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**OPINION, SUPREME COURT OF VIRGINIA
(APRIL 15, 2024)**

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 15th day of April, 2024.

BONNIE BURKHARDT,

Appellant,

v.

PENNEY AZCARATE, CHIEF JUDGE,

Appellee.

Record No. 230875

Court of Appeals No. 1908-22-4

FROM THE COURT OF APPEALS OF VIRGINIA

Upon review of the 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.

Justice Mann took no part in the resolution of the petition.

App.2a

A Copy,

Teste:

Muriel-Theresa Pitney
Clerk

By: {signature not legible}
Deputy Clerk

**MANDATE,
COURT OF APPEALS OF VIRGINIA
(AUGUST 9, 2024)**

bonnie.burkhardt blueridge-sw.com
From: Court of Appeals of VA _4
<court_of_appeals_of_va_4@vacourts.gov>
Sent: Friday, August 9, 2024 7:53 AM
To: bonnie.burkhardt blueridge-sw.com;
tsanford@oag.state.va.us;
rmcenteeiii@oag.state.va.us
Subject: Bonnie Burkhardt v. Chief Judge Penney
Azcarate; Record No. 1908-22-4
Attachments: 100323 mandate judgment aff'd 1908
-22-4 bw.pdf



COURT OF APPEALS OF VIRGINIA

Counsel:

Attached is this Court's mandate certified today in the above-referenced matter.

(sent to Hon. Christopher J Falcon, Clerk)

Please note that no paper copies of the attachment(s) will be mailed separately to you.

Counsel must file all correspondence and pleadings electronically through the VACES system. Information about VACES is available on the Virginia Judicial System Website at <https://eapps.courts.state.va.us/help/robo/vaces/index.htm>. Pro se/self-represented litigants may file through the VACES system. Otherwise, such

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individuals must submit one paper copy of a filing to the Clerk of the Court.

DO NOT REPLY TO THIS EMAIL.

This Court will take no action on anything received at this email address. Should you wish to contact the Clerk's Office of the Court of Appeals of Virginia, you may do so by telephone at 804-786-5651 or by writing to A. John Vollino, Clerk, Court of Appeals of Virginia, 109 North Eighth Street, Richmond, Virginia, 23219

**ORDER, COURT OF APPEALS OF VIRGINIA
(OCTOBER 3, 2023)**

VIRGINIA:

*In the Court of Appeals of Virginia on Tuesday the
3rd day of October, 2023.*

BONNIE BURKHARDT,

Appellant,

v.

PENNEY AZCARATE, CHIEF JUDGE,

Appellee.

Record No. 1908-22-4

Circuit Court No. CL-2022-7261

From the Circuit Court of Fairfax County
Before Judges Humphreys, Ortiz
and Senior Judge Annunziata

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant must pay to the appellee 150 damage.

Appellant's motions to add supplemental authority are granted.

This order shall be certified to the trial court.

App.6a

A Copy,

Teste:

A. John Vollino, Clerk

By: {signature not legible}
Deputy Clerk

**MEMORANDUM OPINION*,
COURT OF APPEALS OF VIRGINIA
(OCTOBER 3, 2023)**

UNPUBLISHED

COURT OF APPEALS OF VIRGINIA

BONNIE BURKHARDT

v.

PENNEY AZCARATE, CHIEF JUDGE

Record No. 1908-22-4

**From the Circuit Court of Fairfax County
Charles S. Sharp, Judge Designate**

**Before: Judges Humphreys, Ortiz and Senior Judge
Annunziata Argued at Fairfax, Virginia.**

Appellant Bonnie Burkhardt, *pro se*, challenges a decision by the Circuit Court of Fairfax County finding that Burkhardt lacked a cognizable right of action that would allow her to sue a circuit court judge for the ability to present evidence to a grand jury, that Burkhardt failed to state a claim against appellee Penney Azcarate, Chief Judge of the Fairfax County Circuit Court, and that Judge Azcarate would be entitled to absolute judicial immunity, had Burkhardt

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

properly stated a claim. Limiting our review to the second issue, we hold that Burkhardt failed to state a claim against Judge Azcarate.

BACKGROUND¹

Burkhardt initiated this action by filing, *pro se*, a petition against Chief Judge Azcarate in Fairfax County Circuit Court requesting to appear before the grand jury “to present evidence of felonious activity by Fairfax County government employees.” Burkhardt did not include in the petition the names of the individuals she intended to accuse or the nature of the crimes. Burkhardt alleged that before filing the petition, she had reported the crimes “to Fairfax County law enforcement, Virginia State police officers, and even Virginia Attorney General Mark Herring’s office,” but “[a]ll her reports were ignored.” Despite Burkhardt’s having made “numerous crime tips and requests for an investigation, . . . [n]o action has been taken by any agency or official.” Nowhere in Burkhardt’s complaint does she allege that Judge Azcarate had any involvement in the selection of witnesses before the grand jury.

Upon receipt of the petition, Judge Azcarate entered a recusal order disqualifying all the judges of the Fairfax County Circuit Court from hearing the case and the case was reassigned to a judge from

¹ Burkhardt filed with this Court an appendix of materials relating to a prior case. Burkhardt also filed a transcript from a hearing in that matter. Neither the materials in the appendix nor the transcript from the other matter are properly part of the record in this case, so we will not consider them on appeal. *See* Rule 5A:7(a); *Coe v. Coe*, 66 Va. App. 457, 468 (2016) (“[A]n appellate court’s review of the case is limited to the record on appeal.”) (quoting *Wilkins v. Commonwealth*, 64 Va. App. 711, 717 (2015))).

App.9a

another circuit. Judge Azcarate, represented by the Office of the Attorney General, then filed a demurrer and a plea in bar. Judge Azcarate argued that Burkhardt lacked a cognizable right of action because there is no “statutory authority or Virginia caselaw authorizing [Burkhardt] to appear before the grand jury, much less permitting her to sue a [c]ircuit [c]ourt judge with respect to obtaining such an appearance.” Judge Azcarate further argued that even if such a claim existed, Burkhardt would have failed to state a claim against Judge Azcarate because “there is simply no mention of Judge Azcarate in the body of the [p]etition.” Finally, Judge Azcarate argued that she is entitled to absolute judicial immunity because, although the petition does not include specific reference to any acts by her, the “claim would inherently have to concern [Judge Azcarate]’s status as the Chief Judge of the Circuit Court of Fairfax County and judicial acts taken or decisions made in that capacity with respect to [Burkhardt]’s efforts to appear before the grand jury.”

Upon hearing oral argument from Burkhardt and counsel for Judge Azcarate, the circuit court ruled in Judge Azcarate’s favor, sustaining Judge Azcarate’s demurrer and plea in bar and dismissing Burkhardt’s petition with prejudice. Burkhardt filed a motion to reconsider, which the circuit court denied without a hearing. Burkhardt appeals.²

² Burkhardt has since filed two motions to amend her appeal. We treat these motions as motions to add supplemental authority and grant those motions.

STANDARD OF REVIEW

The doctrine of judicial restraint dictates that we decide cases “on the best and narrowest grounds available.” *Commonwealth v. Swann*, 290 Va. 194, 196 (2015) (quoting *McGhee v. Commonwealth*, 280 Va. 620, 626 n.4 (2010)). Although the circuit court ruled in Judge Azcarate’s favor on each of the three grounds she raised, in deciding this appeal, it is sufficient to address only the issue of whether Burkhardt sufficiently stated a claim against Judge Azcarate. We therefore limit our analysis to the circuit court’s decision sustaining Judge Azcarate’s demurrer on that ground. *See Commonwealth v. White*, 293 Va. 411, 419 (2017).

“We exercise de novo review of the circuit court’s decision sustaining the defendants’ demurrers.” *Theologis v. Weiler*, 77 Va. App. 596, 603 (2023). “When reviewing such a judgment, we ‘accept as true all factual allegations expressly pleaded in the complaint and interpret those allegations in the light most favorable to the plaintiff.’” *Taylor v. Aids-Hilfe Koln e.V.*, 301 Va. 352, 357 (2022) (quoting *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358 (2018)). “Furthermore, we draw any reasonable inferences arising from the express factual allegations of the complaint in the plaintiff’s favor.” *Id.* “The purpose of a demurrer is to determine whether a [complaint] states a cause of action upon which the requested relief may be granted. A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof.” *Id.* (quoting *Coutlakis v. CSX Transp., Inc.*, 293 Va. 212, 216 (2017)).

ANALYSIS

Assuming, without deciding, that Burkhardt has a right of action to pursue her claimed right to testify before the grand jury, Burkhardt's petition failed to articulate why Judge Azcarate was responsible for the violation of that claimed right. "While a complaint need not 'descend into statements giving details of proof in order to withstand demurrer,' it must contain 'sufficient allegations of material facts to inform a defendant of the nature and character of the claim.'" *Hale v. Town of Warrenton*, 293 Va. 366, 368 (2017) (quoting *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 143 (2013)). Burkhardt's suit was not a petition for a writ of mandamus, but a civil lawsuit naming Judge Azcarate as defendant; however, Burkhardt's petition did not provide any basis for Judge Azcarate to determine the nature or character of Burkhardt's claim. The complaint contained no assertion that Judge Azcarate impaired Burkhardt's asserted right to appear before the grand jury. In fact, the complaint did not contain any assertion that Judge Azcarate had any involvement whatsoever in the empaneling, supervision, or procedures of the grand jury. Furthermore, the petition failed to articulate any specific claim, any elements necessary to support such a claim, nor any facts to support such a claim. Accordingly, Burkhardt's petition wholly failed to state a claim against Judge Azcarate and the circuit court did not err when it sustained Judge Azcarate's demurrer.

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.

**FINAL ORDER,
CIRCUIT COURT OF FAIRFAX COUNTY
(NOVEMBER 13, 2022)**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BONNIE BURKHARDT,

Petitioner,

v.

PENNEY AZCARATE, CHIEF JUDGE,

Respondent.

Case No. CL-2022-7261

Before: Charles S. SHARP,
Fairfax County Circuit Court.

FINAL ORDER

THIS DAY, October 20, 2022, came before the Court Bonnie Burkhardt (“Petitioner”), *pro se*, and the Honorable Penney Azcarate, Chief Judge of the Circuit Court of Fairfax County (“Respondent”), by counsel.

THIS MATTER came before the Court for hearing on Respondent’s Demurrer and Plea in Bar of Judicial Immunity filed in response to Petitioner’s Petition to Appear Before the Grand Jury of Fairfax County Pur-

suant to Va. Code § 19.2-191(2) to Present Facts of Crimes (the “Petition”).

The Court has reviewed the parties’ pleadings and considered the positions advanced by the parties at oral argument on October 20, 2022.

THE COURT FINDS there is no authority statutorily or otherwise specifically for this type of action and no authority under these pleadings for this Court to grant the relief sought.

THE COURT FURTHER FINDS that the Petition has failed to state a claim.

IT IS THEREFORE ORDERED THAT, for the reasons stated on the record, the Demurrer is **SUSTAINED** and, on that basis, this matter and Petitioner’s Petition are **DISMISSED WITH PREJUDICE**.

THE COURT FURTHER FINDS that the principle of judicial immunity applies to judicial actions, even if those actions come about because of judicial inaction.

THE COURT THEREFORE FINDS that inaction, if taken in this case, is such that it would be covered by the principles of judicial immunity.

IT IS THEREFORE ORDERED THAT, for the reasons stated on the record, the Plea in Bar of Judicial Immunity is **GRANTED** and, on that basis, this matter and Petitioner’s Petition are additionally **DISMISSED WITHOUT PREJUDICE**.

The Clerk of Court is requested to strike this case from the Court’s docket of active cases.

The Clerk of Court is further requested to send a copy of this Order to the parties.

App.14a

Entered this 15 day of November, 2022.

/s/ Charles S. Sharp
Fairfax County Circuit Court

Endorsements on following page.

WE ASK FOR THIS:

JUDGE AZCARATE

By: /s/ Thomas J. Sanford
Counsel for Respondent
Thomas J. Sanford (VSB No. 95965)*
Robert B. McEntee, III
(VSB No. 89390)*

Assistant Attorneys General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Telephone: (804) 692-0551
Facsimile: (804) 371-2087
Email: TSanford@oag.state.va.us
Rmcентeeiii@oag.state.va.us

**Counsel of Record for Respondent*

SEEN AND OBJECTED TO FOR THE REASONS STATED
ON THE RECORD DURING THE OCTOBER 20, 2022 HEARING
AND IN PETITIONER'S PLEADINGS:

App.15a

BONNIE BURKHARDT

BY: /s/ Bonnie Burkhardt

Bonnie Burkhardt, *Pro Se*

Petitioner

8402 Gambrill Lane

Springfield, VA 22153

Phone: (703) 505-2793

Bonnie.Burkhardt@cox.net

BonnieBurkhardt@blueridge-sw.com

**ORDER,
CIRCUIT COURT OF FAIRFAX COUNTY
(JUNE 21, 2022)**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BONNIE BURKHARDT,

Plaintiff,

v.

PENNEY AZCARATE, CHIEF JUDGE,

Defendant.

Case No. CL-2022-7261

Before: PENNEY AZCARATE, Chief Judge.

ORDER

It appearing to the Court that all of the Judges of this Circuit having determined that they are so situated in respect to this case as to render it improper, in their opinion, to preside at the trial thereof or to participate therein, it is

ADJUDGED, ORDERED and DECREED that the Judges of this Circuit are disqualified from presiding over any further aspect in this case; and that the Clerk promptly forward a copy of this order, duly certified, to the Chief Justice of the Supreme Court of

App.17a

Virginia as a request for designation of a judge from another circuit to preside over this case, pursuant to provisions of § 17.1-105.B. of the Code of Virginia as Amended.

ENTERED this 21st day of June 2022

/s/ Penney Azcarate
Chief Judge

*ENDORSEMENT OF THIS ORDER BY COUNSEL
OF RECORD FOR THE PARTIES IS WAIVED
IN THE DISCRETION OF THE COURT
PURSUANT TO RULE 1:13 OF THE
SUPREME COURT OF VIRGINIA.*

**ORDER DENYING PETITION FOR
REHEARING, SUPREME COURT OF VIRGINIA
(JUNE 10, 2024)**

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 10th day of June, 2024.

BONNIE BURKHARDT,

Appellant,

v.

PENNY AZCARATE, CHIEF JUDGE,

Appellee.

Record No. 230875

Court of Appeals No. 1908-22-4

UPON A PETITION FOR REHEARING

On April 24, 2024, came the appellant, who is self-represented, and filed a motion to amend her appeal in this case.

Upon consideration whereof, appellant's motion is denied.

On consideration of the appellant's pleading titled "Motion to Reconsider," which is treated as a petition to set aside the judgment rendered herein on April 15,

App.19a

2024, and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Mann took no part in the resolution of this petition.

A Copy,

Teste:

Muriel-Theresa Pitney,
Clerk

By: {signature not legible}
Deputy Clerk

**ORDER DENYING PETITION FOR
REHEARING, COURT OF APPEALS OF VIRGINIA
(OCTOBER 31, 2023)**

VIRGINIA:

*In the Court of Appeals of Virginia on Tuesday the
31st day of October, 2023.*

BONNIE BURKHARDT,

Appellant,

v.

PENNEY AZCARATE, CHIEF JUDGE,

Appellee.

Record No. 1908-22-4

Circuit Court No. CL-2022-7261

Before: Judges HUMPHREYS, ORTIZ and
Senior Judge ANNUNZIATA.

Upon a Petition for Rehearing

Before Judges Humphreys, Ortiz and Senior Judge
Annunziata

On consideration of the petition of the appellant
to set aside the judgment rendered herein on the 3rd
day of October, 2023 and grant a rehearing thereof,
the said petition is denied.

App.21a

A Copy,

Teste:

A. John Vollino, Clerk

By: {signature not legible}
Deputy Clerk

**ORDER DENYING MOTION TO RECONSIDER,
CIRCUIT COURT OF FAIRFAX COUNTY
(NOVEMBER 18, 2022)**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BONNIE BURKHARDT,

Petitioner, pro se,

v.

HONORABLE PENNEY AZCARATE, Chief Judge.

Case No. CL-2022-7261

Before: Charles S. SHARP, Judge Designate.

ORDER

This cause comes before the Court upon the Petitioner's motion to reconsider the Court's rulings in the Demurrer and Plea in Bar filed previously,

And upon consideration of the pleadings, the arguments, the written memoranda and the Petitioner's motion, the motion to reconsider is DENIED.

ENTERED this 18 day of November, 2022.

/s/ Charles S. Sharp
Judge Designate

**MOTION FOR DEMURRER AND PLEA IN BAR,
TRANSCRIPT EXCERPTS
(OCTOBER 20, 2022)**

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BONNIE BURKHARDT,

Plaintiff,

v.

PENNEY AZCARATE,

Defendant.

No. CL-2022-7261

Before: Charles S. SHARP, Judge.

[October 20, 2022, Transcript, pp. 24-32]

THE COURT: No, since it's your motion, I just—and the burden is on you in making these arguments—I wanted to make sure you had an opportunity to address any specific points Ms. Burkhardt may have made in rebuttal.

MR. SANFORD: No, your Honor.

THE COURT: Okay.

MR. SANFORD: Thank you.

THE COURT: Ms. Burkhardt—

THE PLAINTIFF: Yes, your Honor?

THE COURT:—and Mr. Sanford, thank you very much for your arguments.

As I said, I've read all of these things and I've made some notes, not only in preparation of the hearing, but as we've heard these arguments.

So if you're going to allow me an opportunity, I'm going to take a short recess to look at my notes, and I'll come back and give you an opinion, okay?

(Brief recess.)

THE COURT: All right. The Court is prepared to rule on these motions in the matter of Burkhardt versus Judge Azcarate.

Before I do that, let's make sure we understand why we are here. This comes on the Court's docket today for a demurrer and plea in bar based on judicial immunity.

Neither of those things are a ruling on the merits. They don't speak to what the underlying grievances are. They don't speak to what the methods of approach are. They're only rulings based on the pleadings themselves.

As I indicated earlier, there's not an evidentiary hearing. It's simply a matter of the Court inspects the pleadings and has to make a determination, first of all, with respect to the demurrer whether a claim has been stated. And secondly, with the claim of the judicial immunity, whether that judicial immunity acts as a bar to any proceeding given the actions that are alleged.

So let's address first of all, the demurrer. The Court has examined all of these documents. I don't know anything of the history, except the little bit I heard from Ms. Burkhardt of prior proceedings.

It is interesting to know those things, but they don't necessarily have any legal efficacy when it comes to the Court ruling today. It certainly suggests to the Court and the Court is sympathetic and understanding of a desire to present items before a grand jury.

And Ms. Burkhardt, in her pleadings, very well documented the importance and the history of the grand jury in general and in the Commonwealth, and the Court was interested in reviewing that. But the Court has to find that this petition filed against the circuit court judge is not the mechanism to achieve those goals.

Specifically, the Court made these findings. There is no authority, as has been argued by the Attorney General's Office, statutorily or otherwise, specifically for this type of action.

The circuit court does not currently, as far as this Court knows, and has not historically, directed the actions of any grand jury. Requests for submission of the grand jury usually come from public officials or from the jurors themselves.

When a jury is impaneled, a circuit court judge directs them that not only do they have jury responsibilities, but if they desire to investigate matters which have come to their attention, then they can ask that they be designated a special grand jury in which case, the judge may appoint them to do that. But again, it doesn't initiate with

the judge. It's not put into motion by the judge. It's put in motion by other factors.

As I indicated earlier, a demurrer can only address the facts and positions which are alleged in the documents. And there is no assertion in these pleadings, nor is there any evidence before the Court that in the sequence of events which constitute this action, that there was ever a request made to submit to a grand jury or that any accommodations to do so were ever sought from the judge named in this position; none. And it's hard to find that a judge is somehow to be faulted for not taking action on something in which no action was ever requested.

So given all of those factors, there is simply no authority under these pleadings for this Court to grant the relief sought. And accordingly, the Court must find that there's a failure to state a claim, and in light of that finding, is compelled to sustain the demurrer and dismiss the action with prejudice.

Let's move on to judicial immunity. As I indicated in my questions to the Attorney General, it's a little curious of a situation because ordinarily, judicial immunity is raised saying, no you can't go against the judge for that action taken.

There was no action taken here. In other words, there is an inaction. And for that reason, it suggests that perhaps judicial immunity at this stage of the proceedings doesn't even apply. Should it apply, however, I guess it would stand to reason the Court finds that the principal immunity would apply to judicial actions, even if

those actions come about because of judicial inaction, as it would anything else.

And in the nature of these proceedings, the Court finds that, that inaction, if taken in this case and if it's cognizable as a claim here, is such that it would be covered by the principles of judicial immunity and the plea in bar is granted and the case is dismissed without prejudice.

And I think I have to address one thing, and that is, Ms. Burkhardt made the statement at some point or someone did, questioning why the Attorney General's here. The Attorney General is here because a judge has been named as a defendant in a suit, and that's a perfectly normal course of events that they or somebody has to argue on behalf of the judiciary.

The fact that the Attorney General is present and arguing is not evidence of anything being hidden. It's simply to assist the Court in making sure that whatever decision made, is made by a consideration of positions on both sides and according to the law.

So that's the ruling of the Court. I'm going to ask the Attorney General to draft an order consistent with those findings and submit it to the Court so that this Court can enter it.

But before we leave, are there any questions, first of all from you, Mr. Sanford?

MR. SANFORD: Just who would you like me to submit the order to, your Honor; would that be Ms. Callahan?

THE COURT: Yes. Yes, Ms. Calahan. I've got a number of cases that I'm assigned to here, and she's helping me through the system. Yes.

MR. SANFORD: Okay. Thank you, your Honor.

THE COURT: All right.

Anything further from you, Ms. Burkhardt?

THE PLAINTIFF: One question, your Honor.

THE COURT: Yes.

THE PLAINTIFF: Is there a proper method to submit such a petition to the grand jury to request two witness?

THE COURT: Ms. Burkhardt, I'm going to suggest that there's probably any number of ways to get that done. I don't have any evidence whether in this case, you've attempted to do those or not.

But one thing I am sure of, if I were to suggest to you what those methods were, I would be giving you legal advice, and I'm absolutely prohibited from doing that.

So I hate to leave you out there on your own. I'm saying I'm not sure that you should abandon your pursuit. All I'm saying, is in the context of the way this action has come before me, this is not the way to do it.

THE PLAINTIFF: Okay. Thank you, your Honor.

THE COURT: Yes, ma'am.

If there's nothing further, again, if you'll submit that order, Mr. Sanford, I'll enter it as soon as I get it.

MR. SANFORD: Yes, your Honor. Just one question would be, so I do have a few proposed orders I brought with me today that are—

THE COURT: Oh, okay.

MR. SANFORD:—kind of bottom line orders. Obviously your Honor on the record made more specific findings. Would you like the order to be more detailed to cover those?

THE COURT: I'd like the order to address some of those specifics. And if it's necessary for you to have a transcript to do that, obviously, I don't know that necessarily that time is of the essence, but I'd like it to be complete with the findings.

MR. SANFORD: Okay. Then I will wait for the transcript to make sure that we have—

THE COURT: All right.

MR. SANFORD:—exact precision and not my handwritten notes.

THE COURT: All right.

MR. SANFORD: Thank you, your Honor.

THE COURT: Anything further? All right.

Thank you. I appreciate your arguments. You all have a nice day.

(Whereupon, the hearing in the above-entitled matter was concluded at approximately 10:38 o'clock a.m.)

[. . .]