

---

**IN THE SUPREME COURT OF THE UNITED STATES**

Petitioner, Khai Quang Bui

v.

Respondent, Abdul Alshaer

---

**ON PETITION FOR WRIT OF CERITORARI  
TO THE SUPREME COURT OF VIRGINIA**

---

**APPENDIX**

**PETITION FOR WRIT OF CERTIORARI**

Khai Quang Bui

1124 Duchess dr Mclean, VA 22102

Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

Number: 571-389-0693

---



## TABLE OF CONTENTS

1.	Table of Contents .....	ii-v
I.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order .....	1,6
II.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 December 8, 2020 order .....	1,7
III.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 January 31, 2020 order .....	1,8
IV.	Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (5) .....	1,8
V.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 Transcript of hearing transcribed order on [page 13-14] .....	1, 9-23
VI.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 April 6, 2018 order .....	2,24
VII.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (13) .....	2,25-30
VIII.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (17) .....	2,24

IX.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 complaint “civil libel defamation tort” file February 12, 2018 .....	2,31-34
X.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (12) .....	2,31-34
XI.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 complaint “Malicious prosecution” filed October 29, 2019 .....	2, 35-42
XII.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (1) .....	2-3,35-42
XIII.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 “response to plea in bar” filed January 23, 2020 .....	3, 43-47
XIV.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (4) .....	3, 43-47
XV.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 plea in bar without exhibit filed November 21, 2019 .....	3,48-54
XVI.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (3) .....	3,48-54

XVII.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order .....	3,6
XVIII.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (1) .....	4
XIX.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (3) .....	4
XX.	Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 petition rehearing appendix C p. 46 .....	4,55-56
XXI.	General Rules of Pleading, 28a U.S.C. Rule 8 (c) (1) (2010) .....	4
XXII.	Determination, 28 U.S.C. § 2106 (1948) .....	4
XXIII.	State courts; certiorari, 28 U.S.C. § 1257 (a) (1988) .....	4
XXIV.	Writs, 28 U.S.C. § 1651 (1948) .....	4
XXV.	State laws as rules of decision, 28 U.S.C. § 1652 (1948) .....	4
XXVI.	Va. Code § 8.01-249.3 .....	4
XXVII.	Va. Code § 8.01-45 .....	4
XXVIII.	Va. Code § 19.2-265.6 .....	4
XXIX.	Supreme Court of Virginia rule 1:6 .....	4
XXX.	County of Fairfax Virginia police report (can only be retrieve through court process) .....	4-5,55-56

XXXI.	Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-	
	14766 Table of Contents .....	5

- I. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order, SCV case management system: ACMS - Home (state.va.us) record no. 200989.
- II. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 December 8, 2020 order, SCV case management system: ACMS - Home (state.va.us) record no. 200989.
- III. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer January 31, 2020 order, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.
- IV. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (5), Table of Contents page 71, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.
- V. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 Transcript of hearing transcribed order on [page 13-14], SCV case management system: ACMS - Home (state.va.us) record no. 200989, petition August 6, 2020 appendix B.

- VI. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer April 6, 2018 order, volume record of Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer.
- VII. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (13), volume record of Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer.
- VIII. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (17), volume record of Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer.
- IX. Fairfax County Circuit Court CL2017-16518 complaint “civil libel defamation tort” file February 12, 2018, volume record of Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer.
- X. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2017-16518 proceeding (12), volume record of Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer.
- XI. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer complaint “Malicious prosecution” filed October 29, 2019, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.
- XII. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (1), Table of Contents page 1-14, SCV case management



system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.

XIII. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer “response to plea in bar” filed January 23, 2020, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.

XIV. Fairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (4), Table of Contents page 53-70, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.

XV. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer plea in bar filed November 21, 2019, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer.

XVI. SFairfax County Circuit Court Khai Bui v. Abdul Alshaer CL2019-14766 proceeding (3), Table of Contents page 16-51, SCV case management system: ACMS - Home (state.va.us) record no. 200989 Fairfax County Circuit Court CL2019-14766.

XVII. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Fairfax County Circuit Court No.CL2019-14766 February 5, 2021, SCV case management system: ACMS - Home (state.va.us) record no. 200989.

- XVIII. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (1), SCV case management system: ACMS - Home (state.va.us) record no. 200989.
- XIX. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (3), SCV case management system: ACMS - Home (state.va.us) record no. 200989.
- XX. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 petition rehearing appendix C p. 46, SCV case management system: ACMS - Home (state.va.us) record no. 200989.
- XXI. General Rules of Pleading, 28a U.S.C. Rule 8 (c) (1) (2010).
- XXII. Determination, 28 U.S.C. § 2106 (1948).
- XXIII. State courts; certiorari, 28 U.S.C. § 1257 (a) (1988).
- XXIV. Writs, 28 U.S.C. § 1651 (1948).
- XXV. State laws as rules of decision, 28 U.S.C. § 1652 (1948).
- XXVI. Va. Code § 8.01-249.3.
- XXVII. Va. Code § 8.01-45.
- XXVIII. Va. Code § 19.2-265.6.
- XXIX. Supreme Court of Virginia rule 1:6.
- XXX. County of Fairfax Virginia police report (can only be retrieve through court process), SCV case management system: ACMS - Home

(state.va.us) record no. 200989, petition rehearing December 22, 2020  
appendix C p. 46.

XXXI. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer  
Table of Contents, ACMS - Home (state.va.us) record no. 200989 Fairfax  
County Circuit Court CL2019-14766.

**VIRGINIA:**

***In the Supreme Court of Virginia held at the Supreme Court***

***Building in the City of Richmond on Friday the 5th day of February,  
2021.***

**Khai Quang Bui,**

**Appellant,**

**against      Record No. 200989**

**Circuit Court No. CL-2019-14766**

**Abdul Alshaer,**

**Appellee.**

**Upon a Petition for Rehearing**

**On consideration of the petition of the appellant to set aside the judgment rendered herein on December 8, 2020 and grant a rehearing thereof, the prayer of the said petition is denied.**

**A Copy,**

**Teste:**

**Douglas B. Robelen, Clerk**

**By:      s/**

**Deputy Clerk**

**VIRGINIA:**

***In the Supreme Court of Virginia held at the Supreme Court  
Building in the City of Richmond on Friday the 8th day of December,  
2020.***

Khai Quang Bui,	Appellant,
against	Record No. 200989
	Circuit Court No. CL-2019-14766
Abdul Alshaer,	Appellee.

From the Circuit Court of Fairfax County

Upon review of record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: s/  
Deputy Clerk

**VIRGINIA:**

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**KHAI BUI,**

Plaintiff,

V.

ABDUL ALSHAER,

**Defendant.**

CL 2019-14766

## ORDER

THIS MATTER came to be heard on Defendant's Plea in Bar, and IT APPEARING THAT Plaintiffs claims is barred by res judicata, it Is hereby ADJUDGED, ORDERED and DECREED that the plea in bar is sustained and case is dismissed with prejudice. ~~Plaintiff is further ordered to pay sanctions in the amount of \$\_\_\_\_\_ to Defendant for bringing this action.~~ The request for sanction is denied.

ENTERED this 31 day of January, 2020

BRETT A. KASSABLAN

s/

**JUDGE**

**SEEN AND AGREED:**

**SEEN AND object**

s/

S/

**Sefton Smyth (VSB#68669)**

Khai Bui, pro se

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----  
KHAI BUI,

Plaintiff,

v.

ABDUL ALSHAER,

Defendant.

- x

:

:

:

:

:

CASE NO.: CL-2019-0014766 :

:

:

:

:

- x

-----  
Circuit Courtroom 5A Fairfax  
County Courthouse Fairfax,  
Virginia

Friday, January 21, 2020

The above-entitled matter came on to be heard before the  
HONORABLE BRETT A. KASSABIAN, Judge, in and for the Circuit Court  
of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 10:23  
o'clock a.m.

APPEARANCES:

On Behalf of the Plaintiff:

(Pro se.)

On Behalf of the Defendant:

SEFTON K. SMYTH, ESQUIRE

\*\*\*\*\*

## P R O C E E D I N G S

THE COURT: Bui versus Alshaer.

MR. SMYTH: Good morning, Your Honor. Sefton  
Smyth here on behalf of the Defendant.

THE COURT: Good morning. It's good to see  
you.

MR. SMYTH: This is here on my plea in bar.

THE COURT: Yes.

MR. SMYTH: This is Mr. Bui's third case that  
he has filed in connection with a civil charge from back  
in 2017. And in my motion I outlined the entire timeline  
of everything that he had filed. And I attached copies of  
everything.

I know that in this particular instance he seems to be  
trying to focus on the statements that are made to the police officers. But  
his case is for malicious prosecution. And there was only one criminal  
prosecution.

And the statements that were in the criminal complaint  
which were the subject of the first action before Judge Bellows -- the case  
which he dismissed with prejudice -- obviously, those statements which  
were sworn out before the magistrate for the summons to be -- a



1 criminal summons to be issued, those were part of the prosecution.

2 And Judge Bellows dismissed that case with prejudice  
3 already. So there's already been a final order that was decided on the  
4 merits.

5 And under rule 1:6 any additional claims in connection with  
6 that same transaction or occurrence -- the criminal case -- had to have been  
7 brought in the initial case.

8

9

10 THE COURT: I understand.

11 MR. SMYTH: I know Mr. Bui in his -- his motion -- he was  
12 citing an exception in a Rule 1:6 about separate claims to be brought for  
13 personal injuries and property damage, but his case is not a personal injury  
14 case.

15 He had told me via email that he was going to cite two other  
16 cases -- *Kellogg versus Green* and *D'Ambrosio versus Wolf*, which I do have  
17 copies of if Your Honor would like.

18 But the -- in the *Kellogg* case the only issue before the  
19 Supreme Court was whether or not a rule to show cause that was issued  
20 and dismissed after a final decree of divorce had been entered -- the  
21 question for the Court

22

23

1 was whether or not that was a final order.

2 THE COURT: I don't need to --

3 MR. SMYTH: We have a --

4 THE COURT: -- see that case. I recall that  
5 case.

6 MR. SMYTH: -- we have a final order here.

7 The other case that he said he was going to rely on was  
8 *D'Ambrosio versus Wolf*, which was actually a Judge Tran  
9 matter.

10 And the question there was whether or not a suit to contest  
11 the will was barred by res judicata when there had been a previous suit  
12 about the testator's mental capacity while she was alive.

13 And the Supreme Court there said, "Well, you can't contest  
14 the will until after the testator is dead." And this particular case a claim for  
15 malicious prosecution accrued once the criminal case was nollied back in  
16 2017.

17 And his -- actually, in the federal case, which was dismissed  
18 for lack of subject matter jurisdiction, he brought a malicious prosecution  
19 there. So he knew about that just four months later.

20 The other thing though is that to the extent  
21 that he's claiming defamation for the criminal charges, as  
22  
23

1 I said, those would be barred by the one-year statute of limitation for  
2 defamation, even allowing for all the tolling.

3 This case was filed one year to the day after  
4 the federal case. And there's time in between there.

5 So I'm asking for this case to be dismissed. And I am asking  
6 for sanctions since this is his third case about this matter.

7  
8  
9 THE COURT: Okay.

10 Do you have the second case you referenced? The second  
11 case you referenced that he emailed you? I don't need to see the first  
12 because I'm familiar with it.

13 MR. SMYTH: I have *D'Ambrosio versus Wolf*  
14 here, Your Honor.

15 THE COURT: Mr. Bui -- thank you very much. Mr. Bui,  
16 do you wish to rely on this case -- this -- I'm sorry. I'm sure you can't see.

17 Do you wish to rely in part on *D'Ambrosio versus Wolf*?  
18

19 MR. BUI: I do, Your Honor.

20 THE

21 COURT: Okay.

22 Why -- MR.

23 BUI: I would like to --

1 THE COURT: -- don't you go ahead and go to  
2 the podium --

3 MR. BUI: -- in our motion on that.

4 THE COURT: -- and let me read this case?

5 Give me a few minutes because I don't recall it. Hold on  
6 one second.

7 MR. BUI: Um --

8 THE COURT: If you'll give me one second?

9 MR. BUI: Oh.

10 THE COURT: I want to read the case first.

11 MR. BUI: Okay.

12 THE COURT: Okay. I've read it.

13 Go ahead. MR.

14 BUI: THE Good morning, Your Honor.

15 COURT: MR. Good morning.

16 BUI: The Plaintiff pro se is presenting  
17 our argument in response to a plea in bar.

18 This case -- malicious prosecution -- was filed on October  
19 29, 2019. Pursuant to Virginia Code 8.01-243 it -- the action is allowed for  
20 recovery of any type of personal injuries, including economic injuries.

21 And the case also -- malicious prosecution --  
22 is a relevant civil action and deemed to be accrued when -

23

1 - after the initial court case is terminated according to 8.01-249.

2 So this case is filed before a two-year limitation after the  
3 November 6, 2017 prosecution that was nolle prosecuted.

4 So the little -- the legal claim here involved the speech and  
5 records made with the police officer. And I have that record right here. It is  
6 existing in the Police Department.

7 Those records were intended to be used in obtaining a  
8 warrant of arrest or summons which resulted in the magistrate warrant.  
9 That case that the plea in bar is referring to that was dismissed with  
10 prejudice was called a civil libel defamation tort case.

11 It was an amended pleading. So in response to that the  
12 dismissal is based on the statement made to the magistrate. And the ruling  
13 was that the statement made to magistrate was absolute privilege.

14 So under Article Two -- under Article Four defamation is an  
15 actual legal claim by itself. And it has many different legal causes of that.  
16 This current case that I filed does not contain any of those legal causes.

17 So it's -- it's definitely a different legal  
18  
19  
20  
21  
22  
23

1 cause. So the dismissal order was ruled because -- was ruled based on the  
2 plea in bar.

3 And the plea in bar that was filed two years ago specifically  
4 state in many paragraphs that its main purpose and its single plea was that  
5 the statement was absolute privilege.

6 And it was granted so -- but it's different from this legal  
7 claim here. And it -- it -- it doesn't -- the basis of this claim is malicious  
8 prosecution. So there's no other issue that was -- that were fully legally  
9 litigated on that pleading.

10 The Plaintiff never did attempt to use the defamation as a  
11 cause of action in any court jurisdiction or others.

12 In response to the plea in bar that said Rule 1:6 would bar  
13 it, it -- it wouldn't because -- because the claim -- the legal claim are  
14 different here and the merit of the case and the issues and the factual issues  
15 of the case were never litigated or -- or -- in the pleading or in court  
16 proceedings.

17 In this pleading of the complaint -- malicious prosecution --  
18 it does not mention or challenge the court order. It is an action of fraud.

1 And it's legal ground on the laws of this state  
2 including the interpreta -- interpret -- an interpretation of Rule 1:6(C).

3  
4 Now, here the plea in bar -- the current plea  
5 in bar also cite Rule -- *Lambert v. Javed*. The ground --  
6 the -- it's -- it was a wrongful death action where the parties are -- where  
7 the parties are different through a joint filing of different cases.

8 And the second case was dismissed due to statute tolling.  
9 And then the -- and then the third case was bar because of that.

10 So it's -- it's a little bit different here and it's not identical  
11 at all since -- since actually the -- the cause of action was still the same in  
12 all those cases that Lambert filed.

13 And all the cases that he filed Lambert alleged that the  
14 defendant or defendants attempted or resulted the death of -- of Lambert --  
15 a family member.

16  
17

18  
19 So in *Kellogg v. Green* the Supreme Court held  
20 that "When an action is precluded by res judica (ph)[sic] is a question of  
21 law that the Court review de novo.

22 *Caperton v. A.T. Massey Coal Co.*, (2013) --

23 "The parties seeking to assert defense res judicata as a

1 bar must show by preponderance of evidence that the claim of issue should  
2 be precluded by prior judgment."

3 And in *D'Ambrosio v. Wolf* Supreme Court of  
4 Virginia held that "The evidence must be proven are each of these claim and  
5 issue preclusion and judicial estoppel."

6 In this case the court relies on the absolute privilege  
7 statement for its prior judgment to dismiss the defamation case. The  
8 plaintiff's factual position in this pleading did not come up in the dismissal  
9 of 2017 case.

10  
11 So I'm going to cite some opinion that is from  
12 *D'Ambrosio* --

13 THE COURT: Okay.

14 MR. BUI: -- case where it said "The claim" --  
15 "claim at issue -- what is claim and issue preclusion? It is by showing a  
16 preponderance of evidence that the claim at issue should have been --  
17 should be precluded by a prior judgment."

18  
19 And it's also cite *Bates v. Deaver* (ph).  
20 "When these cases issue are not asserted in the federal action and not  
21 dismissed with prejudice it should not be a bar."

22  
23 And also the legal claim -- the legal opinion



1 here is that "If there is an underlying different legal claim that can be  
2 joined, it should be joined unless --unless a judicially recognized exception to  
3 res judica  
4 (ph) [sic] exists."

5 "However," it said on the four -- on the second paragraph,  
6 fourth line, it said, "However, if the underlying conduct transaction  
7 occurrence produces multiple legal claims, not all of which can be asserted  
8 at the time of the initial litigation, claim preclusion will not prohibit the  
9 previously unmaintainable claims for" --"from being raised in subsequent  
10 litigation."

11 So -- so if -- so if he cite -- if he cite that -- if he -- if he cite  
12 that this -- this other case in the plea in bar that said -- that said there was  
13 a

14  
15 contest of a will issue -- no. What is it I wrote, Your  
16 Honor? No, no. It's -- that's fine.

17 So basically the argument -- the argument here is that based  
18 on -- based on the opinion here, the Court -- the Court said that if there is a  
19 different legal claim that was not fully litigated, it can be brought up.

20  
21 THE COURT: Okay.

22 MR. BUI: So -- and then also the issue --

23 THE COURT: I'm going to give you -- I'm going

1 to give you two more minutes --

2 MR. BUI: All right.

3 THE COURT: -- to finish up, all right?

4 MR. BUI: The issue of preclusion here it  
5 said, "The common factor issue between the same or related party must  
6 have been actually litigated essential to a valid and final personal judgment  
7 in the first action in order for -- in order for res judicata to be bar."

8  
9 THE COURT: Okay.

10 MR. BUI: And then the -- the last -- the last issue that  
11 needs to be proven for -- for the res jud --for the bar to be active is actually --  
12 it said judicial estoppel.

13 It said that the -- it said that "The fundamental requirement  
14 for the application that's sought -- application that the parties sought to be  
15 estoppel must be to adopt a position of fact that is inconsistent with a stand  
16 taken in a prior litigation."

17 So basically I think it's -- it's saying --what it's saying here is  
18 that in order for it to be an estoppel the party that's seeking an estop must  
19 show the court that the factual position that was asserted in the first order  
20 is the same as this one which the plea in bar

21

22

23

1 currently does not have.

2 THE COURT: All right. Thank you, Mr. Bui. I want you to  
3 know that your time is up. I've also read not only your pleading and  
4 Defendant's pleading, but I've also read the case that I was unfamiliar with  
5 that you have  
6 cited -- *D'Ambrosio versus Wolf*.

7 I'm ready to rule now. I'm going to sustain the plea in bar  
8 and dismiss this case with prejudice pursuant to Rule 1:6.

9 My basis for doing -- and I'm going to direct you to prepare  
10 an order that simply states that. I am denying the request for sanctions  
11 and fees in this case.

12 My basis for it is the plain language of Rule 1:6 when read in  
13 conjunction with Judge Bellows' order dismissing the claim with prejudice  
14 on April 16th, 2008.

15 And I conclude that that claim that was dismissed with  
16 prejudice was a claim or cause for action that arose out of the same conduct  
17 in this case which is the incident in 2017 that is common to both complaints.

18 I do not find that the exceptions apply in  
19 this case as this is a malicious prosecution claim.  
20  
21

22 I also do not find that the factual scenario  
23 is similar to that of *D'Ambrosio versus Wolf* because one

1 of the claims in *D'Ambrosio versus Wolf* did not exist at  
2 the time of the ruling in the dismissed claim. This claim  
3 did exist. That is the basis for my ruling.

4 Prepare the order. Sign it "Seen and objected  
5 to." And you obviously have a right to note an appeal to  
6 this decision as well. Thank you very much.

7 MR. SMYTH: Thank you, Your Honor.

8 \* \* \* \* \*

9 (Whereupon, at approximately 10:44 o'clock  
10 a.m., the hearing in the above-entitled matter was  
11 concluded.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**CERTIFICATE OF REPORTER**

I, GAIL HIRTE ZEHNER, a Verbatim Reporter, do hereby certify that an audio recording of the foregoing proceedings was provided to me by the IT Department of the Fairfax County Circuit Court; that I thereafter reduced the audio recording to typewriting; that to the best of my ability the foregoing is a true record of said recording; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

---

**GAIL HIRTE ZEHNER**  
Verbatim Reporter



IN THE CIRCUIT COURT OF FAIRFAX COUNTY

KHAI BUI,	)	Case No.: 2017-16518
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ABDUL ALSHAER,	)	
	)	
Defendant.	)	

**PLEA IN BAR TO CIVIL LIBEL DEFAMATION TORT (AMENDED COMPLAINT)**

COMES NOW the Defendant. by counsel, and for his Plea in Bar to the Civil Libel Defamation Tort (which seems to be Plaintiff s .. Amended Complaint"), states as follows:

- 1 Plaintiffs Amended Complaint is based on a "handwritten statement" made on September 1, 2017, accusing the Plaintiff of property damage.
- 2 Although the Plaintiff refers to the statement as a police statement." it was actually a Criminal Complaint. attached as Exhibit I. The handwritten Criminal Complaint is dated September 1, 2017, and contains the sentences referenced in Plaintiffs Complaint. As indicated by the signature, the Criminal Complaint was actually made before a magistrate. not to the police.

- 3 The Criminal Complaint initiated case number GCI 7176768 in the Fairfax County General District Court, charging the Plaintiff with damaging the Defendant's vehicle. The magistrate issued a summons for the Plaintiff.
- 4 Defendant's statements made to the magistrate initiating the criminal case are protected by the doctrine of judicial privilege and absolute immunity words spoken or written in a judicial proceeding that are relevant and pertinent to the matter under inquiry are absolutely privileged. *Mamfield v. Bernabei*, 284 Va. 116, 121 (2012)
- 5 The rule of judicial privilege is not limited just to trials, but includes all proceedings of a judicial nature. *Id.* at 122. For instance, in *Donohoe Construction* (..... *Mount Vernon Associates*, 235 Va. 531 (1988), the Court found that filing a memorandum of mechanic's lien constituted a judicial proceeding. Specifically, the Court found that because a claimant had to appear and make an oath before a notary public, which is a judicial act, and then a suit to enforce the lien must be brought, it fit the broad rule for a judicial proceeding. *Id.* at 538.
- 6 In addition, judicial privilege extends outside the courtroom. *Mansfield, supra* at 122. In *Mansfield*, a draft complaint circulated before filing for settlement purposes, was found to be protected by judicial privilege.
- 7 In *Darnell v. Davis*, 190 Va. 701 (1950), the defendant had requested in writing that the justice of the peace dismiss an arrest warrant which the defendant had originally sworn out.



The dismissal request still stated that the defendant had committed trespass. The Court found that while the language of the dismissal request could be the basis for a violation of the insulting words statute, they were made as part of a judicial proceeding, and, therefore, were privileged.

8 Finally, in *Decker v. Watson*, 2000 WL 33649965 (Va. Cir. Ct. Nov. L 2000) (attached), the Court found that an affidavit made to a magistrate for a search warrant, even when there were no charges pending, constituted a judicial proceeding and was afforded absolute immunity. The Court specifically found that because the defendant testified under oath and under the threat of perjury, that defendant made the alleged defamatory statements in an attempt to secure a search warrant in a criminal investigation pursuant to certain statutory provisions, and that the proceeding was conducted before a magistrate, an officer of the Court vested with certain judicial powers, it constituted a judicial proceeding.

9 In the instant case, Mr. Alshaer submitted the Criminal Complaint under the threat of perjury. Mr. Alshaer made the statements to initiate a criminal case, and such a case was initiated. The statements were made before a magistrate,

who, pursuant to *Decker*, is a judicial official, and who had the power to issue a summons against the Plaintiff (which in fact was issued). Therefore, the submission of the Criminal Complaint constitutes a judicial proceeding.

- 10 The damages which Plaintiff alleges all arise from the criminal charges. For instance, in Paragraph c, he claims that he lost his job as a result of the property destruction charges.<sup>1</sup> Paragraphs d, e, g, and h and j refer to damages suffered as a result of the criminal charges. The statements in the Criminal Complaint regarding the damages to Mr. Alshaer's vehicle were the substance of the criminal charge for vehicle damage, and that is the criminal charge which Mr. Bui complains of. Therefore, Mr. Alshaer's statements in the Criminal Complaint were relevant and pertinent to the matter under inquiry.
- 11 Since the statements in the Criminal Complaint were part of a judicial proceeding, and they were relevant and pertinent to that proceeding, the statements are afforded absolute immunity.
- 12 Even assuming that paragraph f is an allegation that the statements were made maliciously, no action for defamation can lie for statements which enjoy absolute immunity, no matter how malicious they may be. *Penick v. Ratcliffe*, 149 Va. 618, 632, 140 S.E. 664, 669 (Va. 1927) (citation omitted).

(<sup>1</sup>However, Plaintiff's reference to his employer's

policy regarding property destruction sounds like property destruction that occurs on the job, not property destruction generally.)

13 Plaintiff does not allege that the Defendant shared the written statement with anyone not connected with the criminal proceeding. Therefore, there is no claim that Defendant published the statement outside of the judicial proceeding.

14 To the extent that the claim for emotional distress is a separate cause of action as opposed to damages flowing from the alleged defamation, the Amended Complaint fails to satisfy the pleading requirements of *Russo v. White*, 241 Va. 23 (1991). In *Russo*, the plaintiff alleged that she was nervous, could not sleep, experienced stress and its physical symptoms, and was unable to concentrate at work. The Court, stating that liability only arises --when the emotional distress is extreme, and only where the distress inflicted is so severe that no reasonable person could be expected to endure it: ruled that these symptoms were not extreme enough to meet the pleading requirements for non-tactile infliction of emotional distress. *Id.* at 27-28. In the instant case, the Plaintiff only alleges that he suffered headaches and loss of sleep. Any financial loss he claims in his

Amended Complaint is due to criminal charges. not to any emotional distress. and any alleged emotional distress does not rise to the *Russo* requirements.

WHEREFORE. Defendant asks that this Court sustain his Plea in Bar and that the case be dismissed with prejudice.

Respectfully submitted.

ABDUL ALSHAER

By counsel

s/

SEFTON SMYTH

KHAI BUI  
1124 Duchess dr  
Mclean, VA 22102  
Telephone: 703-338-5898  
Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

VA: Fairfax County Circuit Court

Khai Bui,	:	Case No.: 2017-16518
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
abdul alshaer,	:	
	:	
Defendant,	:	

**Civil libel defamation tort**

I, Khai Bui, pro-se herein charge that defendant commit libel statement. The statement was made on September 1, 2017 with defendant's handwriting. The statement has intended to put plaintiff in trouble with the law. It did and it did further cause damages to plaintiff's reputation, jobs, contracts, financial status, change of jobs, and change of work schedule.

- a. Mr Bui knows defendant through usage of a rental house. Mr Bui and defendant were at odds over keeping the shared bathroom clean. Defendant was kicked out the shared bathroom for not keeping it clean. About the same time, he files a false police statement. Beginning of his statement he wrote "On Aug 25<sup>th</sup>, I witnessed Khai scratch my vehicle through my front window

of the house at or around 3pm- 5pm.” Defendant made an untruthful statement to the police and a libel statement was committed against the plaintiff

- b. Mr Bui’s name was re written several more times in the statement. Where his name was associated and controlled in the statement’s sentences; the sentences said: “On the 24<sup>th</sup>, prior to this incident, I found cake on my car. On the 26<sup>th</sup> of Aug, the following day, I was taking a shower while Khai had exited his room and stood by the bathroom door and waited my leaving the bathroom in aggressive ....” Defendant willfully use plaintiff’s name in the sentence and accused plaintiff of improper domestic behavior. Defendant has tried to ruined plaintiff’s name with people that are living in this house.

#### **I. Financial damages (c)**

- c. Plaintiff annual income is 20 – 40 thousands / year contractually for last 2 years. Before the last 2 years plaintiff has worked with many different companies with an average of \$20-\$45 per hour. Resulting from these allegations, plaintiff has no longer work with TL transportation logistics. TL transportation logistics hire Mr Bui for contracts since 2016. Therefore, Mr Bui not only loss his contracts but everything that he has built within the organizations. Mr Bui does not accused defendant of trying to get his job or jealous of his earnings. He just knows that as a result of the property destruction charges, his employers were reluctantly letting him out. TL transportation logistics’ policies generally do not compensate for properties destruction. Properties destruction were tier infractions that will result in termination

#### **II. Emotional distress and credit distress (d - e)**

- d. Plaintiff was considered for employment with several car dealer ship. His employment was pending background check. Criminal charges were appearing on these reports and were securities issues for employment. Ultimately, after looking at the background check potential employer were not able to acquire his service.
- e. Plaintiff could have been jailed and convicted of criminal charges as resulted from defendant's pages of notes. Plaintiff was suddenly losing income of \$2000 / month. Plaintiff was becoming insolvent and could not pay his bills on time. As a result plaintiff is emotionally distress over loss of jobs and contracts since September 2017.
- f. Malice occurs when the person making the statement knew the statement was not true at the time he made it or had reckless disregard for whether it was true or not.
- g. Plaintiff suffers headache and insomnia after facing criminal charges from defendant's untruthful written words.
- h. Plaintiff change of work and change of work schedule because of defendant's charges. Loss of earnings and incurred charges to look for jobs are a part of this claim

Wherefore, plaintiff's claim that defendant's statement were false. Defendant's statement causes financial damages because it brought on a criminal charge. Then these charges were appearing on background check for employment. Defendant's false statement causes loss of jobs and contracts. Plaintiff's background check for employment rejected because of court case. Plaintiff claim that there are enough to prove that defendant committed libel and there were injuries to plaintiff's emotions

the lawsuit in this court under

- I. Malicious intent
- II. Defendant made the report
- III. Without probable cause, AND
- IV. Terminated or nolle prosequi
- V. File false police report

2-1A Plaintiff complains that defendant told fraud and false information to the police officer, McElliott. That information and subsequent events causes plaintiff to lose his job at transportation logistic llc and amazon.com. These subsequent events public records had an adverse condition on his pre-employment qualification at Koon's tysons corner. Plaintiff was seeking a job at Koon's auto dealership. His employer ran a background check. Background check results had immediate adverse condition that prevent employer going further in the employment process. The pending court case was on the report.

2-1B Plaintiff was using a work address 6479 Gainer Street Annandale VA 22003. This address is where plaintiff lives April 2017 - April 2018. Plaintiff on two occasions told defendant to clean the bathroom but defendant did not clean. Plaintiff was feeling sick so he sends a text to Haley, landlord, so she can fix the situation and clean the bathroom. Haley told plaintiff that somebodies in the house also stole plaintiff's packages and did not return until Haley raise her concerns.

2-1C Fees of approximately twenty dollars per tenant per month were asked by landlord to fix the cleaning situation. Defendant discontinued paying the fees and then he discontinued self-cleaning the bathroom.

2-1D In committing these civil wrongs, defendant was upset because he had a verbal argument with plaintiff in front of the house. The next couple days, he filed a false



police report claiming that plaintiff was the person that destroyed his car on several different occasions and different days. The criminal case was prosecuted in court November 2017. The case was nolle prosequi because of no probable evidence. Defendant also claims that he saw the person who did it on those occasions. The false police report leads to a charge with property destruction. The charges were nolle prosequi at the end.

2-1E Defendant went to the police officer, McElliott and report that he saw Mr. Khai Bui destroyed his car on August 24th, August 25th and August 26th. After the police investigated, defendant went to the Fairfax County magistrate court. Mr. Khai Bui was working for TL LLC on those days from 3pm - 9pm and was nowhere near defendant's car.

2-1F VA code 18.2-461 Falsely summoning or giving false police reports to law enforcement officials is an offense that is punishable by the Commonwealth. Furthermore, a lie to an officer can be dangerous especially if it was induced from a negligence and malicious motives.

2-1G Defendant is not trustworthy in state of Georgia. Defendant was found guilty on a writ of possession, case 09-m-22947. Defendant was avoiding service of process on a small claim, case 06-m-27040. These are charges of unpaid rent and unpaid goods and services. These are also crimes of frauds and dishonesties when defendant rented in Georgia. [ATTACH 6 pages: Gwinnett County Magistrate Court]

2-1H Defendant motive was to file a false report to put plaintiff in false light and assign a peace officer or police officer to arrest plaintiff. This motive is fueled with previous arguments about cleaning a bathroom and last argument was in front of the house.

2-1I Defendant fails to meet the lease requirements of keeping a clean space and

bathroom. Furthermore, he uses his failures to adhere to rental rules as motivation in a criminal attempt to use plaintiff's name on the false police report. Even though, defendant did not have a covenant agreement with plaintiff but they were tenants at the same location. Therefore, defendant can be liable for attacking plaintiff personal space, personal properties, and including plaintiff's name

2-1J Plaintiff's bedroom was at least accessed during a water leaking from the roof.

Plaintiff bank account, computer, documents, and other personal things were exposed. Plaintiff lost some clothing and his online packages were stolen

2-1K Defendant did not have probable cause when he initiates a police report.

Defendant did not observe incidents any incidents he reported. Case was dismissed in plaintiff's favor. Defendant asked for money to fix his car

2-1L Defendant brought guy friends to the house to tries intimidate plaintiff after the criminal court case. They would block the house stairways at the same time as plaintiff's leaving

2-1M Defendant wrote some quotes in the false police report. These are offensive words within quotations to make plaintiff looks worse. The use of plaintiff's name was not noticed and unauthorized by plaintiff

2-1N Defendant did not see plaintiff did anything to his car. Defendant's statement was surreal and false while he uses plaintiff's name without permission to the police

2-1O File false police report - defendant committed a crime with intent to harm and without probable cause

2-1P Fields v Sprint Corporation, in this case, the Sprint employee thought he saw a theft and report to the police but it wasn't a theft. The court finds that report to the police to initiate a crime is early in the judicial process and therefore should only afford qualified privilege and the court also find that the police report in

Fields v Sprint Corporation was made with malice. To the extent of court order, any order made by the court in judicial settings are judgment of the court and is constitutional. It may or may be looked upon as decision of a case. It may definitely be counted as a judgment for a specific item to be complete by a party in a case.

2-1Q Similarly, to Fields v Sprint Corporation case, defendant report to the Mason district police about Mr. Khai Bui destroying his car was too early in the process to be absolute privilege. It was a lie so it cannot afford qualified privilege, and it was made with negligence and malice.

2-1R Plaintiff has suffered loss from the defendant's false report as lost job at TL llc, unable to obtain a job at Koon's, damaging information on background check, and immediate and future mis-interpretation of his name.

Plaintiff's rights to life, liberty, or property was deprived when defendant falsely accused plaintiff of destruction of his car. That false accusation exposed plaintiff to nolle prosequi case, bad background check and lead plaintiff to lost contract, lost job opportunities, loss of privacies, and "equal protection" of the laws.

Plaintiff is entitled to relief because defendant filed false report to the police and followed up with officer McElliott in the investigation without noticing plaintiff. Plaintiff was charged with properties destruction in circuit court of Fairfax. Plaintiff appear in court on November 8, 2017 to hear the case. Defendant offered no explanations but did demand some money in circuit court on trial date. The court nolle prosequi the case. Plaintiff filed defamation suit in circuit court but that case was dismissed. Plaintiff allege in this complaint that defendant had filed false reports. It shows that defendant wrote these reports on or about September 1, 2017. The

charges brought against plaintiff cause him to lose his job and unable to obtain job. Consequently, plaintiff is seeking remedies against a tortfeasors and is within his state statute of limitation, § 8.01-243. Personal action for injury to person or property generally; extension in actions for malpractice against health care provider or state law.

2-1S Plaintiff seeks relief for the harm caused by malicious prosecution. Plaintiff seeks damages of economic loss as an employment loss and loss of employment opportunity and immediate and future mis-interpretation of plaintiff name due to the violation of plaintiff civil rights. Plaintiff seeks compensatory and general damages loss even though plaintiff now has a good job. Compensatory damages are employment loss at distribution center where plaintiff was on two-year term contractor at any given time at that time. Additional, compensatory damages are employment opportunity loss at car dealership where plaintiff opportunity was denied by an adverse background check on October 27, 2017. General punitive damages seek is an amount within state limits for willful, wanton, and reckless negligence. Punitive damages are an amount equal three hundred forty-two thousand. This amount of punitive is ninety percent of compensatory damages claims times two due to the willful, wanton, and reckless negligence. Plaintiff was in the fifty percent portion of the contract at Amazon, therefore he seeks compensatory damages for two terms of contract base on his salary, amount of one hundred forty thousand. Plaintiff seeks salary damages for missed re-employment opportunity at Koons dealership, amount of fifty-four thousand.

Wherefore, it is evident that plaintiff constitutional rights given to him by the constitution could be infringe upon by another. When a crime occurs, a civil lawsuit is pursued for purposes of recovering damages. Three lawsuits were filed and dismissed on grounds of absolute privilege, lack of federal subject matter jurisdiction, and no cognizable cause of action. This lawsuit alleges in details the wrongs that previous lawsuits were never litigated or could have been litigated. This lawsuit is different and it asks for relief of damages from results of wanton reckless negligence and its complaint of malicious prosecution seeks compensatory and punitive.

s/ KHAI BUI 10-29-2019

X

---

KHAI BUI

KHAI BUI

1124 Duchess dr

Mclean, VA 22102

Telephone: 703-338-5898

Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

Certificate of Service

I, Khai Bui pro-se, confirm a true copy of complaint-malicious prosecution was sheriff  
serve request on October 29, 2019:

s/ KHAI BUI 10-29-2019

---

KHAI BUI

1124 Duchess dr

Mclean, VA 22102

Telephone: 703-338-5898

Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

**KHAI BUI**

**1124 Duchess dr**

**Mclean, VA 22102**

**Telephone: 703-338-5898**

**Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**Khai Bui**

**Case Number: 2019-14766**

**1124 Duchess dr**

**Mclean VA 22102**

**Plaintiff,**

**v.**

**abdul alshaer**

**6479 Gainer st**

**Annandale VA 22003**

**Defendant**

**Response to plea in bar**

**Comes now, Khai Bui pro se response to the plea in bar. A lawsuit was filed for malicious prosecution on October 29, 2019. The title of the lawsuit is Complaint-Malicious Prosecution. This cause of action is merit if conditions of facts previous**

raised by defendant was fraud or false. Defendant filed plea in bar alleged plaintiff lawsuit is bar by res judicata citing Rule 1:6( a ), Lambert v Javed, Funny Guy, LLC v Lecego, and an order dismissed defamation case with prejudiced.

Defamation case was filed in November 22, 2017 and disposition:

- 1) Demurer was sustained, plaintiff filed amended complaint ( Exhibit a )
- 2) Civil libel defamation tort filed February 12, 2018 ( Exhibit b )
- 3) Plea in bar was filed February 23, 2018 ( Exhibit c )
- 4) Court rule that allege written statement in the defamation cause was absolute privilege. Case was dismissed with prejudice ( Exhibit d )

Defamation action in state of Virginia is under code 8.01-45 through 8.01-49.1. It does not refer to malicious prosecution.

Pursuant to Rule 1:6( c ) "Exceptions. The provisions of this Rule shall not bar a party or a party's insurer from prosecuting separate personal injury and property damage suits arising out of the same conduct, transaction or occurrence, and shall not bar a party who has pursued mechanic's lien remedies pursuant to Virginia Code § 43-1 et seq. from prosecuting a subsequent claim against the same or different defendants for relief not recovered in the prior mechanic's lien proceedings, to the extent heretofore permitted by law." His cause of action is different and he claims personal injuries under VA code 8.01-243. In this case rule 1:6( a ) does not applies because merit of this case is initial report to the police was fraudulent.

On November 8, 2017 prosecution case against plaintiff was nolle prosequi. Defendant was the person that made the false report to the police. Pursuant to state civil remedies and laws, defendant could be sued for each false oral or different types



of statements made by himself if those statements were not produced at the same time. Defendant alleged two cases in support of his plea in bar.

Plaintiff's cause of action is malicious prosecution. It is different than defamation. Lambert v Javed cite opinions concerning final disposition of a case. It did not prove that any of the cases in questions had been fully litigated until disposition. Defamation was dismissed because its cause was absolute privilege. Federal case was dismissed because of subject matter jurisdiction and the other was not served.

Plaintiff's cause of action and claims are under personal matters and personal injuries. Funny Guy LLC v Lecego is regarding contract dispute. Surely, in contract disputes legal claims are disclosed between the parties before a lawsuit. In personal injuries cases, parties do not know details of the claims until discoveries. Plaintiff did not receive correspondence from the police about the incident until November 2018. Plaintiff could not have used that as a cause of action in the defamation case.

Federal case filed August 24, 2018 and dismissed without prejudiced citing the court does not have subject matter jurisdiction. The case was never looked at for its merit. Federal case filed August 2019 was never served. It was dismissed for unrecognizable action. Federal jurisdiction requires residents to be non-citizens of same state. Federal rule 12 ( b ) requires defense motion to assert limited grounds and res judicata was not asserted in the federal case 1:18-CV-1061.

Wherefore, plaintiff asks for eight hundred dollars in legal fees to defend plea in bar ( Exhibit e ) and asks this court to dismiss the plea.

In this circuit court, it is before a malicious prosecution case. It is filed under rule

1:6( c ) and is a personal injuries recoveries claims. Under VA code 8.01-243 recoverable action for personal injuries case was filed before two years statue of limitation. This case is not in violation of Virginia laws and can not be a claim for attorney fees. Under 8.01-271.1, meritless or fraudulent claims may be considered by the court for reimbursement of attorney fees.

Defendant has not proven this case was decided on the merits or they are identical. Plaintiff ask this court to believe that there was a false report made to the police and the prosecution ended in his favor.

1-23-2020

s/ KHAI BUI

X

---

KHAI BUI

KHAI BUI

1124 Duchess dr

Mclean, VA 22102

Telephone: 703-338-5898

Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

KHAI BUI

1124 Duchess dr

McLean, VA 22102

Telephone: 703-338-5898

Email: akhaibui@yahoo.com

Certificate of Service

I, Khai Bui pro-se, confirm a true copy of response to plea in bar was mailed on January 23, 2020 to opposing counsel:

Date 1-23-2020 s/ KHAI BUI

---

Sefton Smyth

32 W. Baltimore St.

PO Box 944

Funktown, MD 21734

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

KHAI BUI,	)	Case No.: 2019-14766
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ABDUL ALSHAER,	)	
	)	
Defendant.	)	

PLEA IN BAR

Defendant, by counsel, for his Plea in Bar, states as follows:<sup>1</sup>

**BACKGROUND**

Plaintiff and Defendant used to be roommates. On September 6, 2017, Mr. Alshaer filed a criminal charge in the General District Court against Mr. Bui for damaging his car on or about August 25, 2017, case number GCI 7176768 (a copy of the criminal complaint and criminal summons is attached as Exhibit 1). Ultimately, a *nolle prosequi* was entered on November 8, 2017

On November 22, 2017, Mr. Bui filed his first suit against Mr. Alshaer

criminal charge, entitled "Complaint Credit Worthiness and Emotional Distress," case number CL 2017-16518 (the "First Fairfax Case"), a copy of which is attached as Exhibit 2. Mr. Alshaer demurer, and on February 2, 2018, Judge Bellows granted Mr. Alshaer leave to amend, warning him in court that if his amended complaint failed to state a claim, then his case would likely be dismissed (the order granting leave to amend is attached as Exhibit 3). On February 12, Mr. Bui filed his amended complaint, entitled "Civil libel defamation tort," attached as Exhibit 4. Mr.

---

<sup>1</sup> Defendant actually no longer lives at the address where the Complaint was served, and he learned about the case from an old roommate who still lives at that address.

Defendant waives any arguments regarding service of process.

Alshaer filed a plea in bar (attached as Exhibit 5), since the alleged defamatory statements came from the criminal complaint, which was protected by judicial privilege. On April 6, 2018, Judge Bellows granted the plea in bar, and dismissed the case with prejudice (see Exhibit 6). Mr. Bui did not appeal the dismissal.

On August 24, 2018, Mr. Bui sued Mr. Alshaer in the United States District Court for the Eastern District of Virginia, Case Number 1:18-cv-

1061 (the "Federal Case"). In the Federal Case, Mr. Bui sued Mr. Alshaer for "Breach of duty of care;" "Malicious prosecution with malice;" "Invasion of privacies under statute of false light;" "Illegal use of a person name with intent to harm;" and "File false police report" (the federal complaint is attached as Exhibit 7).

Once again, his suit was based on the criminal charge, which he attached as an exhibit to his complaint. Since the Federal Case alleged only state court claims, and the parties were at the time both residents of Virginia, Mr. Alshaer moved to dismiss the case for lack of subject matter ....<sup>2</sup> On October 29, 2018, Judge Hilton granted the motion and dismissed the Federal Case without prejudice (Exhibit 8).

Exactly one year later, Plaintiff filed the instant case for malicious prosecution from the incident, claiming that Mr. Alshaer lied to the police officers when he reported the charge. Mr. Bui even references his previous civil suits, and states that "Three lawsuits were filed and dismissed on grounds of absolute privilege, lack of federal subject matter jurisdiction, and no cognizable cause of action."<sup>3</sup> Mr. Bui's claims are barred by *res judicata*, and Mr. Alshaer seeks sanctions to prohibit further legal harassment.

## ARGUMENT

---

<sup>2</sup> Since federal practice is to resolve jurisdictional issues prior to

rulings on The merits, Defendant did not raise the *resjudicata* issue in

the Federal Case.

<sup>3</sup> Counsel is only aware of two suits, but the third case which Plaintiff references may have been the first complaint in the First Fairfax Case.

As stated above, the First Fairfax Case was dismissed with prejudice. "As a general proposition a judgment of dismissal which expressly provides that it is 'with prejudice' operates as *resjudicata* and is as conclusive of the rights of the parties as if the suit had been prosecuted to a final disposition adverse to the plaintiff." *Lambert v. Javed*, 273 Va. 307, 310, 641 S.E.2d 109, 110 (2007)(citation omitted). "Virginia law has historically recognized that a litigant must unite every joinable claim that he has against a particular defendant in one proceeding or risk the preclusion of his other claims. 'Every litigant should have opportunity to present whatever grievance he may have to a court of competent jurisdiction; but having enjoyed that opportunity and having failed to avail himself of it, he must accept the consequences.'" *Funny Guy, LLC v. Lecego, LLC*, 293 Va. 135, 146-47, 795 S.E.2d 887, 892 (2017)(citation omitted). "Thus, the effect of a final decree is not only to conclude the parties as to every question actually raised and decided, but as to *every claim which properly belonged to the subject of litigation* and which the parties, by the exercise of reasonable diligence, might have raised at the time." *Id.* at

147, 892-93.

In addition, Virginia Supreme Court Rule 1:6(a) states, "A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, shall be forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought."

The claims which Mr. Bui raises in the instant case are all related to the criminal charge from 2017, and Mr. Bui refers to that charge in the instant complaint. The First Fairfax Case was also based on that criminal charge, and states as much in this complaint. Mr. Bui's complaint in this matter even indicates that this is the third or fourth suit he has filed in connection with the charge. When Mr. Bui filed his amended complaint in the First Fairfax Case, he could have added his counts for malicious prosecution, or for defamation based on the police report (as opposed to the criminal complaint). He did not do so. Instead, he first raised malicious



prosecution four months later when he filed the Federal Case.

The criminal complaint was part of the criminal charge, and once the First Fairfax Case concerning the criminal complaint was dismissed with prejudice, it extinguished every civil claim that Mr. Bui had against Mr. Alshaer related to the criminal charge.

In addition, to the extent that Mr. Bui may be claiming defamation based on the statements made to police, such claims are barred by the one year statute of limitations for defamation actions contained in §8.01-247.1. The statements were made in August, 2017. This suit was filed exactly one year after the Federal Case had been dismissed. The Federal case was filed approximately four months after the First Fairfax Case was dismissed, and the First Fairfax Case was filed two weeks after the criminal case was dismissed. Even allowing for tolling while suits were pending, the one year period to file suit for defamation is past.

### **REQUEST FOR SANCTIONS**

By Mr. Bui 's own statement, this is the third or fourth suit that he has filed against Mr. Alshaer regarding the criminal charge. Mr. Bui is clearly following the old adage of "if at first you don't succeed, try, try again," but, at this stage, all of his claims are barred. Due to this harassment, Mr. Alshaer requests sanctions against Mr. Bui in the form of attorney fees for filing this suit in violation of Va. Code § 8.01-271.1

## CONCLUSION

Wherefore, Defendant asks this Court dismiss the current case without prejudice and award sanctions against the Plaintiff.

Respectfully submitted,

ABDUL ALSHAER

By counsel

s/

SEFTON SMYTH

**County of Fairfax, Virginia**

**To protect and enrich the quality of life for the people,  
neighborhoods, and diverse communities of Fairfax County**

**November 16, 2018**

**Khai Bui**

**1124 Duchess Dr.**

**McLean, VA 22102**

**Re: 2017-**

**2380183**

**Our Re: 18-FOIA**

**768**

**Dear Khai Bui:**

**This correspondence is in response to your Virginia Freedom of  
Information Act (VFOIA) request and serves to confirm the existence  
of an incident report on file with the Fairfax County Police  
Department. The complete police report and associated materials are  
deemed to be criminal investigation information or material.  
Therefore, the exemption from disclosure under Section 2.2-  
3706(A)(2)(a) of the Code of Virginia will be exercised. The following  
criminal incident information is provided pursuant to Va. Code Ann. §**

2.2-3706(A)(1)(a):

Case Number	2017-2380183
Date of Report	08/26/2017
Date of Event	08/26/2017
Investigating Officer	PFC K. McElligott
Reported Event	Injure/Tamper Vehicle Etc.
General Location	6000 Block Gainer Street
General Injuries	N/A
General Property Reported	N/A
Stolen	

Your provided \$10.00 payment has been returned and is enclosed. If we can be offurther assistance, please do not hesitate to contact me at (703) 246-4561 or [FCPДФOIA@fairfaxcounty.gov](mailto:FCPДФOIA@fairfaxcounty.gov).

Sincerely,

s/ Michael W. Cole

Michael W. Cole, Compliance Manager

Media Relations Bureau

MWC/ekw

[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)

Khai Bui 7-8-2021

Khai Bui

1124 Duchess dr

McLean, VA 22102

Email: [akhaibui@yahoo.com](mailto:akhaibui@yahoo.com)

Number: 571-389-0693