No. _____

In The

# Supreme Court of the United States

BEVERLY L. HENNAGER,

*Petitioner,*

v.

TROUTMAN SANDERS LLP,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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*Petitioner - pro se*

## QUESTIONS PRESENTED

1. Whether the rules and laws governing how charging liens are imposed and executed in Federal District Courts should be clarified so as to uniformly apply in all Federal Courts. To establish clarification that charging liens do not apply to any money due a client, but only to judgments obtained with the lawyer's assistance. To provide judicial interpretation of 2006 Code of Virginia 54.1-3932 in order to protect the constitutional rights of citizens provided under the Fourteenth Amendment that "no person shall be deprived of life, liberty, or property without due process of law", and that all persons are entitled to "equal protection of the laws".

2. At issue is a) whether a Federal District Court may grant charging liens to attorneys representing a Defendant when the attorneys did not render services to obtain a monetary judgment and where the client acting pro se achieved the distribution of funds over a year after the attorneys withdrew; b) whether a client has the legal right to contest charges of an attorney and be heard in a court of law, prior to judgment awarding payment.

3. Petitioner requests the Court remand case 1:15-cv-00149-LO-TCB to another jurisdiction for Motion by FRCP 60(a)(3), given the Petitioner, as a defendant, was threatened with a prefiling injunction to bar further action.

## PARTIES

Beverly L. Hennager
—*Petitioner*

Troutman Sanders LLP
—*Respondent*

Underlying case; 1:15-cv-00149-LO-TCB
Katherine R. Dauphin
—*Plaintiff*

v.

Beverly Hennager and Louis Jennings Jr.
—*Defendants*

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## PRIOR OPINIONS

The December 3, 2018 opinion whose review is sought is unpublished and is reproduced in the Appendix at App 1-2. The District Court's June 15, 2018 Order affirmed by the opinion is reproduced in the Appendix at App. 3-6. The Magistrate Judge's May 30, 2018 Report and Recommendation is reproduced in Appendix at App. 7-15. The Magistrate Judge's August 8, 2017 Order affirmed by the District Court Order is reproduced in the Appendix at App. 16.

## JURISDICTION

Petitioner seeks this Court's review of the judgment entered December 3, 2018, with the formal Mandate entered on December 26, 2018, by the United States Court of Appeals for the Fourth Circuit. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition is timely because it was mailed within the ninety days of December 3, 2018, entry of judgment. The action pursued by Troutman Sander LLC was not formally filed before any tribunal but is associated with Civil Action No: 1:15-cv-00149-LO/TCB.

## CONSTITUTIONAL PROVISIONS

Amendment V, United States Constitution in pertinent part provides:

No person shall be deprived of life, liberty or property without due process of the law.

Amendment XIV, United States Constitution in pertinent part provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATUTES INVOLVED

Title 28 U.S.C. Section 455(a) states:

Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

2006 Code of Virginia 54.1-3932 – Lien for Fees

A. Any person having or claiming a right of action sounding in tort, or for liquidated or unliquidated damages on contract or for a cause of action for annulment or divorce, may contract with any attorney to prosecute the same and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. When any such contract is made, and written notice of the claim of such

lien is given to the opposite party, his attorney or agent, any settlement or adjustment of the cause of action shall be void against the lien so created, except as proof of liability on such cause of action. Nothing in this section shall affect the existing law in respect to champertous contracts. In causes of action for annulment or divorce an attorney may not exercise his claim until the divorce judgment is final and all residual disputes regarding marital property are concluded. Nothing in this section shall affect the existing law in respect to exemptions from creditor process under federal or state law.

B. Notwithstanding the provisions in subsection A, a court in a case of annulment or divorce may, in its discretion, exclude spousal support and child support from the scope of the attorney's lien. (Code 1950, 54-70; 1988, c. 765; 2001, c. 495.)

## STATEMENT OF THE CASE

In addition to judicial interpretation, the Petitioner is seeking remand for Fraud upon the Court, which must be presented with particularity. Documents referenced herein are also referenced in 4th Cir. 17-1556, 17-1794, 17-1850 and 18-1671.

**Introduction**

1. It is widely recognized that charging liens implicate legal ethics concerns directly related to the constitutional right of citizens to their property. The rules governing exactly how charging liens are imposed and executed vary dramatically between jurisdictions such that the status of law is extremely confused, arbitrary, and thus, inadequate. This is particularly disconcerting at the federal appellate level when the laws of one state within a district court's jurisdiction can be interpreted to be at variance with the other states within the same jurisdiction. Statutory enactments, rather than judicial interpretation, is needed in order to clarify this situation.

2. In this case, charging liens were applied against funds that were not obtained with the lawyers assistance. In fact, liens were applied against funds that were ordered by the court to be disbursed to the Petitioner a month prior to the retainment of the attorneys. The attorneys were retained to protect and preserve due process rights, and failed to do so, such that the distribution against which they filed charging liens was not even received by their client until well over one year after their withdrawal.

3. Attempts to collect unreasonable fees are strictly prohibited by Rule 1.5 providing "*A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses*". At issue is whether a client has the right to protest fees of a law firm prior to having those fees

awarded by the court. In addition to claiming to have secured a distribution that was ordered a month before their retainer, the attorneys portend to have offered a defense against claims that were completely released in a settlement that was executed 17 months prior to their retainer. The Petitioner also maintains the Firm a) over charged for the work it did perform; b) permitted misrepresentation of the Petitioner as litigious, when she was a Defendant subject to repetitive lawsuits brought over 15 years, with the expressed purpose of acquiring her partnership assets; c) refused to correct falsification of the record; d) refused to seek disclosure or address disregard of prevailing laws; and, e) failed to achieve the terms of its agreement to protect against forced waivers of due process rights. Although the Firm was retained for the purpose of appeal, it abandoned its client when appeal was necessary to preserve its client's due process rights, and moved to file charging lien against money the client did not recover until 13 months later (pro se). The Petitioner appealed the order granting the liens, which was consolidated with the appeal challenging the orders requiring waiving due process rights. In its Appellee Brief, the Firm argued in support of the orders it was retained to prevent, misrepresenting its former client to the Fourth Circuit Court.

**History of Legal Aggression**

4. The Kay Jennings Family Limited Partnership has three general partners, Katherine Dauphin ("Dauphin"), Beverly Hennager ("Beverly") and Louis

Jennings Jr. ("Louis"). Michael Jennings ("Michael") is a limited partner as well as the previous tenant of the partnership property, where he owned and operated a car dealership from March 1994 until November 2014 ("Jennings Motor Company", "JMC"). In 2013, Dauphin testified about a plan Michael had to force the partnership into financial ruin with lawsuits and by preventing marketing at the end of his lease so that he could purchase it "for a cheap price". (Deposition filed in Dkt. # 224; page 62-65).

5. In 2014, Dauphin absconded with all the partnership money. Her attorney asked to prepare a contract to lease and submitted it three times for execution with the wrong address and no legal description (Dkt. # 128; filed in exhibit 7). Michael moved his business to a new location November 14, 2014. December 31, 2014, Dauphin brought a lawsuit against Beverly ("Defendant-Petitioner") and Louis ("Defendant") to dissolve the partnership. Referencing a provision in the partnership agreement that requires unanimous agreement of the general partners to incur debt, represent the partnership or execute a contract, Dauphin alleged the partners were unable to agree.

6. Although Michael was not listed as a party to the case, he made an appearance as an "Interested Party". The Defendants removed the case to the Federal Court for the Eastern District of Virginia where it was assigned to the Honorable Judge Liam O'Grady. Due to their counter claims being filed directly rather than derivatively, the Defendants counter claims were stayed by the court such that they could only address

the plaintiff's bad faith actions if they lost the case (Dkt.# 17). Thus, if they won, they would be back where they started with a rogue general partner obstructing business to prevent income.

**Settlement Agreement and Violations of Trust**

7. Stymied by the paradox of winning is losing, the Defendants agreed to settle in August of 2015 with a complete release of all claims and counter claims (pursuant to paragraph 12). Their settlement agreement allowed a court appointed special master *"to administer the partnership until sale or final disposition by the Court, including possible leases, collection of income, and payment of bills"* (paragraph 4). Magistrate Judge Theresa Buchanan was directed to resolve any dispute as to the meaning of the terms of the agreement (P. 13).

8. In conformance with maximizing the redevelopment value of the partnership assets for the benefit of all the partners, paragraph two of the agreement provided the court appointed special master, would do a:

*"Thorough investigation and recommendation to the court, as expeditiously as possible, as to how to maximize the value of the partnership assets with due consideration as to lease, sale, or a combination thereof, taking into account the property's current, potential or future zoning, condition, and potential for redevelopment alone or in conjunction with neighboring landowners."*

9. Paragraph 9 permitted the special master to *"employ professional advisors necessary to the administration of duties"*. Rather than hire impartial consultants, the special master decided to utilize the opposing counsel to act as his advisors, at their clients expense. Having accepted the responsibility to maximize potential redevelopment value, at the same time the attorneys for Michael and Dauphin transferred bids from their clients to purchase the assets for millions of dollars below the appraised value (Dkt. # 224; exhibits 5, 6, 7, & 8). They prevented any evaluation of the potential redevelopment value, which remains unknown. Judge Buchanan did not respond to requests for interpretation (4th Cir. 17-1556; exhibits 1& 2).

10. When Magistrate Judge Buchanan failed to respond to Beverly's requests to replace an attorney of record who misrepresented her interests, Beverly filed a motion for an interpretation of the agreement as well as permission to replace the attorney (Dkt.# 85). Judge Buchanan denied the motion (Dkt. # 93 referenced in 16-1907). Although the Defendants strongly opposed selling the assets, their attorneys falsely informed the special master that they were not only in agreement to sell, but that they were in agreement to do so without having made any attempt to fulfill the obligation of paragraph two of the agreement (Dkt. # 120-121 referenced in 16-1907). April 7, 2016 the Special Master listed the property for sale with CBRE. May 13, 2016, the Special Master made his first report to the Court with the recommendation to do what he had already done the previous month. Louis and Beverly's

attorneys were permitted to withdraw after the court ordered selling the property. Throughout this time, their efforts to correct falsification of the record were thwarted by protests that they were "represented by counsel".

11. To hasten the sale, the attorneys perpetuated false reports that the property was losing automotive zoning. In addition, they supported false reports by Michael's attorney that a parcel he owned (but which was held in a long term lease by the partnership) was getting a letter of closure on EPA remediation (Dkt. # 121; exhibit 3). Michael had not completed the first phase of the EPA project to determine the extent of the damages, thus assuring interest in the asset would be minimized (Va. Voluntary Remediation reports filed in Dkt. # 205; exhibit 16).

12. On August 18, 2016, Louis Jennings made a motion to the Court to accept one of two lease offers, which would allow the partnership to remain viable while the other three parcels achieved rezoning for maximum value (Dkt. # 168). August 25, Magistrate Judge Buchanan ordered although the special master was tasked with recommending how to maximize the value of the assets with plan amendments, rezoning and consolidation, nothing in the agreement required him to attempt to do what he recommended (Dkt. # 174). Acting pro se, the Defendants filed an appeal by Collateral Doctrine seeking an interpretation of the agreement they relied upon (16-1907 4th Circuit). An email from the county zoning department was attached proving the property had proffers that do not

expire (Dkt. 17 - exhibit 5). In addition they referenced several emails from the Virginia Voluntary Remediation Program Managers stating Michael's company, DAMN LLC, was not getting a letter of closure (Dkt. 205; 16). The appeal was dismissed as premature.

13. On August 29, 2016, counsel for plaintiff, Caitlin Lhommedieu, filed "second Motion for Summary Judgment with Roseboro", with memorandums (Dkt. #s 182, 183, 184, 185, 186, 187, 188). The Defendants represented themselves pro se filing opposition to the Plaintiff's motion. September 21, 2016, Judge O'Grady ordered, "*Plaintiff's Motion is DENIED AS MOOT.*" "*The parties reached a settlement agreement on August 10, 2015*" (Dkt. # 212).

**Sale of Partnership Assets**

14. The Court ordered the sale of the assets September 23, 2016 (Dkt. # 215). December 13, 2016, the Court ordered, "*The Honorable Paul F. Sheridan, Special Master, is authorized to execute the deed and all closing documents, pay normal closing costs and to disburse funds received after Closing*" (Dkt. # 226). The Partnership closed with Leckner Nissan Three LLC on December 15, 2016.

15. During a hearing held in April of 2016, the Special Master had determined JMC could not be held responsible for breaching its lease because it was not served proper notice by all three partners (Dauphin dissenting). The report (Dkt. # 117) and appraisal were sealed. December 22, 2016, Jennings Motor Company

filed a motion to hold Louis and Beverly responsible for attorneys fees and costs incurred during that hearing. JMC argued a provision in the lease agreement provided attorneys fees would be awarded to the prevailing party in the event of a dispute with the partnership.

16. The Defendants responded pro se in opposition to the motion. The Defendants noted **Virginia Statute of Limitation, 8.2A-506**, allowed two more years for the Master to serve that notice himself and argued that he had a fiduciary duty as an adjunct of the court acting in the capacity of the sole managing partner, to do so. In Louis' appeal (4th Cir. 17-1850) he brought up the same argument. Opposing counsel responded, "*it is not disputed that the Special Master could have given notice but Mr. Louis Jennings argues no basis for his demand that the Special Master should have done so*" (Dkt. 4).

17. Referencing the Plaintiff's assertion that the partners could not act as long as she was not in agreement, the Defendants argued Virginia Partnership Laws prohibit the enforcement of provisions in partnership agreements that allow partners to breach their duties to the Partnership and other partners. In addition, they attached numerous emails from the Plaintiff in which she did support not only holding JMC responsible for breaching its lease, but was the only partner who threatened him with a lawsuit (Dkt. # 244; exhibits 4, 5, 7, 12). Thereafter, she threatened if her demand to trade her partnership interests for the asset of her choice was not met, she would block

the partnership from leasing or hiring any professionals, including an attorney to serve JMC with notice of default (Dkt. # 205; exhibit 11).

18. On December 23, 2016, Katherine Dauphin's attorney, Caitlin Lhommedieu, filed "Plaintiff Praecipe in Support of previously Itemized Claims" in which she sought a reward for attorneys fees and costs incurred for a non-live controversy settled without assigning blame and a release of all claims. In addition, Plaintiff sought the entire cost of the Special Master process be transferred to the Defendants (Dkt. # 230).

19. The Defendants defended themselves from the plaintiff's false allegations pro se. In numerous previous filings the Defendants submitted testimony from the Plaintiff's 2015 deposition, in which she admitted her claims against the Defendants were false (Dkt. #s 120-121-122; 205; 224). The Defendants reiterated the Plaintiff's admissions and threats in this defense (Dkt. 247). During the June 22, 2016 hearing the Plaintiff's attorney explained how her client used the provision requiring unanimity to disrupt business.

*"I would be perfectly happy to say that my client is being the one who is so unreasonable here that this partnership needs to be dissolved . . . The statute does not care who is being unreasonable. If the three partners in this partnership cannot come to unanimous agreement, the partnership cannot continue and must be dissolved"* (page 47 of transcript filed in 247).

20. The Defendants reiterated Virginia laws do not permit general partners to violate their fiduciary

duty or good faith obligation of fair dealings. The lawsuit was a sham brought with the intent of forcing a below value sale. Given their partnership agreement prohibits the "*sale, assignment, transfer, or disposal*" of general interests, whether "*voluntarily, involuntarily*" or even "*by operation of law*", the plaintiff and her attorneys knew it could not be dissolved when they brought the lawsuit.

**Troutman Sanders Retained to Protect Due Process Rights**

21. Expecting the need to appeal, the Defendants sought an appellate attorney. January 12, 2017, the Defendants retained William Hurd of Troutman Sanders law firm for the purpose of:

(a) "*appearing in federal court seeking payment from the proceeds of sale of properties by the Special Master with the objective being to obtain payment as quickly as possible without your having to relinquish any claims or sign any waivers of your rights.*

(b) "*Opposing two pending sets of claims filed against you: (i) a motion for attorneys fees filed by Jennings Motor Company, Inc. (Docket # 228), and (ii) various claims filed by Katherine Dauphin (listed in Docket # 230).*"

"*Upon our completion of the services for which you have engaged us, our attorney-client relationship will be terminated*".

22. As the agreement provided bringing an appeal would require another retainer (and the Defendants were both financially destitute), getting a distribution, without waiving claims and rights to complete disclosure and equal benefit, was imperative.

23. While doing an online search, the Defendants discovered that prior to closing with the partnership, Leckner Nissan Three LLC privately arranged to sell shares to 39 undisclosed investors. Troutman Sanders refused to petition the court for disclosure pursuant to the **Revised Uniform Limited Partnership Act Section 407** to determine if the Plaintiff, Michael, or any of the partners' former or current attorneys or family members purchased or exchanged shares in the purchasing entity. Undisclosed until August of 2017, the special master transferred money to holding companies for 1031 exchanges denied to the Defendants (Dkt. # 425). Such transfers would violate **RULPA Section 408** to provide equal benefit to all partners.

24. On January 13, 2017, Troutman Sanders filed a supplemental memorandum in opposition to motion for attorney's fees filed by Jennings Motor Company (Dkt. # 256). Sanders argued, "*JMC relies upon the attorney's fee provision in a lease agreement between JMC and the Jennings Family Limited Partnership. JMC does not seek an award against KJFLP but against Louis Jennings and Hennager.*" Troutman Sanders continued to clarify the provision only provided for an award against the party found to be in default, which did not apply to KJFLP.

25. On January 25, 2017, Troutman Sanders filed a supplemental memorandum in opposition to claims filed by Plaintiff (Dkt. # 267, corrected in 268). Troutman Sanders adopted Beverly's defense. Beverly directed the Firm to the August 29 motion brought by the Plaintiff for the same purpose, which had been denied by the court as moot. The Defendants were billed over $50,000 for the supplemental briefs.

26. Although the Defendants wanted a full distribution of their assets (as required by Section 5 of their partnership agreement and pursuant to **RULPA Section 508**), on January 27, 2017, Troutman Sanders filed a motion for a partial distribution leaving six million dollars in reserve. On Feb. 7, Troutman Sanders replied to oppositional responses to the motion for partial distribution (Dkt. # 285). To assure the court it would not need to "claw back" money released, the Defendants represented:

*"Please be advised that I do not and will not seek to rescind the sale or otherwise challenge the purchaser's title to any of the three KJFLP partnership properties sold by the Special Master in December 2016".*

**Troutman Sanders Refuses to Correct Falsification of Record**

27. On Feb. 8, 2017, Magistrate Judge Theresa Buchanan filed her report with the recommendation to transfer payment of Louis Jennings' attorney, Kathy Holmes, from Louis, who had retained her, to the

partnership (Dkt. # 286). Beverly objected to William Hurd's assessment that this was a *"BIG WIN!"*, demanding opposition. Beverly argued transferring payment would provide judicial immunity from Holmes' misrepresentation of Louis and the partnership. Plaintiff alleged Louis had taken partnership funds for personal use when the accounting clearly showed he merely paid the bills of the partnership. Holmes charged Louis over $20,000 to prepare a defense but in opening statements in the April 2016 hearing, agreed with the Special Master that she did not believe she was permitted to speak. Although the master paid a forensic CPA over $40,000 he was not called to testify and his report was not referenced (all documented in 4th Cir. 17-1850). Troutman Sanders objected on behalf of the Defendants but did not mention that Professional Rule of Conduct 1.8 prohibits an attorney from accepting payment from one other than the client, unless the client gives informed consent, or from accepting protection from liability for malpractice claims.

28. On Feb. 16, 2017, Judge Buchanan filed her second Report with the Recommendation to transfer payment of **all** of the attorneys from the clients who had retained them to the partnership (Dkt. # 298). Judge Buchanan's recommendations relied upon the false reports that the property was losing zoning for automotive use. *"All of these matters were time sensitive. The property would have lost its zoning for use as a car dealership unless a buyer or tenant were obtained within months. Loss of that zoning would have resulted in a devastating decrease in the value of the property.*

*Thus, a successful outcome required the skill of experienced, knowledgeable counsel such as Ms. Holmes and Mr. Fiske."*

29. Troutman Sanders ignored numerous requests to correct Judge Buchanan's misperception by refiling the September 2, 2016 email from Fairfax county zoning department confirming the property had proffers that do not expire so there was never any risk of plummeting values. The email from Cathy Lewis, head of the zoning department for Fairfax county, was filed September 7, 2016 in Appeal 16-1907; doc.17; exhibit 5. On September 16, 2016, attorney for the plaintiff, Caitlin Lhommedieu, responded in the Appellee brief, thus demonstrating that she was in receipt of that information. Had Hurd re-filed this document, it would have proven the attorneys knew the report they generated to hasten the sale was false prior to the order to sell. In her 2015 deposition the Plaintiff testified she and Michael discussed zoning with the county supervisor of planning in late 2011. Another email from Cathy Lewis confirmed Plaintiff and Michael's law firm met with her in the Spring of 2015 to discuss zoning and she told them the property had proffers (that do not expire) (Dkt. # 205; exhibit 17).

30. Troutman Sanders refused to advise the Court it lacked subject matter jurisdiction to decide the merits of a non-live controversy that was settled without assigning blame and a release of all claims. In her Feb. 15, 2017 Report with Recommendations, Magistrate Judge Buchanan determined, *"The Partners relationship was so antagonistic that no agreements*

*could be reached as to sale or lease of the properties and thus, there was insufficient income to pay real property taxes or other expenses of ownership. Without the Settlement agreement, there is little doubt that the court would have had no choice but to grant dissolution resulting in a sale under extremely disadvantageous conditions at below market value*".

31. On March 1, 2017, Beverly retained Adam Kronfeld to file opposition to Judge Buchanan's second report and recommendations, on grounds that the attorneys were conflicted from working on behalf of the partnership and did not fairly and adequately represent the best interests of the Defendants (Dkt. 319). Kronfeld filed a signed notice of appearance two days after filing the submission.

32. On March 10, 2017, William Hurd and Stephen Piepgrass of Troutman Sanders, as well as Adam Kronfeld, attended a hearing with Judge O'Grady. Two days prior to the hearing, the broker for CBRE, John Ryan, produced over 2000 previously undisclosed documents that were germane to the issue of whether the attorneys acted in a manner conflicted with the best interests of the Partnership and Defendants. William Hurd was granted permission to file a supplemental brief to introduce this important evidence.

33. Troutman Sanders did not file the supplemental brief and the attorneys continued to perpetuate the myths, which the Court accepted and referenced in its orders as reason to provide them with judicial immunity.

34. During the hearing, William Hurd, Stephen Piepgrass and Adam Kronfeld offered no objections, remaining absolutely mute during outbursts from opposing counsel maligning their clients as "Litigious", "Malicious", "Never satisfied – Always want more", and "Their desire to wage war is stronger than their business sense". The Defendants in this case have never been plaintiffs in any partnership dispute but have themselves been ruthlessly attacked for over 15 years. By not objecting, Troutman Sanders allowed false allegations to stand uncontested on the record to become grounds for the Court's orders.

35. On March 24, 2017, the Court ordered the Defendants file by April 3, 2017, any opposition to the attorney fee requests sought by Michael Jennings and Katherine Dauphin in Dkt. Entries 312 and 337 (Dkt. # 338).

36. On March 27, 2017, the Court ordered accepting the recommendations of Judge Buchanan to provide retroactive employment to all of the attorneys who orchestrated the sale, such that the partnership paid their fees instead of the partners who had retained them (Dkt. # 341-2). In the following order, 354, the Court acknowledged this order brought all of the previous attorneys under the umbrella of judicial immunity.

**Firm's Abandonment of Client**

37. On April 1, Beverly emailed her opposition to the attorney fees requests of Plaintiff and Michael to

Kronfeld, Hurd and Piepgrass. Beverly asked them to either file the documents themselves in response to the March 24, Order, or to withdraw so that she could file it. Having received no communication about filing a response, Beverly wrote the court she was releasing her attorneys to file opposition pro se (Dkt. # 345). On April 3, 2017, Beverly's pro se submission was filed (Dkt. # 346). Beverly's submission included all of the documentation that the attorneys had ignored requests to file, including:

a) An October 9, 2016 letter from the plaintiff attorney, Caitlin Lhommedieu, requesting "preferential treatment" for her client regarding a secret bid to purchase the leasehold interests of DAMN LLC. Lhommedieu requested the offer be kept secret, which the special master honored in spite of his rule prohibiting ex parte communication (Dkt. 346; exhibits 6 & 7) and disregarding partnership laws enforcing disclosure and equal benefit.

b) The September 2, 2016, email from Cathy Lewis of the Fairfax County zoning department, assuring the automotive proffers were permanent so there was no risk of them expiring (Dkt. 346; exhibit 4). Beverly referenced six emails from the VRP EPA remediation managers filed in Dkt. 122; exhibit 29, that unequivocally confirmed Michael was not getting a letter of closure on EPA remediation.

c) A September 7, 2016 letter from Grayson Hanes to the Special Master acknowledging his duty to investigate zoning of the property,

in which Hanes wrote he had been told by Michael's attorney that the automotive use was due to expire in November of 2016, so the property had to be sold immediately (Dkt. 346; exhibit 1).

d) An October 25, 2016 letter from Fairfax County zoning department confirming Leckner Nissan's research that the property had proffers for automotive use that are permanent so there was no risk of the expiration of zoning with a plummet of values (Dkt. # 346; exhibit 3).

e) Reference to documentation indicating the leasehold interests of the parcel owned by Michael (held in lease by partnership until 2065) was briefly advertised before Grayson Hanes (who had previously represented Michael in a dispute over the only rent increase in the 20-year history of the lease), recommended selling the asset to Michael.

f) A March 22, 2016 letter from plaintiff's attorney, Stephen Cochran, falsely telling the special master all of the partners unanimously agreed to sell the property and it should be sold as quickly as possible because it was losing zoning for automotive use. Cochran asked that his client be the only partner allowed to do an in-kind distribution (originally filed in Dkt. # 148; exhibit 2; refiled in Dkt. # 346; exhibit 8).

g) October 25, 2016 email communication between Lhommedieu and the broker indicating she had redlined a contract submitted by the

> Defendants to purchase her client's and Michael's partnership assets for their percentage of the appraised value of the remaining asset, DAMN LLC (Dkt. 346; exhibit 7).

38. Over the weekend, Kronfeld transposed Beverly's submission into his own words, filing the same on April 3rd, without a signature (Dkt. # 343). Kronfeld did not heed the clerks warning to sign the submission and it was stricken. Troutman Sanders filed nothing on Louis' behalf and never argued the Plaintiff violated partnership laws prohibiting partners from seeking to benefit themselves to the detriment of the other partners.

39. Troutman Sanders failed to bring to the Court's attention that the Virginia Supreme Court found Michael Jennings adversarial to the Partnership and other partners because of his lawsuits designed with the expressed intent of acquiring the assets. Michael maintained interests diametrically opposed to those of the Partnership and as such, should never have been entrusted with maximizing the value of assets he expressed the intent of acquiring. After settlement both the plaintiff and Michael's attorneys transferred bids to purchase the assets for millions of dollars below the appraised value for lowest use (Dkt. # 244; exhibits 5, 6, 7). They made a joint offer for the DAMN parcel (Dkt. # 244; Exhibit 8 and Dkt. 16-2126 4th circuit; exhibit 3) that was literally half of what the Plaintiff had testified she had been told the asset was worth in her 2015 deposition (P. Depo. filed in 122; page

142). They also made sure the potential redevelopment value would never be known.

40. As a result, Judge O'Grady misapprehended the history writing in his order to transfer the DAMN asset to Michael, "*Defendants aver that Michael Jennings relationship to the other parties is adversarial because he represents a party interested in purchasing the DAMN leasehold held by the partnership and was the adverse party in a derivative suit brought by the partnership*" (Dkt. # 342; pg 7). Michael was adversarial because the Virginia Supreme Court found him so, and he brought the derivative action, not the partnership. "*Furthermore, Michael's expressed desire to 'control the partnership and the land' can be viewed as antagonistic to the interests of the Partnership and other partner.*" **Jennings v. Kay Jennings Family Ltd. P'ship, 275 Va. 594, 659 S.E.2d 283, 2008 Va. 23.**

41. On April 2, 2017, Michael's attorney filed a motion to strike Beverly's submission because she was represented by counsel (Dkt. # 347). Kronfeld's submission could not be accepted without a signature, which he would not correct. This meant the Court was free to make its order without taking into consideration either submission or any of the evidence confirming the conflicts of interest of transferring payment of the attorneys to provide judicial immunity.

42. In agreement with Judge Buchanan's determination of the non-live controversy settled without assigning blame, Judge O'Grady found "*the partners of*

*JFLP* (sic KJFLP) *were unable to make decisions for the partnership which led to the need for dissolution and the sale of its property to pay for the debts and taxes due*" (Dkt. # 298; pg. 3). This contradicted the plaintiff's 2013 deposition in which she agreed the partners were "*easy to work with*" and "*We want to work together*" (P. Depo. Filed in 224; pgs 72-75). In her 2015 deposition, plaintiff admitted many alleged disagreements were situations where she insisted upon a course of action that was unsafe and that the Defendants objections protected the partnership from possible legal disputes (filed in Dkt. 122; page146-47). The plaintiff admitted the partners had fully executed two contracts in spite of her own attorney sabotaging one of them with the wrong address and no legal description or parcel number (filed in Dkt. 122; pgs. 39-43). No matter how many times the Defendants attempted to correct these falsifications, it was ignored (Dkt. #s 120, 121, 205, 224, 248, 346 & 404).

43. Referencing the "litigious history of the parties", on April 7, 2017, the court ordered a partial distribution of $400,000 to each partner contingent upon that partner executing an agreement not to initiate any lawsuit against the court, the Special Master, the McCammon Group, its employees, agents, any professional advisors retained by the special Master, the partnership, any general or limited partners, the purchasing entities and its employees and agents and "*any present or former counsel retained for this matter with respect to the sale of the Three KJFLP partnership Properties*" (Dkt. 354-355).

**Petitioner is Denied a Distribution of her Uncontested Funds**

44. As Beverly Hennager did not sign this waiver, she did not receive a distribution of her funds. The Defendants appealed the court's March 27 and April 7 orders separately in 17-1556, 17-1795 and 17-1850.

45. On April 13, 2017, Troutman Sanders and Adam Kronfeld filed motions to withdraw as counsel (Dkt. # 359-360). It was not until May 3, 2017, that the Court denied Jennings Motor Company Inc.'s Motion for attorney Fees, Dkt. No. 227, and Plaintiff Katherine Dauphin's Praecipe in Support of Previously Itemized Claims, Dkt. No. 230. "*For reasons set forth in the accompanying memorandum opinion, the Court hereby ORDERS that the motions are DENIED*" (Dkt. # 390). Dkt. # 391 is the Memorandum Opinion, but it does not offer an opinion regarding why the court denied the motions. Dkt # 391 addresses the withdrawal of attorneys, which was granted in Dkt. # 392.

46. On August 1, 2017, Troutman Sanders filed charging lien with a motion to seal its retainer and bills (Dkt. # 432). On August 8, 2017, Magistrate Judge Buchanan briefly ordered, "*Upon consideration whereof, and for good cause shown, it is hereby ORDERED that Exhibits A and B to Troutman Sanders' Notice of Attorneys' Charging Lien shall be placed and kept under seal*" (Dkt. # 432). On the same day, Beverly's opposition to Troutman Sanders (Dkt. 433), which had been delivered to the clerk of court two days

before, was filed. Beverly presented two arguments to oppose the lien. First, Troutman Sanders did not recover the money against which it applied the lien. Secondly, as previously expressed throughout this submission, Troutman Sanders was negligent in its representation and over charged by billing for multiple attorneys such that its hourly rate fluctuated between $1200 and $1900 for the expertise of attorneys having no experience in partnership law, real estate or violations of settlement agreements. As both Defendants opposed their bills being filed under seal, Beverly questioned why this would be permitted. The Defendants were prohibited from addressing specifics of the bills given doing so would subject them to sanctions for violating a court order. Neither Judge Buchanan nor Judge O'Grady ever addressed these issues (or anything else brought to their attention).

**Troutman Sanders Argued in Support of the Orders it was Retained to Prevent**

47. Beverly filed notice of appeal on August 22, 2017 (Dkt. # 439) and was assigned USCA case number 17-1990. In their Appellee brief, Troutman Sanders dissociated getting a distribution from the objective of preserving claims and rights. In the Appellee brief, the firm took a position conflicted with the objectives of its retainer agreement, *"the Firm achieved the primary part of that goal (seeking payment from the proceeds of the sale). . . . Payment of those funds to Hennager awaits only her compliance. . . . The secondary goal was not fully achieved to Hennager's liking. Some*

*relinquishment of putative claims and some waiver of putative rights have been required by the Court as a condition of Hennager's receiving the payment.*"

48. The Appellants' appeals were all consolidated in 17-1556 and decided November 29, 2017. Rehearing without oral argument was granted with the formal Mandate on March 7, 2018. The Fourth Circuit dismissed the appeal for charging liens finding an order by a Magistrate Judge must be appealed first to the judge presiding over the case. The Fourth Circuit misapprehended the grounds of the other appeals, which was stated, and reiterated by the Plaintiff, to be "*abuse of discretion and fraud on the court.*" The Fourth Circuit dismissed the appeals for failure to present the "error" of the court.

49. Beverly submitted her appeal to the District Court for the Eastern District of Virginia, with a motion for Judge O'Grady to recuse himself, because deciding in favor of Troutman Sanders might implicate bias, rewarding Troutman Sanders for supporting his orders. June 15, 2018, Judge O'Grady ordered, "*For reasons cited by Judge Buchanan, and for good cause shown, the Court finds Troutman Sanders LLP's charging lien to be valid. The Court ORDERS that $76,409.51 be deducted from the individual proceeds payable to Beverly Hennager and paid to Troutman Sanders LLP.*"

50. When Judge O'Grady affirmed Judge Buchanan's order Beverly appealed to the Fourth Circuit (18-1858). In its Appellee brief, Troutman Sanders

argued, *"in Virginia, that standard is provided by Virginia Code 54.1-3932(A), which does not limit the application of a charging lien to situations where the attorney has recovered the funds against which the lien is asserted"*. The Firm continued to assert it had *"won for Hennager the right to a partial disbursement of funds before the partnership was completely wound down"* (18-1858; Doc. 19; page 4).

51. On Feb. 13, 2018, the Fourth Circuit only affirmed the district court's final order, which provided for dissolution of the partnership with a distribution of the remaining assets after resolution of challenges to the Court's prior orders. On Feb. 21, 2018, Beverly moved the Court for a distribution (Dkt. # 472). The Mandate was issued March 7, 2018. On the same day, the Plaintiff moved the court to stay dissolution of the partnership.

> *"If Plaintiff is afforded this brief stay and determines that it is now reasonably practicable to carry on the business, then she intends to withdraw her claim for dissolution under Rule 41(a)(2) of the Federal Rules of Civil Procedure. . . . A stay of Plaintiff's claim is genuinely necessary at this time, because if the claim is decided by this Court before Plaintiff has an opportunity to re-evaluate, a multi-generational family business may be irretrievably lost"* (Dkt. # 482-3).

52. On June 22, 2018, Judge O'Grady approved the Proposed Distribution Order prepared by Michael's attorney, a non-party to the case. The order required another waiver of due process rights, this one

requiring the signer to relinquish the right to challenge future orders of his court. Instead of dissolving, Judge O'Grady decided to continue the partnership for at least three more years, keeping $250,000 in reserve for expenses. He ordered withholding $76,409.51 claimed by Troutman Sanders from Beverly's distribution. When the Defendants refused to sign the waiver of their rights, Judge O'Grady ordered withholding $100,000 from each of their personal accounts in case either of them brought future litigation (Dkt. # 516).

**Petitioner Acquired Distribution in Pro Se Action**

53. Beverly and Louis petitioned the Fourth Circuit Court with writ of Mandamus to direct Judge O'Grady to enforce the March 7, 2018 Mandate affirming his order, without variance. Having persisted in her refusal to relinquish due process rights, Beverly finally received a partial distribution of her percentage of the funds retained from the sale of the partnership assets, the end of August 2018.

54. The forced sale of the partnership assets cost the Defendants and their heirs over ten million dollars in lost rental income.The partnership property appraised at 15.1 million dollars, with automotive use. It was sold for 13.6 million dollars. Because Beverly holds 20% interest in the partnership, she was entitled to one fifth of the proceeds. She received only $2,189,290.07. $530,700 was kept for costs and future costs, including $100,000 held for future litigation. As

she was denied the benefit of 1031 exchanges, over $400,000 went to taxes. In addition, Beverly was charged and paid over $150,000 in legal fees. Louis suffered even more, losing his home to foreclosure. His only child, a son, suffered depression from the 15 year assault against his family and died of an overdose on October 24, 2018.

**Petitioner Barred from Further Action**

55. On October 24, 2018, the Mandamus was denied as an appealable issue and the Petitioners did not have a right to the relief sought (4th Cir. 18-1671; doc 24). In addition, the Petitioners were denied disclosure pursuant to **RULPA Section 407** and threatened with sanctions and a prefiling injunction if they attempted any further action in the Fourth Circuit Court. Both Defendants petitioned the U.S. Supreme Court for Writ of Mandamus.

56. On December 3, 2018, the Fourth Circuit found "*We have reviewed the record and find no reversible error. Accordingly, we grant Troutman Sanders' motion to intervene and affirm for the reasons stated in the district court. See Dauphin v. Hennager, No. 1-15-cv-00149-LO-TCB (E.D. Va. June 15, 2018)*" (Dkt. # 542). Given the Petitioner is barred from bringing any further action before the 4th Circuit, writ of certiorari is her only remaining hope of receiving justice.

57. January 3, 2019, the district court ordered payment to Troutman Sanders from the proceeds retained from Beverly's distribution (Dkt. 542).

## LEGAL ARGUMENT

### The Issue of Clarifying Charging Liens is Ripe

58. In defense of her determination, Judge Buchanan illogically relied upon *Heinzman v. Fine, Fine, Legum and Fine*, 217 Va. 958, 962, 234 S.E.2d 282, 285 (1977). However, even as she notes, this U.S. Supreme Court decision applies to contingency fees in a lawsuit brought by a Plaintiff seeking damages, when the attorney was dismissed without just cause, after which the client employed another attorney who effected settlement.

59. Troutman Sanders was not retained to recover funds. Rather it was retained to preserve claims and rights, which it did not accomplish, and to provide a supplemental defense against frivolous claims. At issue is whether **Va. Code 54.1-3932** permits an attorney to impose a lien against funds it did not generate for an action sounding in tort, while representing a Defendant who never initiated any lawsuit seeking such claims. Although not proposed by Troutman Sanders, at issue is whether an attorney may impose liens for the successful defense of claims against a Defendant.

60. Not clarifying this law poses serious risks to the public whereby litigants may have personal funds pilfered by unscrupulous representatives imposing outrageous fees, while failing to protect their interests.

**2006 Code of Virginia 54.1-3932 – Lien for fees**

A. Any person having or claiming a right of action sounding in tort, or for liquidated or unliquidated damages on contract or for a cause of action for annulment or divorce, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the case of action as security for his fees for any services rendered in relation to the cause of action or claim. When any such contract is made, and written notice of the claim of such lien is given to the opposite party, his attorney or agent, any settlement or adjustment of the cause of action shall be void against the lien so created, except as proof of liability on such cause of action. Nothing in this section shall affect the existing law in respect to champertous contracts.

**Charging Liens are Limited by Ethical Considerations**

61. The rules governing exactly how charging liens are imposed and executed vary dramatically between jurisdictions but the funds against which a charging lien can be attached should remain consistent. Charging liens address amounts that the client will obtain as the result of judgment or settlement. *"Charging liens do not apply to any money due a client, but only to judgments obtained with the lawyer's assistance. The lien generally protects only those fees incurred in the proceeding in which the lawyer appeared and which generated a recovery to which the lien*

*attaches.*" See **Boswell v. Zephr Line, Inc., 414 Mass. 241, 248, 606 N.E.2d 1336, 1341 (1993)**. "*It is not enough to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services*". **Chadbourne & Parke, LLP v. AB Recur Finans, 18 A.D.3d 222, 223, 794 N.Y.S.2d 349, 351 (2005)** (charging lien "*enforceable only against the fund created in that action*").

62. The American Bar Association finds the imposition of charging liens is limited by ethical considerations because an attorney's lien must be "*confined to the judgment or funds recovered by him as an attorney*", **Trickett v. Laurita, 674 S.E.2d 218, 229 (W. Va. 2009)**. "*An attorney may not seek to impose a charging lien on client property that is not recovered from the lawsuit the lawyer initiated.*" See **People v. Razatos, 636 P.2d 666 (Colo. 1981)**. Assertion of an improper lien by sending notice to a court risks disciplinary proceedings. See **State Bar of Michigan, Ethics Op. CL-759 (2000)**, and also in re **Ilonka Howard, Grievance Comm. of the North Carolina State Bar, No. 06G0496 (2008)** (attorney reprimanded for, among other charges, improperly asserting a charging lien without a good-faith basis in law or fact in violation of Rule 3.1.).

**Charging Liens May Not be Imposed Upon an Effective Defense**

63. *"Charging liens can be valid only when the attorney's work generates a fund from which fees can be extracted and do not arise in cases where an attorney provides an effective defense or otherwise generates a savings."* See, e.g. **Goldstein, Goldman, Kessler & Underberg v. 4000 East River Road Associates, 409 N.Y.S.2d 886 (N.Y. App. Div. 1978)** (Future tax savings from successful challenge to assessment were not "proceeds" to which charging lien could attach).

64. *"If the attorney fails to recover anything for his client in the lawsuit, then the attorney's lien fails since there are no funds to which it can attach."* **Cattle Owners Corp. v. Arkin, 267 F. Supp. 658, 664 (S.D. Iowa 1967)**. *"It is "well established" in North Carolina that no right to charging lien exists if attorney withdraws prior to settlement or judgment."* **Mack v. Moore, 107 N.C. App. 87, 91-92, 418 S.E.2d 685, 688 (1992)**.

65. It should be brought to the Court's attention that Troutman Sanders was not the only law firm, which the Court allowed to impose charging liens. Although Kathleen Holmes and PCT Law Group were retained for the specific purpose of preventing dissolution and a sale of the assets, they both imposed charging liens for fees incurred in their failure to do so. PCT had accepted a settlement to reduce their fees $10,000. After Troutman Sanders took over Beverly's representation it did not inform her that PCT had placed a lien

and the deadline to respond was missed. David Fiske also imposed a charging lien for misrepresenting his client after he was released in November 2015 until September 2016. The Court ordered payment be transferred to the partnership.

**The Right to Contest Charges in an Unbiased Court**

66. Troutman Sanders' argument in their appellee brief supported the Court's order to impose a waiver of due process rights, in direct opposition to its retainer agreement to protect those rights. The constitutional right to due process of the law is not a putative right. **RULPA Section 407** provides a general partner must receive full disclosure to determine whether they received equal benefit pursuant to **RULPA Section 408**. In the event that does not happen they may sue to recover losses. Given the Court had already ordered a distribution (Dkt. # 226) a month before retaining Troutman Sanders, had the Petitioner been willing to release her constitutional right to due process of the law, there would have been no need for retaining Troutman Sanders in the first place.

67. The Petitioner requested the recusal of Judge O'Grady, who denied her motion. The Petitioner requested a new panel of judges from the Fourth Circuit, which was also denied. The same panel decided every appeal, without addressing the issues presented. The Petitioner was denied four motions for disclosure pursuant to RULPA Section 407.

68. *"Charging a lien is not a right between lawyer and client because clients may contest the validity of changing the lien or assert an affirmative defense in response to the lawyer's action to enforce the lien."* **Eng'g Grp., Inc. v. Oakland Lakes, Ltd., 685 So.2d 11, 12 (Fla. Dist. Ct. App. 1996); Coughlin v. Se Rine, 507 N.E.2d 505, 508 (Ill. Ct. App. 1987).**

69. **Kushner v. Engelberg, Cantor & Leone, P.A., 750 So.2d 33, 35 (Fla. Dist. Ct. App. 1999)** (In assessing amounts due to attorney discharged for cause, lien amount should represent *"the quantum merit value of the services rendered less any damages which the client incurred due to the attorney's conduct"*.

## CONCLUSION

Troutman Sanders did not bring a lawsuit to recover funds and withdrew representation over a year prior to the Defendant personally obtaining her right to a distribution of her funds without signing a waiver of due process rights. Troutman Sanders is not entitled to extract funds from its defense of claims brought against the Defendant. If that were the case, any successful defense would be subject to charging lien against the Defendant's unrelated personal property.

Troutman Sanders charged excessively for the work it actually performed. It was negligent when it did not adequately protect the Defendants, such as not defending them from spurious allegations of being litigious when they had never been plaintiffs. It was

negligent when it did not provide the documentation to prove the attorneys were conflicted from representing the partnership and the Defendants, given they represented clients who had brought three lawsuits against them with the expressed intent of acquiring the assets. It was negligent when it refused to correct falsification of the record, which the court ultimately relied upon for its judgments. When the court transferred payment of the attorneys to the partnership, this meant the Defendants were charged for preparing the motions against them as well as the defense. The attorneys were paid for transferring bids from their actual clients to purchase the assets millions of dollars below appraised value. They were paid for perpetuating false reports used to hasten the sale and diminish competitive offers. They were paid for allowing the insurance to quadruple while failing to renew the coverage for vandalism (the property was destroyed by vagrants). Troutman Sanders' negligence and deliberate abandonment of its client's interests cost the Petitioner hundreds of thousands of dollars, and delayed her distribution of uncontested assets for 21 months. The partnership has not been dissolved and will continue to operate for at least three more years.

**WHEREFORE** the Petitioner moves the Court to a) provide judicial interpretation of 2006 Code of Virginia 54.1-3932 in order to protect the constitutional rights of citizens provided under the Fourteenth Amendment that *"no person shall be deprived of life, liberty, or property without due process of law"*, *and that all persons are entitled to "equal protection of the*

*laws*"; b) clarify rules and laws governing how charging liens are imposed and executed in Federal District Courts so as to uniformly apply in all Federal Courts; c) to establish clarification that charging liens do not apply to any money due a client, but only to judgments obtained with the lawyer's assistance, where the lawyer represented a plaintiff seeking monetary damages; d) to clarify that charging liens may not be applied against a successful defense of claims brought against a defendant. The Petitioner moves the Court to find she is entitled to contest the charging lien and the bills, and that the attorneys did not uphold their retainer agreement to protect her from forced waivers, relinquishing her constitutional rights to due process of the law, and in fact, took a position in support of the orders trying to force her to waive those rights. Given the Petitioner has been threatened with a prefiling injunction to prevent any further attempts to gain justice, the Petitioner requests the Court remand case 1:15-cv-00149 to another jurisdiction for the purpose of a **Rule 60(d)(3)** Motion for Fraud Upon the Court. The Petitioner requests any further relief as the Court finds reasonable and necessary.

Respectfully submitted,

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