *	11-01	80.00
3271	11-07	587.63	3501 *	11-07	574.00
3272	11-07	707.37	3502	11-17	523.24
3273	11-06	587.64	3503	11-27	710.74
3274	11-06	855.67	3504	11-07	572.63
3275	11-07	2,368.12	3505	11-07	1,019.99
3291 *	11-21	305.00	3506	11-06	567.99
3293 *	11-20	146.68	3507	11-01	1,167.50
3294	11-21	1,045.00	3513	11-22	572.64
3295	11-28	26.85	3514	11-27	942.99
3297 *	11-24	167.50	3515	11-22	567.98
3298	11-24	2,338.33	3516	11-07	1,750.00
3299	11-22	587.64	3517	11-21	2,132.59
3300	11-22	687.36	3518	11-29	425.71
3301	11-21	587.63	3519	11-15	221.88
3302	11-21	790.45	3521 *	11-15	76.44
3303	11-21	3,339.30			

* Skip in check sequence

The right choice for the long term[®]

American Funds[®]

P.O. Box 2280
Norfolk VA 23501-2280

Quarterly Statement

September 29, 2006

Page 1 of 1

ST PAULS EPISCOPAL CHURCH
ATTN DAVID N JONES
6735 FAYETTE ST
HAYMARKET VA 20169-2916

Your financial adviser
MULFORD
(866) 881-0723

CAPITOL SECURITIES MANAGEMENT, INC.
7918 JONES BRANCH DR STE 800
MCLEAN VA 22102-3347



For more account information

- Call your financial adviser
- Automated information and services
Website - americanfunds.com
American FundsLine[®] - 800/325-3590
- Personal assistance - 8 a.m. to 8 p.m. Eastern time M-F
Shareholder Services - 800/421-0180

Quarterly summary (July 1 - September 29, 2006)

	Value on 06/30/06	+	Additions	+	Reinvested dividends and capital gains	-	Withdrawals	+/-	Change in account value	=	Value on 09/29/06	Ending share balance
The Income Fund of America-B Account # 1013778163	\$159,841.30		\$0.00		\$1,253.80		\$0.00		\$7,377.79		\$168,472.89	8,534.594

Year-to-date dividends and capital gains

	Account #	Fund #	Dividends	Short-term capital gains	Long-term capital gains
The Income Fund of America-B	1013778163	206	\$3,661.53	\$0.00	\$0.00

Year-to-date history

The Income Fund of America - Class B

Account # 1013778163 Fund # 206
Symbol IFABX

Dividends and capital gains reinvested
Per-share average cost: Not available (please see back of statement)

Trade date	Description	Dollar amount	Share price	Shares transacted	Share balance
01/01/06	Beginning balance	\$150,234.76	\$18.01		8,341.741
03/24/06	Income Dividend	\$1,158.21	\$18.86	61.411	8,403.152
06/23/06	Income Dividend	\$1,249.52	\$18.51	67.505	8,470.657
09/22/06	Income Dividend	\$1,253.80	\$19.61	63.937	8,534.594
09/29/06	Ending balance	\$168,472.89	\$19.74		8,534.594

Daily dividend. Since the fund declares dividends daily, the amount of your income dividend depends on the number of days between the day you paid for your shares and the day the dividend was paid.

Dividend change. Beginning with the December payment, the fund will increase its quarterly dividend by approximately 1 cent per share.

00000000



Admitted

DSTP-390-04864

[Switch Client](#) | [Preferences](#) | [Help](#) | [Sign Out](#)

Search	Get a Document	Shepard's®	More	History	Alerts
------------------------	--------------------------------	----------------------------	----------------------	-------------------------	------------------------

FOCUS™ Terms

Advanced...

[Get a Document](#)[View Tutorial](#)Service: **Get by LEXSEE®**Citation: **67 va cir 122***67 Va. Cir. 122, *; 2005 Va. Cir. LEXIS 12, ***

Kelly Lynn LeBrun v. Jay B. Yakeley

Law No. 209591

CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

67 Va. Cir. 122; 2005 Va. Cir. LEXIS 12

March 7, 2005, Decided

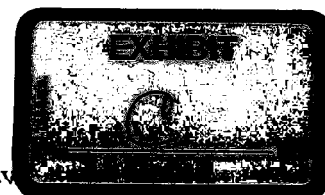
DISPOSITION: [****1**] Defendant's motion granted.**CASE SUMMARY**











PROCEDURAL POSTURE: Plaintiff former stepdaughter brought an action for intentional infliction of emotional distress against defendant former stepfather. The jury found for her, and awarded her compensatory and punitive damages. It then awarded interest. The trial court entered a final order. The former stepfather moved to modify the final order to delete any award of interest pertaining to the punitive damage award.

OVERVIEW: The former stepdaughter brought an action for intentional infliction of emotional distress against the former stepfather. Following a jury trial, the jury found in her favor. It awarded compensatory and punitive damages to her. The jury then awarded interest to the former stepdaughter on a sum that included part of the punitive damages awarded. The trial court then entered a final order reflecting the jury's verdict and damage award. The former stepfather filed a motion to modify the final order and objected to an award of interest on any amount of the jury's verdict above the compensatory damages. The trial court considered the motion and found that the purpose of the interest statute, Va. Code Ann. § 8.01-382, was to make a party whole and an award of interest regarding the punitive damage portion of the jury's verdict would not serve that purpose.

OUTCOME: The former stepfather's motion was granted and the trial court modified the final order to limit the pre-judgment interest included in the jury's award to compensatory damages only, and not the punitive damages awarded.

CORE TERMS: punitive damages, pre-judgment, final order, compensatory damages, modification, damage award, punitive, jury's award, compensatory, punish, emotional distress, sum awarded, principal sum, prejudgment interest, stepfather, compensate, commence, opinion letter, reasons stated, jury awarded, enter judgment, advisement, modified, rested



LEXISNEXIS® HEADNOTES **Hide**Civil Procedure > Remedies > Judgment Interest > General Overview **HN1**  See Va. Code Ann. § 8.01-382.Civil Procedure > Remedies > Damages > Punitive Damages Civil Procedure > Remedies > Judgment Interest > Prejudgment Interest Commercial Law (UCC) > General Provisions (Article 1) > Application & Construction > Damages **HN2**  Generally, prejudgment interest is not allowed on unliquidated damages in a dispute between the parties. [More Like This Headnote](#)Civil Procedure > Remedies > Judgment Interest > Prejudgment Interest **HN3**  Pre-judgment interest is normally designed to make the plaintiff whole and is part of the actual damages sought to be recovered. Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it. [More Like This Headnote](#)Civil Procedure > Remedies > Damages > Punitive Damages Civil Procedure > Remedies > Judgment Interest > Prejudgment Interest Torts > Damages > Punitive Damages > General Overview **HN4**  Unlike pre-judgment interest, punitive damages, by definition, are not intended to compensate a plaintiff. Instead, they are intended to punish the defendant and to serve as an example to others from acting in a similar way. Thus, the purposes of pre-judgment interest, to make the plaintiff whole, and punitive damages, to punish the defendant and serve as a deterrent to others, are antithetical. [More Like This Headnote](#)Civil Procedure > Remedies > Damages > Punitive Damages Civil Procedure > Remedies > Judgment Interest > Prejudgment Interest Torts > Damages > Punitive Damages > General Overview **HN5**  A plaintiff is not entitled to pre-judgment interest on an award of punitive damages. [More Like This Headnote](#)**HEADNOTES / SYLLABUS** **Hide****HEADNOTES**

A plaintiff is not entitled to pre-judgment interest on an award of punitive damages.

COUNSEL: Debra Fitzgerald-O'Connell, Esq., Arlington, VA.

Timothy B. Hyland, Esq., Leffler & Hyland, Fairfax, VA.

JUDGES: Jane Marum Roush.

OPINION BY: Jane Marum Roush

OPINION

[*122] OPINION LETTER

This matter came on the defendant's "Motion for Modification of the Final Order and for Reconsideration" and the plaintiff's opposition thereto. For the reasons stated below, the defendant's motion will be granted. The final order entered in this case will be modified to limit the pre-judgment interest included in the jury's award to the compensatory damages only, not the punitive damages.

Facts

The facts of this case are well-known to the parties and will be briefly summarized here. The plaintiff, Kelly Lynn LeBrun, brought this action against the defendant, Jay B. Yakeley, her former stepfather, alleging a cause of action for intentional infliction of emotional distress. After a two-day trial, the jury found in favor of the plaintiff and awarded her \$25,000 in compensatory damages and \$275,000 in punitive damages. The jury awarded the plaintiff interest on the sum of \$275,000 beginning on February 17, 2001. The defendant objects to the award of interest on any **[**2]** amount of the jury's verdict above the compensatory damages of \$25,000.

[*123] Discussion

Virginia Code § 8.01-382 provides, in pertinent part:

HN1 ¶ In any action at law or suit in equity, the verdict of the jury, or if no jury the judgment or decree of the court, may provide for interest on any principal sum awarded, or any part thereof, and fix the period at which the interest shall commence.

Virginia Code § 8.01-382. The defendant claims that "any principal sum" awarded is limited to the principal sum of any compensatory damages awarded. The plaintiff claims that "any principal sum" includes both compensatory and punitive damages.

In *Advanced Marine Enterprises v. PRC, Inc.*, 256 Va. 106, 501 S.E.2d 148 (1998), the Virginia Supreme Court held that **HN2** ¶ "generally, prejudgment interest is not allowed on unliquidated damages in a dispute between the parties." *Id.* at 126. In that case, the Court reversed an award of pre-judgment interest on both compensatory and punitive damages, because the punitive damages were not liquidated prior to the trial court's final judgment.

HN3 ¶ "Pre-judgment interest is normally **[**3]** designed to make the plaintiff whole and is part of the actual damages sought to be recovered." *Monessen Southwestern Ry. v. Morgan*, 486 U.S. 330, 335, 100 L. Ed. 2d 349, 108 S. Ct. 1837 (1988), *quoted in Shepard v. Capitol Foundry*, 262 Va. 715, 554 S.E.2d 72 (2001), and *Dairyland Insurance Co. v. Douthat*, 248 Va. 627, 449 S.E.2d 799 (1994). "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it." *Shepard, supra*, at 722, *citing J.W. Creech, Inc. v. Norfolk Air Conditioning Corp.*, 237 Va. 320, 377 S.E.2d 605, 5 Va. Law Rep. 1859 (1989), and *Jones v. Williams*, 6 Va. 102 (1799).

HN4 Unlike pre-judgment interest, punitive damages, by definition, are not intended to compensate the plaintiff. Instead, they are intended to punish the defendant and to serve as an example to others from acting in a similar way. Thus, the purposes of pre-judgment interest (to make the plaintiff whole) and punitive damages (to punish the defendant and serve as a deterrent to others) are antithetical.

Furthermore, the plaintiff has no right to punitive damages until judgment has been entered in the plaintiff's favor that awards punitive damages. Pre-judgment ****4** interest is therefore not appropriate on punitive damages because it cannot be said that the defendant has enjoyed the use of the punitive damages to which the plaintiff was entitled before judgment.

[*124] A majority of the courts from other states that have considered the issue has held that **HN5** a plaintiff is not entitled to pre-judgment interest on an award of punitive damages. See generally Annotation, *Right to Prejudgment Interest on Punitive or Multiple Damage Awards*, 9. A.L.R.5th 63 (1993).

Applying those principles to the facts of this case, the jury's award of \$25,000 was intended to compensate LeBrun for the emotional distress caused by her stepfather Yakeley. The jury's award of \$275,000 in punitive damages was intended to punish Yakeley and serve as an example to prevent others from acting in a similar way. Awarding pre-judgment interest on any part of the punitive damage award will in no way serve the purpose of Code § 8.01-382 to make LeBrun whole. Additionally, LeBrun had no entitlement to the punitive damage award until judgment was entered. Yakeley has not had the use of the \$275,000 punitive damage award to which LeBrun was entitled ****5** since February 17, 2001, the date at which the jury determined that interest should commence.

Conclusion

For the foregoing reasons, the defendant's motion will be granted. The final order will be modified to limit the pre-judgment interest awarded to the \$25,000 compensatory damages.

Sincerely,

Jane Marum Roush

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Kelly Lynn LeBRUN, Plaintiff, v. Jay B. YAKELEY, Defendant.

At Law No. 209591

ORDER

THIS MATTER came before the court on the defendant's "Motion for Modification of the Final Order and for Reconsideration" and the plaintiff's opposition thereto; and, for the reasons stated in the court's opinion letter dated March 7, 2005, a copy of which is incorporated herein, it is hereby

ORDERED that the defendant's "Motion for Modification of the Final Order and for Reconsideration" is GRANTED; and it is further

ORDERED that an amended final order reflecting this ruling will be entered by the court.

ENTERED this 7th day of March, 2005.

Jane Marum Roush

Judge

Signatures of Counsel Waived Pursuant to Rule 1:13

AMENDED FINAL ORDER

On November 29 and 30, 2004, the parties to this action came before **[**6]** this court for a jury trial.

After a jury was duly empaneled, the plaintiff introduced her evidence and rested. The defendant then moved the court to strike the plaintiff's evidence and to enter judgment in his favor. The court took that motion under advisement.

The defendant introduced his evidence. At the conclusion of the defendant's case, the plaintiff introduced testimony to rebut the defendant's evidence.

At the conclusion of the evidence, both sides having rested, the defendant renewed his motion to strike the plaintiff's evidence and to enter judgment in his favor. The motion was taken under advisement.

The jury received instructions from the court and heard closing arguments. The jury returned a verdict in favor of the plaintiff in the amount of \$25,000 in compensatory damages and \$275,000 punitive damages. The jury awarded the plaintiff pre-judgment interest on the amount of \$275,000 beginning February 17, 2001.

The defendant filed his motion to set aside the verdict, which was heard on January 28, 2005. The court denied this motion. A final order was entered on February 11, 2005.

The defendant filed his "Motion for **[*125]** Modification of the Final Order and for Reconsideration. **[**7]** " The court entered its order of February 15, 2005, suspending the final order of February 11, 2005 until the defendant's motion was ruled upon. The plaintiff filed her opposition to the defendant's motion. The court having granted the defendant's motion for modification of the final order; it is hereby

ORDERED that judgment is hereby entered in favor of the plaintiff, Kelly Lynn LeBrun, and against the defendant, Jay B. Yakeley, in the amount of \$25,000 in compensatory damages, plus interest thereon at the rate of 6% beginning February 17, 2001 until paid, plus punitive damages of \$275,000. Interest shall accrue on the punitive damages at the judgment rate from the date of this order until paid.

THIS MATTER IS FINAL.

ENTERED this 7th day of March, 2005.

Jane Marum Roush

Judge

Signatures of Counsel Waived Pursuant to Rule 1:13







Service: **Get by LEXSEE®**

Citation: **67 va cir 122**

View: Full

Date/Time: Monday, February 13, 2012 - 11:47 AM EST

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

* Click on any *Shepard's* signal to *Shepardize*® that case.

In

[About LexisNexis](#) | [Privacy Policy](#) | [Terms & Conditions](#) | [Contact Us](#)
Copyright © 2012 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

VIRGINIA: IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED
CIVIL DIVISION

KELLY LYNN LeBRUN

2002 NOV 13 AM 11:22

Plaintiff

JOHN T. FREY
CLERK-CIRCUIT COURT
FAIRFAX, VA

v.

Law No:

SERVE: JAY B. YAKELEY
c/o Computer Sciences Corporation
5154 Underwood Lane
Sterling, Virginia 20166

209591

PERSONAL SERVICE REQUESTED

Defendant

MOTION FOR JUDGMENT

COMES NOW your Plaintiff, Kelly Lynn LeBrun, by counsel, and does hereby submit this Motion for Judgment wherein she moves for judgment against Defendant, Jay B. Yakeley, on the grounds and in the amount set forth below:

1. Plaintiff, Kelly Lynn LeBrun (hereinafter "LeBrun") was, at all times referenced herein, domiciled in the Commonwealth of Virginia. This lawsuit seeks redress for the severe and permanent emotional distress and injuries she suffered as the result of the unlawful acts of her stepfather, Defendant Jay B. Yakeley, in secretly videotaping her in various stages of undress and nudity in February, 2001 while she, the Defendant and her mother, Mary Lou Yakeley were staying in VIP quarters located at Fort Monroe, Virginia.

2. Defendant Jay B. Yakeley, (hereinafter "Yakeley") was, at all times referenced herein, domiciled in the Commonwealth of Virginia, first in Vienna, then Alexandria, and now, on information and belief, in McLean, Virginia. At all times relevant to this proceeding, Yakeley publicly and privately expressed his intent and desire that LeBrun consider him to be her father in all respects and that he would fulfill that role as both guide

and protector. Notwithstanding this fact, the Defendant sexually assaulted and battered the Plaintiff on two separate occasions, the first in 1994 when she was fifteen years of age, and again in 1997, just weeks after she had turned eighteen years of age. At the time of the February, 2001 incident, the Defendant knew with certainty, or should have known, that the Plaintiff suffered severe and lasting emotional and physical distress as the result of these earlier attacks. Therefore, given his particular knowledge, and understanding with respect to the Plaintiff's particular vulnerability and susceptibility to this kind of behavior, Defendant knew or should have known that his intentional, reckless, outrageous and intolerable act of videotaping the Plaintiff in her private quarters would cause the Plaintiff to suffer severe and lasting emotional and physical damages.

4. The previous acts of sexual assault by the Defendant in 1994 and 1997 are not the subject of recovery in this lawsuit, but they nonetheless created in the Plaintiff a preexisting vulnerability which in turn made her even more sensitive and susceptible to the profound physical and emotional distress and injuries caused by Yakeley's actions in February, 2001. Further, the Plaintiff's severe and profound emotional response and injuries to the 1994 and 1997 incidents created for the Defendant certain knowledge with respect to the Plaintiff's expected emotional response to the acts perpetrated in February, 2001.

5. Further, Defendant's conduct as described herein, is and was so outrageous and intolerable that they evidence his patent and malicious disregard for commonly held notions of decency and morality.

6. The first sexual assault was committed by the Defendant against in the Plaintiff in 1994 when they were living on the Navy base located in Alameda, California. In the 1994 incident, Yakeley first asked LeBrun to allow him to touch her breasts, but when she refused

to allow him to do so, he forcefully thrust his hands under her shirt and proceeded to fondle her breasts against her will.

7. LeBrun was shocked and brutalized by Yakeley's sexual attack, but, due to her tender age and inexperience, and out of a deep concern and love for her mother, she mistakenly believed that secrecy would protect her mother and preserve what she at that time considered to be a "fairy-tale" family, and so did not relate the incident to her mother or any other adult at that time. She withdrew unto herself, internalizing the emotional and physical abuse, ever apprehensive that her step-father would once again sexually assault and batter her, and fearing that that he would ultimately be successful in forcing her have sexual relations with him.

8. In June, 1997, Mrs. Yakeley was required to be out of the home to take care of her ailing mother in Indiana, and the Defendant, taking advantage of this absence, sexually assaulted and battered his step-daughter by getting into her bed in the middle of the night while she was sleeping, straddling her body with his legs, attempting to force her down onto the bed into a prone position and placing his hands on and under LeBrun's clothing in an attempt to fondle her breasts and other body parts.

9. LeBrun struggled with Yakeley, extricating herself from the Defendant's physical control and domination, and in doing so, escaped what she reasonably believed was a situation that would have ultimately resulted in forced sexual intercourse with her stepfather.

10. Plaintiff became so emotionally distraught over the incident that Yakeley immediately became remorseful and apologetic, tearfully promising that his behavior would never be repeated and begging for her forgiveness while entreating her not to tell her mother about the incident.

11. However, on this occasion, despite Yakeley's tearful and profound apologies and promises, LeBrun contacted her mother, who immediately returned to the family home. It was at this time that LeBrun first informed her mother as to occurrence of the prior sexual assault and battery in 1994.

12. While it was the intent of both LeBrun and her mother at that time of the second attack to place criminal and civil charges against Yakeley, the Defendant pled with both his wife and his step-daughter to abstain from seeking such remedies, but rather to allow him to seek professional counseling to assist him in overcoming his drinking problems which he claimed were the cause of his lewd and lascivious acts.

13. Given that she would shortly be absent from the family home due to her imminent matriculation as a freshman at Texas A & M, and believing Yakeley's assurances that the conduct would not be repeated and his promises to seek professional counseling and other assistance; LeBrun agreed to continue the familial relationship due in no small part to her long-standing love for her step-father and her deep and abiding love and concern for her mother.

14. Once again however, the love, trust, forgiveness, and consideration LeBrun felt for the Defendant was tragically misplaced. On the weekend of February 16 - 18, 2001, LeBrun, anxious to pursue scholarship opportunities, participated as a contestant in the preliminary competition for the Miss Virginia Pageant in the Norfolk, Virginia area. LeBrun, her mother and Yakeley availed themselves of admiral's accommodations at nearby Fort Monroe, Virginia, beginning on Friday night, with LeBrun occupying a small study adjacent to the room occupied by Yakeley and her mother. At some point after their arrival, and unbeknownst to either LeBrun or her mother, Yakeley set up a hidden video camera in

LeBrun's room so as to record all of her activities, including dressing and undressing throughout the course of the weekend. .

15. Early Sunday morning LeBrun, having won the pageant, returned to her room and was in the process of disrobing and preparing for her award breakfast when she noticed the video camera that Yakeley had placed in her room, hiding it with an overturned flight bag. Upon realizing that he had filmed her in various states of undress and nudity over the course of two previous days, LeBrun became so emotionally distraught that her mother was alerted, and in coming to her daughter's assistance, whereupon she too became aware of the existence of the camera and Yakeley's use thereof.

16. Defendant Yakeley was also present at the time LeBrun discovered the video camera, and while first denying his action, he finally admitted that he had placed it in his stepdaughter's room to record her private activities during the course of the weekend.

17. As had been the case in the prior incidences, Yakeley professed to be profoundly sorrowful, threatening to kill himself if he were not forgiven yet again by LeBrun and her mother for his perverse acts. However, neither LeBrun or her mother were willing to accept any further assurances or promises from Yakeley and Mrs. Yakeley demanded that he remove himself from the family home. The Defendant has not been allowed to return to the family home since February, 2001.

18. As the self-proclaimed "father" and caretaker of Plaintiff LeBrun, Defendant Yakeley had a duty to provide her with a safe and protected living environment, free from threats of mental and physical harm and injury. Furthermore, based on his intimate observations and direct experience with respect to the Plaintiff's severe emotional response and distress as the result of his prior sexual assaults, Defendant Yakeley knew or should have

known that his act of videotaping the Plaintiff in her private quarters in February, 2001 would cause her to suffer severe and permanent emotional distress and injuries.

19. Defendant's intentional, reckless and shocking act of secretly videotaping the Plaintiff in various stages of undress and nudity in February, 2001 was *malum in se* and was behavior so shockingly outrageous, intolerable, unlawful and immoral that it transcended commonly held notions of decency and morality, forcing the Plaintiff to suffer severe and profound emotional distress and injuries that no person should be expected to endure.

20. As the direct and proximate result of Defendant's willful, wanton, reckless, intentional, unlawful, perverse and malicious act of secretly videotaping the Plaintiff in various stages of undress and nudity in her private quarters in February, 2001, she suffered severe emotional distress, with lasting and permanent mental and emotional damage, including but not limited to humiliation, embarrassment, self-disgust, guilt and mental anguish, as well as invoking feelings of anxiety, fear of imminent bodily harm,, sexual assault and battery by the Defendant and a reasonable belief that she is in danger of being forced to have sexual intercourse with her step-father, all of which shall be severe and permanent throughout the course of her life.

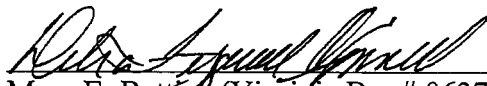
21. Further, as the direct and proximate result of Defendant's willful, wanton, reckless, intentional, unlawful, perverse, malicious act of secretly video taping the Plaintiff in various stages of undress and nudity in her private quarters in February, 2001, and the resulting severe emotional, mental, and physical distress described herein, the Plaintiff has been forced to seek professional medical and psychological care in an effort to deal with the trauma and emotional distress; was diverted and distracted from fully and freely pursuing her college education, and has otherwise sustained severe and permanent damages and injuries.

000006

WHEREFORE, Plaintiff Kelly Lynn LeBrun respectfully that she have a trial by jury, and demands judgment against Defendant Jay B. Yakeley as follows:

1. Compensatory damages in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00);
2. Punitive damages in the maximum amount allowed by the laws of the Commonwealth of Virginia, said amount currently set at THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00);
3. Her attorneys' fees and costs expended herein; and
4. For other and such relief as is just and meet.

Respectfully submitted,
KELLY LYNN LeBRUN
By Counsel



Marc E. Bettius (Virginia Bar # 06379)
Debra Fitzgerald-O'Connell (Virginia Bar # 31778)
LAWSON & FRANK, P.C.
6045 Wilson Boulevard
Suite 100
Arlington, Virginia 22205
Telephone - 703-534-4800
Facsimile - 703-534-8225
Counsel for Plaintiff

[Switch Client](#) | [Preferences](#) | [Help](#) | [Sign Out](#)

Search	Get a Document	Shepard's®	More	History	Alerts
------------------------	--------------------------------	----------------------------	----------------------	-------------------------	------------------------

FOCUS™ Terms

[Advanced...](#) [Get a Document](#)[View Tutorial](#)Service: **Get by LEXSEE®**Citation: **49 va cir 436***49 Va. Cir. 436, *; 1999 Va. Cir. LEXIS 363, ***

United Healthcare Services, Inc., and William L. Griffith & Co. of Va., Inc. v. B. F. Saul Real Estate Investment Trust v. Trammel Crow Real Estate Services, Inc.

Case No. (Law) 174215

CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

49 Va. Cir. 436; 1999 Va. Cir. LEXIS 363

August 18, 1999, Decided

CASE SUMMARY

PROCEDURAL POSTURE: The court entered judgment on plaintiff tenant's complaint against defendant landlord for recovery of withheld tenant improvement allowance due to plaintiff under the parties' lease. Plaintiff also sought an award of attorney's fees as sanctions for defendant's baseless pleadings pursuant to Va. Code Ann. § 8.01-271.1.

OVERVIEW: Plaintiff tenant's lease with defendant landlord provided for defendant's payment of an improvement allowance for improvements made by plaintiff. Plaintiff's contractor damaged non-leased property belonging to defendant in the process of making plaintiff's improvements. Defendant refused the contractor's offer to repair the damage or to accept an offset against the improvement allowance for the amount of damage caused and defendant refused to pay the tenant improvement allowance. The court entered judgment for plaintiff. The court found that defendant suffered no damages because the property damaged would have been razed by the next tenant to occupy the space in any event. The court said that plaintiff was entitled to an award of attorney's fees pursuant to Va. Code Ann. § 8.01-271.1 because defendant's position, including an asserted counterclaim, which it later dropped, was without a viable claim or defense. Applying the standard established by the statute, the court said that defendant's counsel knew, or should have known, through reasonable inquiry, that defendant's asserted claims and defenses were without merit.


OUTCOME: The court entered judgment for plaintiff for the withheld tenant improvement monies due under the lease because defendant suffered no damage by the inadvertent destruction of non-leased property by plaintiff's contractor. The court also awarded plaintiff its attorney's fees and costs because the position of defendant in its defense and its counterclaim was unreasonable and had no basis.


CORE TERMS: tenant's, space, demolished, withheld, attorney's fees, lost rent, demolition, allowance, tenant improvement, reasonable inquiry, replace, deposition, lease, leased


premises, replacement, prior to trial, counterclaim, outset, real estate, substantive evidence, withholding, destruction, lease agreement, consequential, interpreting, groundless, reimburse, colorable, totally, viable


LEXISNEXIS® HEADNOTES

[Hide](#)

Civil Procedure > Sanctions > Baseless Filings > General Overview 

HN1  See Va. Code Ann. § 8.01-271.1.

Civil Procedure > Sanctions > Baseless Filings > General Overview 

HN2  It is clear that the duty of reasonable inquiry is ongoing. The duty of reasonable inquiry arises each time a lawyer files a pleading, motion, or other paper' or makes an oral motion. Va. Code Ann. § 8.01-271.1. More Like This Headnote

HEADNOTES / SYLLABUS

[Hide](#)

HEADNOTES

HEADNOTE: Where a defendant files a totally groundless defense and continues with it during the course of the litigation, it may be required to reimburse the plaintiff for its attorney's fees as a sanction under Va. Code § 8.01-271.1.

JUDGES: **[**1]** BY JUDGE R. TERRENCE NEY

OPINION BY: Ney

OPINION

[*436] This matter was tried before me on August 2 and 3, 1999. At the conclusion of the trial, I took the matter under advisement. For the reasons stated herein, I find for the Plaintiff, United Healthcare Services, Inc. ▼

On April 25, 1996, Plaintiff United Healthcare Services, Inc. ▼(hereinafter "UHC") entered into an agreement with Defendant B. F. Saul Real Estate Investment Trust (hereinafter "Saul") for the lease of certain commercial property ("the leased premises") in McLean, Virginia. The lease agreement included a tenant improvement allowance in the amount of \$ 699,700 for UHC to make improvements to the leased premises.

Plaintiff Wm. L. Griffith & Co. of Virginia, Inc. (hereinafter "Griffith") is a general contractor hired by UHC to construct certain tenant improvements on the leased premises. In May 1996, Griffith demolished certain improvements owned by Saul located outside of the leased premises. Saul **[*437]** claimed substantial financial damages as a result of Griffith's actions and withheld \$ 301,337.04 in tenant improvement funds which were due UHC.

On May 24, 1998, UHC and Griffith filed this action against Saul, seeking **[**2]** recovery of the withheld tenant improvement allowance and a declaratory judgment establishing Griffith's right of equitable subrogation to UHC. Saul filed a counterclaim alleging, inter alia, negligence

against Griffith and UHC and seeking recovery of lost rent and replacement cost damages.

On July 30, 1999, Plaintiff Griffith and Third-Party Defendant Trammel Crow Real Estate Services, Inc., were dismissed from this action. Trammel Crow was brought into the suit as a counter-defendant by Saul.

On August 2, 1999, the day of trial, Saul suffered a nonsuit as to its counterclaim for lost rent against UHC.

Two issues are presented for decision. First, whether Saul improperly withheld the tenant improvement funds from UHC. Second, if so, whether Saul should be required to reimburse UHC for its attorney's fees and costs pursuant to Virginia Code § 8.01-271.1 because of its assertion of groundless defenses and counterclaims to UHC's action. I answer both questions in the affirmative.

I. Saul's Withholding of UHC's Tenant Allowance Funds

Rarely does an action involving commercial leasing, landlord and tenant, and breach of contract issues, including construction overtones, if not disputes, **[**3]** present such an uncomplicated set of virtually, if not completely, undisputed facts.

The situation is disarmingly simple. The landlord, Saul, agreed to allow its tenant, UHC, \$ 699,000.00 in tenant allowances. The monies were withheld by Saul to be paid upon completion of the tenant work. UHC hired Griffith to do the work, which included demolition of improvements in the space to be occupied by UHC. Griffith, through plain error, demolished improvements in adjacent, unoccupied space belonging to Saul. Upon its discovery, the same day as the demolition occurred, Griffith offered to rebuild the improvements or allow a credit for their value to Saul. UHC Exhibit No. 7. Saul did not accept either offer and subsequently advised UHC that it had suffered damages by reason of the demolition in the amount of \$ 301,000.00, ¹ which it then unilaterally withheld from the \$ 699,000.00 tenant allowance it was holding.

FOOTNOTES

¹ Later, this sum was increased to \$ 324,000.00. By trial, it had shrunk to \$ 210,000.00.

[*438] **[**4]** The damages asserted by Saul consisted of two elements, lost rent in the amount of \$ 116,126.68 and the costs of replacement of the demolished improvements in the amount of \$ 210,628.00. By trial, if not before, it was absolutely clear that Saul had suffered no lost rent damages - it never had a tenant for the space - and further that it had never spent any monies to "replace" the demolished improvements. Even more telling, Saul's subsequent tenant for the space, the American Arbitration Association, redesigned it completely so that all that had been inadvertently demolished by Griffith would have had to be intentionally demolished by Saul. What little remained to be demolished was at less cost to Saul, approximately \$ 7,500.00 less, as a result of Griffith's prior efforts. UHC Exhibit No. 50 (trial testimony of Frederick Hammond).

Notwithstanding these events, Saul refused to release the withheld monies to UHC, and this suit followed. ²

FOOTNOTES

² Griffith was an initial plaintiff as an alleged equitable subrogee to the rights of UHC by virtue of an indemnification agreement between it and UHC. Trammell Crow, the real estate broker for the alleged lost tenant Infotech, was brought in by Saul. Both parties were

dismissed prior to trial.

[5]** One searches for a colorable, much less justifiable, reason for the withholding of the funds, at least after the initial recognition that no tenant was lost and the demolished improvements would have had to have been demolished in any event. Not only did the existing improvements fail to fit the configuration of the space eventually occupied by the AAA, but they were antiquated and failed to comply with the Americans with Disabilities Act, which became law subsequent to their construction but prior to AAA's proposed use of the space. And, whatever may be said about the initial wisdom to withhold the funds after demand and after the onset of this litigation, withholding them after the demand of April 30, 1999, when the totally baseless nature of Saul's claims was clearly explained in a letter to counsel,³ is unfathomable.

FOOTNOTES

³ UHC Exhibit No. 1.

Simply put, despite the unintentional destruction of Saul's improvements by Griffith,⁴ Saul suffered absolutely no money damages whatsoever from their destruction. **[**6]** Saul did not even attempt to show a loss of rent; it nonsuited that claim on the morning of trial.

FOOTNOTES

⁴ Griffith is assumed for purposes of this opinion to be UHC's agent.

Saul's proof as to the replacement costs might have had some resonance if it had been accompanied by even a suggestion that Saul intended or planned, or seriously considered, or did anything whatsoever evidencing an intention to spend the withheld monies on the affected space because of the **[*439]** harm caused by the demolition. Not only did it not do so, but, to the contrary, its own employees acknowledged that it would have been "ridiculous" to do so until such time as the needs of any new tenant could be determined. (Deposition testimony of Frederick Hammond at 106:17-20 and 107:3-11 (read into the record as substantive evidence).) In that respect alone, Saul acted wisely. The evidence was clear that the AAA would not use any of the existing improvements and that they would had to have been demolished in their entirety. UHC Exhibit No. **[**7]** 3.

In short, there was absolutely no basis for Saul to withhold any part of UHC's tenant allowance. Saul suffered no damages as a result of the unintentional demolition by Griffith of the improvements in the adjacent space. For these reasons, UHC's claim as to the withheld monies in the amount of \$ 351,057.65, which includes prejudgment interest from September 16, 1997, is granted.

II. Attorney's Fees

Virginia Code § 8.01-271.1 provides, in pertinent part:

HN1 ✎ The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation....

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a **[**8]** represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

The purpose of the section is clear - to place a reasonable duty of inquiry upon counsel before initiating or continuing to prosecute baseless litigation.

[*440] Courts have been reluctant if not loath to enforce the same or similar provisions.⁵ Whether based on our heritage of "American Rule" dicta as to each party's responsibility for attorney's fees, or a genuine respect for the ultimate value of "zealous representation," only a few courts have been willing to impose an obligation for attorney's fees absent explicitly apparent egregious circumstances or conduct.

FOOTNOTES

⁵ Virginia courts, however, have awarded attorney's fees and costs as sanctions pursuant to Va. Code § 8.01-271.1 for a party's failure to perform a reasonable pre-filing inquiry into the factual basis of its position. See, e.g., *Taylor v. Midgett*, 46 Va. Cir. 152 (City of Norfolk 1998); *Dove v. Dayton Town Council*, 39 Va. Cir. 159 (Rockingham County 1996); *Murphy v. Chadwyck-Healey, Inc.*, 31 Va. Cir. 163 (City of Alexandria 1993). Virginia courts also have held that federal opinions interpreting Federal Rule of Civil Procedure 11 are useful in interpreting Va. Code § 8.01-271.1. See, *Oxenham v. Johnson*, 241 Va. 281, 402 S.E.2d 1 (1991).

[9]** Here, UHC challenges the conduct of Saul's counsel throughout the course of the litigation - by continuing with it though it knew Saul had no viable claim or defense - as well as the conduct of its counsel at the outset, namely by signing pleadings that asserted claims that were known, or should have been known upon reasonable inquiry, to have been without merit.

Saul's counsel responds that as to the lost rent claim, it justifiably relied upon a letter from Brian Petruska, a commercial leasing agent for Trammell Crow, who represented the allegedly "lost" tenant, Infotech. The letter, dated May 16, 1996, stated as follows:

I want to thank you for your May 8, 1996, proposal to lease space at 8201 Greensboro Drive. Unfortunately, Infotech can no longer consider the building as an option due to the demolition of the perimeter offices. In addition to the potential impact on the economics [sic], the tenant requires as-is space with "immediate" occupancy.

Saul Exhibit No. 12.

Yet, despite this letter, Saul, if not its outside counsel, had to know that it never had a lease agreement with Infotech or was even close to having one. Worse yet, no one from Infotech even remotely suggested **[**10]** that it wanted the space "as is" or even wanted the space at all. The evidence at trial was completely to the contrary. Saul's vice president, Byron Barlow, admitted at trial that even if Saul had an offer to lease from Infotech - which it did not - it was not bound to accept it, and, in fact, did not even purport to accept it. There was no offer to accept. In any event, only one telephone call or letter to Mr. Petruska would have revealed that his letter was a sham. The **[*441]** letter was written as a "favor" to a Saul employee who was trying to protect himself from any adverse consequences as a result of this entire matter. UHC Exhibit No. 76 (deposition testimony of Brian Petruska dated July 12, 1999, who testified as follows: "Brian Katz, who I had known for probably 10 years, was a friend of mine and a co-worker, opposite, different firms, and he asked me to write it.... And he wanted me to help write

him a letter that would cover his [expletive deleted] basically."). This could have been - and should have been - discovered upon reasonable investigation of Saul's counsel. And, even if it was not discovered prior to the institution of the litigation, it was learned certainly *****11** well prior to trial. In short, there never was a colorable - much less viable - lost rent claim. The UHC/Saul lease agreement also contained a clause that explicitly waived consequential damages. The lost rent claim would certainly constitute a consequential, as opposed to direct, damage. *NAJLA Associates, Inc. v. William L. Griffith & Co.*, 253 Va. 83, 480 S.E.2d 492 (1997).

Insofar as the replacement costs' claim is concerned, Saul's counsel had to know prior to trial that Saul had not suffered even a scintilla of damages. The proof here is also crystal clear.

1. Griffith offered to replace the premises. Saul did not accept. UHC Exhibit No. 7.
2. Griffith offered Saul a credit. Saul did not accept. UHC Exhibit No. 7.
3. Saul never intended to replace the improvements until it knew what its next tenant would require. Deposition testimony of Steven Corey at 153:15-21 (read into the record as substantive evidence).
4. Saul recognized that to replace the improvements prior to knowing the new tenant's requirements would be "ridiculous." Deposition testimony of Frederick Hammond at 106:17-20 and 107:3-11 (read into the record as substantive evidence).
5. Saul did not *****12** replace the improvements.
6. Saul enjoyed a reduced cost of demolition thanks to Griffith's inadvertent destruction of nearly all of the improvements. Trial testimony of Frederick Hammond.
7. The improvements were outdated, outmoded, used, and did not comply with the requirements of the Americans with Disabilities Act. UHC Exhibit No. 3.
8. The AAA could not use any of its existing improvements. UHC Exhibit No. 3.

On top of this, Saul admitted that it never segregated or escrowed the funds withheld, had no plans for them if it prevailed in this litigation, and had simply included them in its general operating account.

*****442** Against all of this, no compelling reasons exist for not imposing on Saul the responsibility for UHC's and Griffith's attorney's fees and costs, which never would have been incurred but for Saul's unreasonable position in this matter from the outset and throughout the course of this litigation. As stated previously, at least by April 30, 1999, Saul and its counsel fully knew the potential consequences of its obdurate behavior. Yet that same behavior continued. In Virginia, ^{HN2} it is clear that the duty of reasonable inquiry is ongoing. "The duty of 'reasonable *****13** inquiry' arises each time a lawyer files a 'pleading, motion, or other paper' or makes 'an oral motion'." Virginia Code § 8.01-271.1. *Oxenham v. Johnson*, 241 Va. 281, 288, 402 S.E.2d 1, 4 (1991) (emphasis in the original).

If, and it is a very big "if," Saul and its counsel were not under a duty at the outset of this litigation to make such reasonable inquiry so that they would know or should have known of the meritless nature of Saul's claim and defenses - and I hold that they were and should have known - Saul and its counsel certainly knew during the course of the litigation the true nature of the situation. See *Nemeroff v. Abelson*, 704 F.2d 652 (2d Cir. 1983); *Decision Support Systems, Inc. v. Universal Data Systems, Inc.*, 46 Va. Cir. 201 (Fairfax County 1998) (appeal denied).

Accordingly, UHC's and Griffith's claims, pursuant to § 8.01-271.1, for attorney's fees and costs are granted in the sum of \$ 251,018.16 against Saul. If the reasonableness of these fees and

costs is contested by Saul, then a separate hearing will be set to address that issue.







Service: **Get by LEXSEE®**

Citation: **49 va cir 436**

View: Full

Date/Time: Monday, February 13, 2012 - 11:46 AM EST

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

* Click on any *Shepard's* signal to *Shepardize®* that case.

In

[About LexisNexis](#) | [Privacy Policy](#) | [Terms & Conditions](#) | [Contact Us](#)
Copyright © 2012 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

FILED

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

88 AUG 24 PM 2:06
JOHN T. ...
CLERK, CIRCUIT COURT
FAIRFAX

UNITED HEALTHCARE SERVICES, INC.,)
300 Opus Center)
9900 Bren Road East)
Minnetonka, Minnesota 55343,)

and)

WM. L. GRIFFITH & CO. OF VIRGINIA, INC.,)
2721 D Merrilee Drive)
Fairfax, Virginia 22031,)

Plaintiffs,)

v.)

At Law No. _____

174215

B.F. SAUL REAL ESTATE INVESTMENT)
TRUST,)
8401 Connecticut Avenue)
Chevy Chase, Maryland 21202,)

SERVE:)
CT Corporation)
Registered Agent)
300 E. Lombard Street)
Baltimore, Maryland 21202,)

Defendant.)

MOTION FOR JUDGMENT

Plaintiffs United HealthCare Services, Inc. ("UHC") and Wm. L. Griffith & Co. of Virginia, Inc. ("Griffith"), by their attorneys, bring this action against B.F. Saul Real Estate Investment Trust ("Saul"), and allege upon information and belief as follows:

PARTIES

1. UHC is a Minnesota corporation with its principal place of business at 300 Opus Center, 9900 Bren Road East,

Minnetonka, Minnesota. UHC does business under the trade name United HealthCare Services of Minnesota, Inc.

2. Griffith is a Virginia corporation with its principal place of business at 2721 D Merrilee Drive, Fairfax, Virginia. Griffith's business is general contracting.

3. Saul is a real estate investment trust with its principal place of business located at 8401 Connecticut Avenue, Chevy Chase, Maryland. Saul is the fee owner of the property described as 8201 Greensboro Drive, McLean, Fairfax County, Virginia ("Building"), which is the subject of this action. At all relevant times, Saul transacted business in the Commonwealth of Virginia.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

4. On or about April 25, 1996, Saul, as Landlord, and UHC, as Tenant, entered into that certain Lease Agreement ("Lease") for approximately 34,985 gross rentable square feet on the 5th and 6th floor located in the Building ("Leased Premises").

5. Pursuant to the Lease, Saul agreed to pay UHC a Tenant Improvement Allowance for UHC to build out and make tenant improvements to the Leased Premises, in the sum of \$699,700.

6. Also pursuant to the Lease, UHC entered into a Work/Construction Agreement with Griffith dated April 15, 1996 to construct certain tenant improvements in the Leased Premises (the "Tenant Improvement Contract"). UHC has completed the tenant improvements pursuant to its Contract with Griffith.

7. By the terms of the Contract, Griffith is obligated to indemnify UHC, including without limitation, paragraph XIX, which states:

Contractor shall indemnify and save harmless Tenant and TCCs and any of their direct or indirect parents, subsidiaries and affiliates and each of their respective officers, directors, agents, successors and assigns, and if Tenant is a lessee, Tenant's landlord (the Indemnified Parties) from and against any liabilities, damages, costs, suits, claims arising out of or in any way connected to Work performed or to be performed, or a product or service supplied under or in connection with this Agreement. This indemnification clause includes but is not limited to the following: (1) injury to, or death of, any person, including agents, employees, subcontractors, suppliers or materialmen, (2) loss of, or damage to, property, (3) claims of subcontractors, suppliers, materialmen or workmen, (4) royalties, license fees and claims for patent infringement, (5) claims against Tenant for express or implied indemnity or contribution arising by the reason of any of the above; but all of the foregoing shall only apply to the extent that the foregoing directly relate to or result from, the Work performed or to be performed, or a product or service supplied or to be supplied under or in connection with this Agreement.

8. Pursuant to the Lease and Contract, Griffith demolished certain areas in the Building in order to build the tenant improvements.

9. Saul has alleged that Griffith demolished areas outside of the Leased Premises and alleges that it suffered damages of \$364,329.68.

10. Griffith has acknowledged that, to the extent, if any, UHC is liable to Saul by reason of Griffith's acts or

omissions in connection with the build out for the tenant improvements, it is obligated to indemnify UHC for such actions or omissions and stands ready to do so.

11. Saul has refused to pay UHC under the Lease the sum of \$301,337.04 for the Tenant Improvement Allowance, asserting that is entitled to offset against the Tenant Improvement Allowance sums due by reason of Griffith's acts or omissions.

12. Saul's refusal to pay UHC amounts due under the Lease for the Tenant Improvement Allowance is contrary to both the Lease and applicable law.

13. The amounts Saul has refused to pay are unreasonable, excessive and bear no relationship to its actual damages, if any.

14. Section 48 of the Lease provides that UHC may recover its reasonable costs, including attorneys' fees, in the case of Saul's default. UHC has acknowledged that Griffith is an intended third party beneficiary of Section 48 of the Lease to the extent Griffith is required to indemnify UHC because of Saul's wrongful conduct.

15. UHC has made repeated demands that it be paid the balance due it under the Lease for the Tenant Improvement Allowance, including without limitation, letters dated September 22, 1997 and March 3, 1998, which are attached hereto and incorporated herein by reference as Exhibits A and B, respectively.

16. Saul's refusal to pay UHC amounts due under the Lease for the Tenant Improvement Allowance is in breach of and a default under the Lease.

17. UHC and Griffith have been damaged by the breaches of the Lease by Saul.

COUNT I

Breach of Contract

18. Plaintiff UHC incorporates by reference the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

19. Plaintiff UHC has performed all of its obligations under the Lease.

20. Saul has breached the Lease by refusing and failing to pay UHC the balance owed under the Lease for the Tenant Improvement Allowance.

21. As a direct and proximate result of Saul's breach of the Lease, UHC has incurred damages in the amount of \$301,337.04, plus interest, costs and attorneys' fees; and Griffith has incurred damages in the form of costs and attorneys' fees.

WHEREFORE, Plaintiffs demand judgment on this Count I:

(1) in favor of UHC in an amount not less than \$301,337.04, plus prejudgment interest, costs of suit, and reasonable attorneys' fees;

(2) in favor of Griffith for costs of suit and reasonable attorneys' fees in an amount to be determined at trial; and

(3) all such other relief as this Court may deem just and proper.

COUNT II

Declaratory Judgment For
Equitable Subrogation by Plaintiff Griffith

22. Plaintiff Griffith incorporates by reference the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

23. As an indemnitor to UHC under the Tenant Improvement Contract, Griffith is entitled to equitable subrogation to the extent Griffith is required to indemnify UHC because of Saul's failure to pay UHC the balance owed under the Lease pursuant to the Tenant Improvement Allowance. Under the doctrine of equitable subrogation, Griffith is subrogated to UHC's claims against Saul for the amounts due UHC under the Lease.

24. As a result of Saul's failure to pay UHC the balance due for Tenant improvements, there exists an actual controversy as to whether Griffith's acts of demolition caused any damage to Saul's property and, if so, the amount of such damage.

25. Plaintiff Griffith seeks a declaratory judgment determining and declaring the amount of Saul's damages, if any, resulting from Griffith's demolition of any areas in the Building outside the Leased Premises, and establishing Griffith's right of subrogation to UHC's claims against Saul.

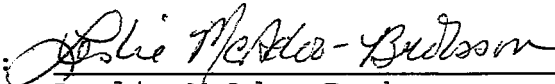
WHEREFORE, Plaintiff Griffith requests the Court to enter a declaratory judgment determining and declaring the rights of the parties with respect to the amount of Saul's damages, if any, and

establishing Griffith's rights to equitable subrogation, together with Griffith's costs of suit, reasonable attorneys' fees and all such other relief as this Court may deem just and proper.

Respectfully submitted,

Of Counsel:

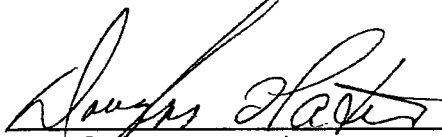
S. Scott Morrison
HOLLAND & KNIGHT LLP
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037
(202) 955-3000

By: 
Leslie McAdoo-Brobson
(VA Bar #41692)
HOLLAND & KNIGHT LLP
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037
(202) 955-3000

Attorney for Plaintiff WM. L.
GRIFFITH & CO. OF VIRGINIA, INC.

Of Counsel:

Steven K. Champlin
DORSEY & WHITNEY LLP
Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-1498
(612) 340-2913


Douglas L. Patin
(VA Bar #20324)
Andrew Bramnick
SPRIGGS & HOLLINGSWORTH
1350 I Street, N.W., 9th Floor
Washington, DC 20003
(202) 898-5800

Attorneys for Plaintiff UNITED
HEALTHCARE SERVICES, INC.

Dated: August 20, 1998

WAS1-358370.2