

No. 17-

IN THE
Supreme Court of the United States

PHILLIP B. LEISER, ESQ., *et al.*,

Petitioners,

v.

AUGUST MCCARTHY, ESQ., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a state trial court violate the procedural due process clause of the 14th Amendment when it denies, *sua sponte*, a timely-filed motion for sanctions, without first conducting a hearing?
2. Can the Virginia Supreme Court (VSC) constitutionally exercise discretionary appellate review, while simultaneously characterizing its decisions denying appellate review as decisions that are “on the merits,” without violating the substantive due process clause of the 14th Amendment?

LIST OF PARTIES

The parties below are listed in the caption. However, Thomas F. Hennessy, Esq., a named-defendant below, was nonsuited (voluntarily dismissed) by McCarthy on 5/4/15.

CORPORATE DISCLOSURE STATEMENT

The Leiser Law Firm, PLLC (“LLF, PLLC”), a law firm organized as a professional limited liability company under the laws of the Commonwealth of Virginia.¹ Both Hennessy and Karen Leiser were, at all relevant times, attorney-employees of LLF, PLLC. There are no parent corporations or publicly held companies owning 10% of its stock. Phillip B. Leiser, Esq. is an individual who is the sole owner/member/manager of LLF, PLLC.

1. The firm was formerly known as Leiser, Leiser & Hennessy, PLLC, and is currently known as Creative Legal Solutions, PLLC. At the time of the underlying lawsuit, it was known as The Leiser Law Firm, PLLC. To avoid confusion, it will continue to be designated as such throughout this Petition.

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OPINION BELOW

The decision of the Virginia Supreme Court (VSC) on 7/17/13 refusing Leiser's Petition for Appeal from the 11/1/16 final order of Circuit Court of Fauquier County, Virginia.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

The Virginia Supreme Court's decision refusing Leiser's Petition for Appeal was rendered on 7/17/17. Leiser's Petition for Rehearing was denied on 10/23/17.

FEDERAL CONSTITUTIONAL PROVISIONS IMPLICATED BY THIS CASE

Amendment XIV, § 1 of the United States Constitution

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

STATEMENT OF THE CASE

On 9/19/13, McCarthy, through his counsel, Hawes, filed, in the Fauquier County (Virginia) Circuit Court ("the trial court"), a verified complaint seeking, *in toto*, \$2.5 million in compensatory and punitive damages, against: (i) Phillip Leiser, (ii) his wife/employee, Karen Leiser, and (iii) LLF, PLLC (collectively, "Leiser"). Count I of McCarthy's complaint asserted a cause of action of defamation *per se*, premised on Phillip Leiser's accusation

that McCarthy had perjured himself in sworn testimony he had given during court hearings in other cases. From the face of McCarthy’s complaint, it is apparent that Leiser’s oral and written statements alleged to be defamatory were published during the course of judicial proceedings—in written pleadings; in Leiser’s argument as counsel in several court hearings; and in his sworn testimony as a witness in those court hearings.¹

Count II asserted a claim of “barratry and maintenance.” Count III asserted statutory and common law civil conspiracy claims,² alleging that, as a result of their “partnership,” Karen Leiser, along with Hennessy and LLF, PLLC, were each vicariously and jointly and severally liable for Phillip Leiser’s intentionally tortious misconduct described in the Complaint, notwithstanding that, as a legal and factual matter, both Karen Leiser and Hennessy served as at-will attorney-employees of LLF, PLLC—an entity organized as a professional limited liability company, solely owned by Phillip Leiser, who also served as its sole member/manager.

Count IV sought injunctive relief, to permanently enjoin Leiser from “filing, maintaining, or promoting lawsuits against [McCarthy], and from making *any* statements regarding McCarthy to *any other* person; and [requiring Leiser to] cause apologies to be transmitted to the courts”³ (emphasis added).

1. McCarthy’s Complaint (R. 1-26) at p. 4, ¶ 25, p. 6, ¶¶ 47-49; p. 7, ¶¶ 57-58; pp. 8-12, ¶¶ 64-78; pp. 15-16, ¶¶ 101-102; p. 17, ¶¶ 111-116; p. 18, ¶¶ 117-118.

2. R. 24-25, ¶¶ 166-173

3. R pp. 25-26, ¶¶ 174-177.

In response to McCarthy’s Complaint, Leiser timely filed a demurrer and a plea in bar, which, with respect to the defamation claim, were premised upon the absolute privilege afforded statements made during the course of, or in relation to, judicial proceedings—a privilege enunciated in VSC precedents dating back more than a century.⁴ Leiser’s demurrer to the barratry claim argued that no such private right of action is cognizable in Virginia, on the grounds that the Virginia statutes proscribing barratry and maintenance are criminal statutes⁵ which can be prosecuted by either the Commonwealth Attorney (County prosecutor) or the Virginia Attorney General, and which can be enforced through the imposition of criminal penalties and/or injunctive relief. But none of those statutes authorizes a suit for damages, let alone, a private right of action, and there is not a single decision by VSC even remotely suggesting such a private right of action is cognizable in Virginia. Moreover, in the absence of any decision on the subject by VSC, Leiser’s demurrer cited to *Daimler Chrysler Corp. v. Kirkhart*, 561 S.E.2d 276 (2002), an opinion of the North Carolina Court of Appeals—that State’s intermediate appellate tribunal—which extensively discussed and ultimately rejected a private right of action against barratry, noting that no such private right of action existed at common law in England.

4. *Mansfield v. Bernabei*, 727 S.E.2d 69, 73 (2012); *Isle of Wight County v. Nogeic*, 704 S.E.2d 83, 88 (2011); *Lindeman v. Lesnick*, 604 S.E.2d 55, 58 (2004); *Titan America L.L.C. v. Riverton Inv. Corp.*, 569 S.E.2d 57, 66 (2002); *Lockheed Information Management Systems Co. v. Maximus, Inc.*, 524 S.E.2d 420, 424-25 (2000); *Donohoe Constr. Co. v. Mt. Vernon Assocs.*, 369 S.E.2d 857, 860 (1988); *Watt v. McKelvie*, 248 S.E.2d 826, 829 (1978); *Darnell v. Davis*, 58 S.E.2d 68, 70 (1950); *Massey v. Jones*, 28 S.E.2d 623 (1944); *Penick v. Ratcliffe*, 140 S.E. 664 (1927); and *Spenser v. Looney*, 82 S.E. 745, 747 (1914).

5. VA. CODE ANN. §§ 18.2-451 - 455.

In response to McCarthy’s civil conspiracy claim, Leiser’s demurrer raised the legal defense of intra-corporate immunity, (R. pp. 49-50, 64 at ¶ 27), arguing that under Virginia law, a principal and his agent—including an employer and his employee—are not legally distinct persons in the context of a conspiracy claim, and consequently, it was a legal impossibility for any of the named defendants to be found liable for that intentional tort, since a person cannot conspire with himself. Finally, Leiser’s opposition to McCarthy’s request for injunctive relief was grounded in the alternative arguments that the injunction McCarthy sought would constitute a way overbroad unconstitutional prior restraint on speech; and that such extraordinary relief was unwarranted because McCarthy had an adequate remedy at law—the availability of a suit for damages for any speculative future actionable defamatory speech. (R. p. 50, p. 64, ¶ 28).

After conducting a hearing on 6/23/14, the trial court overruled Leiser’s demurrers and plea in bar to McCarthy’s claims of defamation *per se* and civil conspiracy; sustained the demurrer to his request for injunctive relief, but with leave to amend, and reserved ruling on Leiser’s demurrer to McCarthy’s barratry claim.⁶ On 11/14/12 the trial court conducted a hearing on Leiser’s motion to reconsider (“MTR”) its adverse rulings on his demurrers and plea in bar, and issued its bench ruling denying his MTR and overruling his demurrer to McCarthy’s barratry claim.⁷

6. R. at 183-88.

7. **11/14/12 TR.**, 58:7-9 (R. 2090). The trial court did not enter formal written orders encapsulating its bench rulings until 5/4/15. R. 255-61, 270-73.

Tellingly, the trial court admitted that McCarthy's barratry claim presented it with an issue of first impression. Yet, prior to issuing its bench ruling overruling Leiser's demurrer to that claim, it readily admitted it had not bothered to read either the barratry statutes or the *Daimler Chrysler* decision, which, in the absence of a single Virginia precedent cited by either side, had been argued by Leiser as persuasive authority supporting the trial court's rejection of the recognition of a private right of action for barratry.⁸

Concurrent with his 10/11/13 filing of his responsive pleadings, Leiser also filed a motion for sanctions, pursuant to VA. CODE ANN. § 8.01-271.1, and naming McCarthy as a respondent, but not Hawes. (R. at 60-66). The basis for Leiser's motion for sanctions was the mere filing of McCarthy's complaint, which sought to hold Leiser liable for defamation, based on statements he had made during the course of judicial proceedings—an absolutely privileged context. At the 6/23/14 hearing the trial court declined to conduct a hearing on Leiser's motion for sanctions, declaring the filing of that motion to have been “premature.” 6/23/14 TR. 74:5-15 (R. 2015). It expressly stated, however, that it was removing the motion from the docket, but not dismissing it. (R. 189-90); 6/23/14 TR. 89:13-90:2 (R. 2030-31). (emphasis in original).

At the 11/12/14 hearing on his MTR, Leiser did not raise the issue of his previously filed motion for sanctions. And although the trial court stated in passing that it thought the sanctions motion was premature, it declined to

8. 6/23/14 TR. 79:6-18 (R. 2020); 11/12/14 TR. 61:17-62:4; 64:2-67:15 (R. 2093-94; 2096-99); 2/10/16 TR. 10:15-12:19 (R. 2205-07).

enter any orders concerning that motion. When the parties next returned to court on 5/4/15, Hawes misrepresented that at the prior 11/12/14 hearing, the court had deemed Leiser's motion for sanctions premature and "denied [it] without prejudice." 6/23/14 **TR.** 74:5-75:13. (R. 2106-07). Leiser disputed Hawes' characterization, and specifically inquired whether he would have to re-file his motion for sanctions. The trial court expressly reaffirmed that Leiser's motion would not have to be re-filed, to which Leiser responded, "Okay. As long as [the motion is] still there." 5/4/15 **TR.** 6:5-20 (R. 2113). Yet, contrary to the trial court's verbal assurance, the order it entered that day, to which Leiser noted his objection, stated at ¶ 4, "[Leiser's] motion for sanctions, prematurely filed, be and hereby is, denied without prejudice;" (R. 255-61, 270-73).

Thus, without ever conducting a hearing on Leiser's motion for sanctions, the trial court purported to *deny*—as opposed to *dismiss*—that motion, albeit, without prejudice. But there was no basis upon which to either deny or dismiss that motion, notwithstanding the trial court's 6/23/14 order, erroneously deeming Leiser's motion for sanctions to have been "premature[ly]" filed, and which the court therefore ordered removed from the docket, but *not* dismissed. Nothing changed between 6/23/14 and 5/4/15 justifying the new disposition of denial, without prejudice.

On 9/28/15 the court entered an order granting Hawes' oral motion for leave to withdraw as counsel. (R. 383-84). Leiser voiced his concern, stating,

Oh, and one thing, your Honor, with respect to the motion to withdraw. I mean, obviously the

Court granted it, but the only thing I would say is that I still intend to preserve my right to pursue the sanctions. And so you might have to— **The court:** I withheld a ruling on that. **Leiser:** Right. So that's still in play. **The court:** It is. **Leiser:** (to Hawes) So you might have to come back and—**The court:** That's in the order of [5/4/15], I think. **9/28/15 TR.** 21:15-22:4. (R. 2181-82).

Based upon all of the foregoing circumstances, Leiser reasonably believed his motion for sanctions that he had filed nearly two years earlier, but which had never been heard, was still pending. From the 9/28/15 colloquy quoted above, it is clear the court thought so, as well. Of course, courts speak through their written orders, and the court had, in fact, on 5/4/15 purported to deny Leiser's motion for sanctions—concerning which it had refused to conduct a hearing—but only after expressly confirming, *at least three times*, that Leiser would *not* have to refile it.⁹

Proceeding *pro se*, at a 2/10/16 hearing, McCarthy elected to suffer a voluntary nonsuit of his case (a dismissal without prejudice), as was his absolute right. But Leiser voiced his objection to entry of the nonsuit as conclusive of his presumably still-pending motion for sanctions,¹⁰ and engaged in the following colloquy with the court.

9. (1) **6/23/14 TR.** 89:13-90:2 (R. 2121-22); (2) 6/23/14 Order (R. 189-90); (3) **5/4/15 TR.** 6:5-20 (R. 2113).

10. Under Virginia law, a nonsuit is not conclusive as to a pending motion for sanctions. *Williamsburg Peking Corp. v. Kong*, 619 S.E.2d 100, 102-03 (2005).

The court: . . . I'll go ahead and endorse the nonsuit order. And then I'll give you a hearing on the sanctions matter. . . . **Leiser:** Are you saying then, that the Court is going to conduct the sanctions hearing? **The court:** That would be my intent, uhm-hm. **2/10/16 TR.** at 26:13-20. (R. at 2121).

Consistent with that clear expression of its intent, the trial court then entered McCarthy's nonsuit order (R. 449-50), along with a separate scheduling order (R. 451), setting a date-certain "for a contested hearing on Leiser's motion for sanctions against McCarthy *and* Hawes." *Id.* (emphasis in original). Two weeks later, on 2/24/16, well within its twenty-one day window provided by VA. R. S. Ct. 1:1 to do so, the court entered a suspending order, which reads,

WHEREAS, it is this Court's specific intent to afford [Leiser] the opportunity to be heard concerning *[their] pending motion for sanctions against [McCarthy] and his former counsel of record, . . . Hawes*; WHEREAS, on [2/10/16] this Court scheduled Leiser's motion for sanctions for a full-day hearing on 4/7/16 . . . ; WHEREAS, the Court needs sufficient time to consider the arguments of the parties and to render its decision on [Leiser's] motion for sanctions; IT IS HEREBY . . . ORDERED that . . . the entry of the non-suit order is hereby suspended until further order of this Court, and shall become a final order only after more than [21] days have elapsed from the entry of an order by this Court disposing of the merits

of *Leiser's motion for sanctions against McCarthy and Hawes*. (R. 473-75). (emphasis added).

On 4/7/16, the date on which the court had scheduled a hearing concerning Leiser's motion for sanctions, the trial court judge (Judge #1) recused himself from any further proceedings in the case. (R. 865). Several weeks later, on 5/31/16, upon realizing his 10/11/13 motion for sanctions was no longer pending because on 5/4/15 the trial court had, *sua sponte*, improperly denied it, albeit without prejudice, Leiser filed a motion for sanctions and memorandum of law in support thereof, along with an exhibit binder containing all of the exhibits he intended to rely on in support of his motion. Unlike his original motion for sanctions, this motion named *both* McCarthy *and* Hawes as respondents, and sought sanctions not just for their initial filing of what Leiser contends was a patently frivolous complaint, but also for their conduct of the litigation in question, during the nearly 2.5 years the case had been active. Leiser believed his 5/31/16 filings to be consistent with the trial court's 6/23/14, 5/4/15, 2/10/16, and 2/24/16 orders (R. 189-90, 451, 473-75), which removed Leiser's motion for sanctions from the docket but did not dismiss it; dismissed it without prejudice (to Leiser's right to refile); expressly acknowledged the trial court's intent to hear Leiser's motion for sanctions against *both* McCarthy *and* Hawes; and scheduled a full-day hearing for that purpose.

On 5/31/16, the same day he filed his sanctions motion and related pleadings, Leiser served them on McCarthy, who was then acting *pro se*, and had Hawes personally served by private process server in Fauquier County,

Virginia. (Appx. H). On 6/10/16, VSC appointed a new Judge Designate (Judge #2) to replace Judge #1, who had recused himself on 4/7/16.¹¹ As a legal matter, Judge #2 stepped into the judicial shoes formerly occupied by Judge #1, and retained any discretion that would have otherwise properly belonged to Judge #1, concerning any of the orders he had previously entered in the case. On 8/16/16 the trial court entered an order scheduling the various pending motions and cross-motions for a hearing to commence on 10/13/16. (R. 1821).¹²

On 10/12/16, the day before the scheduled hearing, Hawes, who 4.5 months earlier had been personally served with Leisers' sanctions-related pleadings, filed a pleading of his own, entitled, "Praecipe and Notice of Special Appearance" (R. 1825-29), which challenged the trial court's exercise of *in personam* jurisdiction over him, in relation to Leiser's motion for sanctions, and requested dismissal of that motion with respect to him. The basis for Hawes' challenge was the fact that the trial court had entered an order on 9/28/15 permitting him to withdraw as McCarthy's counsel of record, and at the time of his withdrawal as counsel, no motion for sanctions was then pending against *him*.¹³

11. By order entered 10/24/13, all of the regularly serving judges of the Fauquier County Circuit Court had also recused themselves from the case, necessitating VSC's special appointment of Judge #1 as a judge-designate. (R. at 78-79).

12. Besides Leisers' motion for sanctions, also on the trial court's docket were, *inter alia*, McCarthy's motion to strike Leisers' motion for sanctions, and his cross-motion for sanctions against Leiser.

13. At that point in time, the only motion for sanctions that

Leiser was first served with Hawes’ “Notice of Special Appearance” when he walked into court on 10/13/16, for the scheduled hearing on his motion for sanctions. Despite his objection to Hawes’ ambush, and the trial court’s acknowledgement thereof,¹⁴ Judge #2¹⁵ elected to proceed with the hearing on Hawes’ “Notice of Special Appearance,” as well as the other motions docketed for a hearing that day. Judge #2 granted McCarthy’s motion to strike Leiser’s pleadings—specifically, his 5/31/16 motion for sanctions and related pleadings. The court adopted McCarthy’s reasoning that at the time Judge #1 entered his 2/24/16 suspending order, which stated, “WHEREAS,

had been filed was Leiser’s motion for sanctions naming only McCarthy. Of course, Hawes was counsel of record for McCarthy at the time Leiser filed and served his initial motion for sanctions, and Hawes had drafted, signed, and filed the complaint that was the subject of that motion. It necessarily follows that Hawes had been placed on notice that his filing of McCarthy’s complaint was sanctionable, notwithstanding the fact that Leiser’s original motion for sanctions had named only McCarthy, despite the fact that both he and Hawes had signed the complaint.

14. **10/13/16 TR.** 28:5-11. (R. 2275).

15. Since Judge #2 stepped into the shoes formerly occupied by Judge #1, who had recused himself, it would be appropriate to continue to refer to Judge #2 as “the trial court.” However, in order to distinguish between the orders of the two judges, which will lend clarity to the issues raised by this appeal, the designation, “Judge #2,” will be used to differentiate between the trial court judge who presided over the case through 4/7/16 (Judge #1), and Judge #2, who presided over it from 6/10/16 until entry of the 11/1/16 final order. Note that, as a result of the recusal of Judge #1, along with the other regularly-presiding judges (See fn. 13), from 4/8/16 – 6/9/16 no trial court judge was available to hear or decide anything related to the case.

it is this Court's specific intent to afford [Leiser] the opportunity to be heard concerning their *pending* motion for sanctions against [McCarthy] *and . . . Hawes . . .*" (emphasis added), there was no motion for sanctions then pending against either of them, since, on 5/4/15, Judge #1 had denied the motion, albeit, without prejudice (but also without affording Leiser an opportunity to be heard).

Judge #2 also adopted Hawes' argument that, since he had been permitted by Judge #1 to withdraw as counsel of record on 9/28/15, before a motion for sanctions had been filed against him, the trial court could not exercise *in personam* jurisdiction over him, irrespective of whether he had engaged in sanctionable misconduct before that court, in the context of that very case. In light of his rulings striking Leiser's sanctions pleadings, and finding Hawes to have been improperly brought before the court to respond to Leiser's motion for sanctions, Judge #2 further declined to exercise his discretion to keep the case open in order to grant Leiser leave of court to re-file his motion for sanctions against McCarthy and Hawes. Thus, the trial court denied Leiser's motion for sanctions without conducting a hearing on the merits, contrary to the specific intent expressed by Judge #1 in his 2/10/16 and 2/24/16 orders, as well as in his earlier 6/23/14 and 5/4/15 orders.¹⁶ Leiser timely filed a motion to reconsider (MTR) (R. 1840-61), in response to which, Judge #2 effectively (but unconstitutionally) issued a "pocket veto," by declining to rule on the MTR before he lost subject matter jurisdiction ("SMJ") over the case, under Rule 1:1.¹⁷

16. See final sentence of § V(D), *supra*.

17. See Leiser's Petition for Appeal to VSC, Assignment of Error #5, and pp. 34-35.

Leiser timely perfected his appeal of the trial court's decisions to VSC. But on 7/17/17, that court issued a perfunctory, boiler-plate order refusing the petition for appeal, stating it "is of the opinion there is no reversible error in the judgment complained of." (Appx. A). On 10/23/17 VSC issued an order denying Leiser's petition for a rehearing. (Appx. F).

At the trial court level, Leiser preserved for appellate review his first question presented, in: (i) his objections #2 and #6, under Section III of his Objections to the court's 6/23/14 orders. (R. 226); (ii) at the 5/4/15 hearing;¹⁸ (iii) in Leiser's Objection #5 to the trial court's 5/4/15 orders (R. 270-75);¹⁹ (iv) at the 2/10/16 hearing;²⁰ (v) in Leiser's

18. From the 5/4/15 transcript: **Hawes:** [referring to the court's bench ruling at the 11/12/14 hearing] ". . . [the court told me that] Mr. Leiser's motion for sanctions was premature and was denied without prejudice." **Leiser:** I don't think the motion was denied, Your Honor. My recollection was that the motion was just—I mean, we hadn't even heard the motion, so I don't know it could be denied. It was just the Court wasn't going to hear it, but I don't think that means that it was denied. **Hawes:** Well, it does mean that. **Leiser:** Well, we didn't argue it. **The court:** That's what I said. I said 'without prejudice.' I mean, is there a big difference or what? **Leiser:** So, I mean, is the motion no longer pending? Do I have to refile it or? **The court:** No. No, you don't. **Leiser:** Okay. As long as it's still there." 5/4/15 **TR.** at 6:5-20. (R. at 2113).

19. Although Leiser's objections were ordered to be filed by 5/8/15, but bear a date-stamp of 5/11/15, per an email from Michele O'Halloran, the Deputy Clerk of the trial court, they were timely received on 5/8/15. Appx. G.

20. 2/10/16 **TR.** at 8:7-14; 12:20-13:1; 14:21-15:2; 17:17-18:2; 19:6-20:12; 23:9-25:3; 25:19-22. (R. at 2203, 2207-10, 2212-15, 2218-20).

3/1/16 Objections # 1 and 2 to the 2/10/16 nonsuit order (R. 476-78); (vi) at the 4/7/16 hearing;²¹ (vii) in Leiser's 8/8/16 Response in Opposition to McCarthy's Motion to Strike [Leiser's Motion for Sanctions] (R. 1814-20); (viii) at the 10/13/16 hearing;²² (ix) in Leiser's objections #1-4 to the 11/1/16 order granting McCarthy's motion to strike Leiser's sanctions motion pleadings (Appx. C); and (x) in Leiser's 11/18/16 MTR (R. 1840-61). Before the VSC, Leiser preserved for appellate review his first question presented in: (i) his Assignments of Error Nos. 1-3 contained within his 2/2/17 Petition for Appeal; and (ii) at pp. 1-10 of his 7/31/17 Petition for Rehearing. His second question presented was preserved in his 7/31/17 Petition for Rehearing at p.10.²³

21. 4/7/16 TR. at 6:6-7:13; 13:14-16:1. (R. at 2235-36, 2242-45).

22. 10/13/16 TR. at 20:6-25:1; 40:8-42:10 (R. at 2267-72, 2287-89).

23. The trial court would not have had any authority to attempt to resolve that issue, and it did not become ripe until Leiser's Petition for Appeal was refused by VSC. Therefore, his second question presented, raised for the first time in his Petition for Rehearing filed with VSC, was timely preserved.

I. ARGUMENT

- A. The trial court violated the procedural due process clause of the 14th Amendment when it denied, *sua sponte*, a timely-filed motion for sanctions, without first conducting a hearing, and then struck the re-filed pleadings, and denied the re-filed motion, again, without conducting a hearing on the merits of the motion for sanctions**

On 6/23/14 the trial court erroneously ruled that Leiser's motion for sanctions had been filed prematurely, and consequently, removed it from the docket, but did not dismiss it. Nearly a year later, on 5/4/15, the court, *sua sponte*, and without a hearing, denied the motion, but without prejudice. Another year later, after the underlying case had been non-suited, but the nonsuit order suspended for the very purpose of conducting a hearing on Leiser's "pending" motion for sanctions "against both McCarthy and Hawes," Leiser filed such a motion and related pleadings. But once again, the trial court declined to conduct a hearing on the merits of that re-filed motion, based upon its interpretation of its own prior suspending order, which had been entered by another judge who had since recused himself from the case. In construing its prior 2/24/16 suspending order, the trial court applied the "plain meaning rule," and ascribed a literal interpretation to the phrase, "pending motion for sanctions," referenced in that suspending order. In so doing, the court concluded the phrase was meaningless because no motion for sanctions was then pending. Concluding the suspending order referenced a non-existing motion, the trial court effectively determined that order was meaningless

gibberish, and necessarily concluded that its 2/10/16 order scheduling a full-day hearing on Leiser's motion for sanctions was also meaningless. Consequently, it struck Leiser's pleadings and denied his motion.

The trial court's interpretation of the 2/24/16 suspending order, and its resulting decision to grant McCarthy's motion to strike Leiser's pleadings related to his motion for sanctions was subject to the *sound* exercise of its discretion, as was its decision whether to further suspend the nonsuit order and grant Leiser leave to re-file his improperly denied (because never adjudicated) motion for sanctions. Here, its interpretation of that suspending order was erroneous because it failed to consider that the *reason* Leiser's motion for sanctions was no longer pending was because it had been improperly denied, albeit, without prejudice, by Judge #1. A trial court cannot constitutionally exercise its discretion, consistent with the dictates of the substantive due process clause of the 14th Amendment, to construe its own orders in such a way as to render them meaningless or absurd, and resulting in the deprivation of a hearing on a litigant's timely-filed motion for sanctions, particularly when an obvious alternative interpretation would not only respect the trial court's clear intent to conduct that hearing, but would also preserve the meaning of the order in question, and harmonize it with several others, that would otherwise also be rendered meaningless by a reflexive, mechanistic application of the "plain meaning" rule.

1. **Judge #2 ignored a plethora of relevant factors that should have informed the exercise of his discretion concerning his decisions to strike Leiser's sanctions motion and decline to grant him leave to re-file those pleadings.**

In deciding whether to strike Leiser's sanctions motion and related pleadings, Judge #2 should have considered the following factors, but instead, completely ignored them.

First, Leiser had timely filed his motion for sanctions three years earlier, as part of his responsive pleading to McCarthy's complaint.

Second, that motion was improperly put on ice by Judge #1, who, on 6/23/14, erroneously deemed it to have been prematurely filed, and consequently, ordered it removed from the docket but *not* dismissed.

Third, Leiser's motion for sanctions, which, as a matter of law, was *not* filed prematurely, because it was based upon the mere filing of McCarthy's/Hawes' frivolous complaint, was subsequently denied by Judge #1 on 5/4/15—albeit, without prejudice. But a denial of the motion suggests a decision on the merits, which, in this case, was rendered without providing Leiser with either notice or the opportunity to be heard, in violation of the procedural due process clause of the 14th Amendment.

Fourth, Judge #1 had expressly and repeatedly assured Leiser, both verbally, and through the court's orders, that his motion for sanctions remained pending, did

not need to be refiled, and would ultimately be adjudicated by the trial court. The decision by Judge #2, to strike Leiser’s pleadings for the sole reason that his motion for sanctions was no longer technically “pending” at the time the 2/24/16 suspending order was entered, unfairly yanked the rug out beneath Leiser’s feet.

Fifth, consistent with the multiple expressions of his intent to conduct a hearing on a motion for sanctions by Leiser, against *both* McCarthy *and* Hawes, Judge #1 entered, contemporaneously with his 2/10/16 nonsuit order, an order scheduling a hearing on “Leiser’s motion for sanctions against McCarthy and Hawes.” R. at 451. That order made no mention of the word, “pending,” suggesting Judge #1 contemplated Leiser would file a new motion for sanctions.

Sixth, consistent with his multiple expressions—by word and deed—of his intent to adjudicate a motion for sanctions filed by Leiser against both McCarthy and Hawes, Judge #1 entered a suspending order, which expressly stated the court’s specific intent to afford Leiser the opportunity to be heard concerning his pending motion for sanctions against McCarthy and Hawes.

Seventh, that very same suspending order, containing that single instance of the extraneous word, “pending,” also “ORDERED . . . the entry of the non-suit order . . . suspended until further order of this Court, . . .” and stated it “*shall become a final order only after . . . the entry of an order . . . disposing of the merits of Leiser’s motion for sanctions against McCarthy and Hawes.*” (emphasis added). R. at 473-75. That part of the order made no reference to a “pending” motion. Indeed, Judge

#1 should be charged with knowledge of his own orders and the procedural posture of a case that he and he alone had adjudicated for the preceding 2.5 years. On that note, the court's references to a motion for sanctions against "McCarthy and Hawes," contained in both the suspending order and the 2/10/16 scheduling order *could not have been* referring to a *pending* motion, because Judge #1, who entered both of those orders, is charged with knowledge that as of 2/24/16, the date of entry of the suspending order, no motion for sanctions *had ever* been filed against *both* McCarthy and Hawes in this case. Thus, the suspending order reflects that the court must have contemplated that Leiser would file, post-nonsuit, a motion for sanctions against both of them, consistent with the court's 2/24/16 suspending order, 2/10/16 scheduling order, 5/4/15 order dismissing Leiser's then-pending motion for sanctions "without prejudice," and finally, with the trial court's 6/23/14 order, which erroneously, but presciently referred to Leiser's motion for "sanctions against [both] the Plaintiff [McCarthy] and his attorney [Hawes]," and which merely removed Leiser's motion from the docket but emphatically, did not dismiss it.

Eighth, the fact that the trial court's 5/4/15 order had improperly purported to "deny" Leiser's motion for sanctions, but had done so "without prejudice," compels the conclusion that Judge #1 contemplated Leiser re-filing a sanctions motion at some future date when it would presumably, in that judge's view, have ripened. That motion for sanctions, centered as it was on McCarthy's/Hawes' mere filing of their complaint, was certainly ripe when the non-suit was entered. Furthermore, Leiser is unaware of any controlling legal authority suggesting that he was limited to re-filing the identical motion that

had been denied, albeit, without prejudice. Thus, Leiser’s subsequent filing of a more comprehensive motion for sanctions against *both* McCarthy *and* Hawes, which addressed not only the filing of their frivolous complaint, but also, additional sanctionable misconduct they engaged in during the course of the 2.5 year-long litigation, was not precluded by the earlier denial of his initial motion for sanctions, “without prejudice.”

Ninth, allowing Leiser to argue the merits of his sanctions motion would not prejudice the rights of either McCarthy or Hawes, for at least three reasons: (a) both are attorneys who signed, filed, and vigorously prosecuted the frivolous complaint that was the subject of that sanctions motion; (b) Leiser filed his initial motion for sanctions as part of his responsive pleadings, at a time when Hawes was still counsel of record. So although the initially-filed motion for sanctions did not name Hawes as a respondent, he was on notice that he could become a legitimate target of that sanctions motion;²⁴ (c) both McCarthy and Hawes were properly served with Leiser’s pleadings on 5/31/16—4.5 months prior to the scheduled hearing on his motion for sanctions, affording them plenty of time to digest the pleadings and exhibits, and develop their defenses thereto.²⁵

24. VA. CODE ANN. § 8.01-271.1 *requires* the imposition of sanctions against an attorney who signs a pleading in violation of any of the three prongs of the statute, and/or against a party. *See also, Northern Virginia Real Estate, Inc. v. Martins*, 720 S.E.2d 121, 130 (2012) and *Ford Motor Co. v. Benitez*, 639 S.E.2d 203, 206 (2007). Hawes was also placed on notice that he was subject to the imposition of sanctions, by the colloquy surrounding his withdrawal as McCarthy’s counsel. 9/28/15 TR. at 21:15-22:4. (R. at 2180-81).

25. 10/13/16 TR. at 31:14-32:20 (R. at 2278-79).

2. **By confining its analysis to the fact of the inclusion—in only one portion of one of the multiple orders addressing Leiser’s sanctions motion—of the single extraneous word, “pending,” the trial court (and by extension, VSC) abused their discretion in granting (and tacitly affirming) McCarthy’s motion to strike Leiser’s sanctions pleadings.**

In support of his motion to strike Leiser’s sanctions pleadings, McCarthy advanced the hyper-technical argument that, in one of two references in the 2/24/16 suspending order, Judge #1 expressed his specific intent to conduct a hearing on Leiser’s “*pending*” motion for sanctions against McCarthy and Hawes.” McCarthy correctly observed that Leiser’s motion for sanctions was technically no longer “pending” at the time the suspending order was entered on 2/24/16, because Judge #1 had initially, on 6/23/14, ruled that Leiser’s sanctions motion was “premature,” and deemed it “removed it from the docket, but *not* dismissed.” (R. at 189-90) (emphasis in original).²⁶ But on 5/4/15 Judge #1 entered formal orders to reduce his 11/12/14 rulings to writing. At the 5/4/15 hearing, Hawes falsely represented to the court that at the 11/12/14 hearing it had denied Leiser’s motion for sanctions, without prejudice. The court agreed, despite the fact that the record of that hearing discloses that the only comment the court made was to reiterate, in passing, that it still thought Leiser’s sanctions motion was “premature.” 11/12/14 TR. at 58:12-13 (ToC at 2090).

26. See colloquy between McCarthy and Judge #2 in 10/13/16 TR. at 8:11-11:14 (R. at 2255-58).

Significantly, no order was entered that day regarding Leiser's sanctions motion, which meant the court's earlier 6/23/14 disposition of that motion—removing it from the docket but *not* dismissing it—was still controlling.

At the 5/4/15 hearing, when confronted with Hawes' mischaracterization of what the court had ruled at the 11/12/14 hearing, and the court's apparent adoption of that mischaracterization, Leiser asked if that meant that his motion was no longer pending. The court replied, "No." And when Leiser asked if he needed to refile it, the court responded, "No, you don't." To which Leiser exclaimed, "Okay. As long as it's still there." But despite the court's reassurances that day, and despite the fact that no hearing was ever conducted on Leiser's motion, the court inexplicably entered an order which purported to *deny* Leiser's motion for sanctions, without prejudice.

McCarthy dangled the single instance of the inclusion of the modifier, "pending," to describe Leiser's motion for sanctions, which modifier appeared in only one of several orders by Judge #1, concerning Leiser's motion for sanctions, and Judge #2 eagerly swallowed that bait, hook, line, and sinker, and concluded, consistent with McCarthy's argument, that because the 2/24/16 order purported to suspend the entry of the nonsuit for the sole purpose of conducting a hearing on what it had erroneously characterized as a "pending" motion for sanctions against McCarthy and Hawes, and because no such motion was technically "pending" at the time the suspending order had been entered, that order was thereby rendered meaningless, and the court was compelled to treat it as if it didn't exist. 10/13/16 TR. at 33:20-36:22. (R. at 2280-83).

Of course, that all begs the question whether the *reason* for the non-pendency of Leiser's motion for sanctions is relevant to the analysis? In this case, Leiser's motion for sanctions *should have* and would have remained pending, had it not been for the erroneous, *sua sponte* unconstitutional ruling by Judge #1, who had purported to deny Leiser's motion for sanctions, (albeit, without prejudice), despite his never having held a hearing on that motion, which he had erroneously characterized as having been "prematurely" filed. It was a flagrant violation of Leiser's right to procedural due process of law for the trial court to deny his motion without conducting a hearing on either the merits of the motion, or on whether there was a legitimate reason to deny it without a hearing. Despite the fact that it was Judge #1's flagrant deprivation of Leiser's right to procedural due process of law that resulted in his motion for sanctions no longer remaining pending, Judge #2 added insult to injury by compounding the error of Judge #1 and denying to Leiser, for the second time, a hearing on his motion for sanctions. Judge #2 thereby penalized Leiser for the trial court's own error.

3. **The fact that before filing his 5/31/16 sanctions pleadings, Leiser had not obtained leave of court to file a twenty-one page memorandum of law, which exceeded the twenty-page limit prescribed by VA. R. S. Ct. 4:15(d), should not have been deemed fatal to the trial court's consideration of the merits of those pleadings**

McCarthy argued, and the trial court apparently agreed, that since Leiser's twenty-one page memorandum of law (including the certificate of service) exceeded by

one page, the twenty page limit imposed by VA. R. S. Ct. 4:15(d), he needed leave of court to file it, which he had not obtained before doing so. And since he had not been granted such leave at the time the 2/24/16 suspending order was entered, his sanctions motion and memorandum of law, filed subsequent to the entry of that suspending order, but without leave of court, could not have been “pending” at the time the order was entered, and therefore could not have been the proper subject of the suspending order. 10/13/16 TR. at 11:9-12:2. (R. at 2258-59).

That analysis ignores the fact that, due to the recusal of all of the judges of Fauquier County, followed by the 4/7/16 recusal of Judge #1, and the more than two month gap between the recusal of Judge #1 and the 6/10/16 appointment by VSC of Judge #2 as a replacement judge-designate, Leiser *could not have* obtained leave of court before filing those pleadings on 5/31/16. Believing it would be prudent to afford McCarthy and Hawes as much time as possible to digest his re-filed sanctions motion, Leiser filed those pleadings, but only after waiting for nearly two months for VSC to designate a new judge to preside over the case. And contemporaneously with his filing of his sanctions pleadings, Leiser also filed a motion for leave of court to file those pleadings, and to exceed (by one page) the twenty-page limit prescribed by VA. R. S. Ct. 4:15(d). His motion for leave to file was scheduled for a hearing on 10/13/16, along with his and McCarthy’s other sanctions-related motions. Since, in Leiser’s experience, such leave of court to exceed the page-limit by one page is routinely granted, even retroactively, he followed the course of action that was least likely to result in prejudice to McCarthy and Hawes, by affording them ample time (4.5 months) to digest and respond to his motion for

sanctions and related pleadings and exhibits. 10/13/16 TR. at 21:7-25:1 (R. at 2268-2272). It was an abuse of discretion for the trial court to extinguish Leiser’s right to be heard, based upon the fact that prior to the 10/13/16 hearing date, due to circumstances not of his own making, he was unable even to seek leave of court to file a memorandum of law exceeding, by one page, the limit authorized by Rule 4:15(d), and made the decision to take the action that would least likely prejudice McCarthy and Hawes—file and serve his motion for sanctions and related pleadings, to afford them as much time as possible to respond. But once again, the trial court penalized Leiser for circumstances not of his creation, for the trial court’s own mistakes, and for doing what by any objective measure was not only reasonable and prudent, but also what was most fair to his opponents.

4. The trial court ignored canons of construction which militate in favor of adopting an interpretation of a writing that does not render it meaningless or absurd

When interpreting *someone else’s* writing—such as a statute, a contract, or a will, Virginia courts are charged with ascertaining the drafter’s *intent*. Familiar canons of construction dictate that whenever possible, that intent should be gleaned through application of the “plain meaning rule,”²⁷ which dictates that, whenever possible, a court should endeavor to ascribe the plain meaning to

27. *Supinger v. Stakes*, 495 S.E.2d 813 (1998) (statutes); *Amos v. Coffey*, 320 S.E.2d 335 (1984) (contracts); *Widgeon v. Widgeon*, 133 S.E. 353 (1926) (wills).

every word employed by the draftsman, *unless* doing so would render the writing meaningless or absurd.²⁸ Those canons also require courts to adopt, whenever possible, a reasonable interpretation that upholds the enforceability of the writing.²⁹ Significantly, those canons of construction are employed when a court is essentially powerless to *modify* the writing at issue, because the writing is not its own.

A fortiori, when, as here, a court is called upon to interpret *its own order*, it is patently absurd, when faced with a choice between two alternative interpretations, to select the interpretation that renders that order meaningless. Moreover, in this case, the 2/24/16 suspending order at issue was still subject to the court’s power to modify, by, for example, striking the extraneous and erroneous word, “pending,” which would have aligned the suspending order with the court’s expressions of its intent contained within its 2/10/16 scheduling order; its 5/4/15 order denying Leiser’s previously filed motion for sanctions, “without prejudice;” and the 6/23/14 order removing from the docket—but not dismissing—Leiser’s previously filed motion for sanctions. All of those orders clearly reflected the intent of Judge #1 to eventually

28. *Hensel Phelps Constr. Co. v. Thompson Masonry Contractor, Inc.*, 791 S.E.2d 734 (2016) (statutes); *Shareholder Representative Services, LLC v. Airbus Americas, Inc.*, 791 S.E.2d 724 (2016) (contracts); *East v. Garrett*, 9 S.E. 1112 (1888) (wills).

29. *Pedersen v. City of Richmond*, 254 S.E.2d 95, 98 (1979), citing *United States v. Harriss*, 347 U.S. 612, 618 (1954) (statutes); *TM Delmarva Power, L.L.C. v. NCP of Virginia, L.L.C.*, 557 S.E.2d 199, 201 (2002) (contracts); *Griffin v. Cent. Nat. Bank of Richmond*, 74 S.E.2d 188 (1953) (wills).

conduct a hearing on the merits of Leiser’s motion for sanctions.

Yet, McCarthy advocated ascribing an interpretation to the 2/24/16 suspending order that reduced it to incoherent nonsense. And that is precisely the interpretation adopted by Judge #2, who disingenuously ignored every other consideration—and singularly focused on the presence in the suspending order of the single extraneous word, “pending,” to justify ascribing a meaningless and absurd interpretation to all three of the trial courts’ orders that facilitated Leiser’s placement of his motion for sanctions on the court’s docket.³⁰ Yet, that suspending order could have been *reasonably* interpreted so as to avoid rendering those orders utterly meaningless, and thereby depriving Leiser of the meaningful opportunity to be heard, to which he was *entitled*. In fact, not only was the order subject to the court’s *reasonable* interpretation, but even assuming no reasonable interpretation existed, that order was still subject to the trial court’s jurisdiction to *modify*, by, for example, striking the extraneous adjective, “pending.”

30. Those orders included the 2/10/16 scheduling order; the 2/24/16 suspending order; and the 5/4/15 order which purported to deny Leiser’s motion for sanctions, without prejudice.

5. **The trial court’s conclusion, that it could not exercise *in personam* jurisdiction over Hawes, so far deviated from well-settled principles of constitutional law, and deprived Leiser of his due process right to a meaningful opportunity to be heard, concerning his request for the imposition of sanctions against Hawes.**

Although he had been served with Leiser’s sanctions motion and accompanying pleadings and exhibits on 5/31/16, Hawes waited 4.5 months, until the day before the scheduled 10/13/16 hearing, to file a “Notice of Special Appearance,” which argued that the trial court could not exercise *in personam* jurisdiction over him, for the simple reason that he had withdrawn as counsel of record in the case. Although Hawes falsely stated he had not been served with Leiser’s 5/31/16 motion for sanctions and accompanying pleadings—assertions flatly contradicted by the Affidavit of Service (Appx. H), which declared Hawes had been personally served with all of those pleadings while in Fauquier County, and on the same day Leiser filed them—5/31/16—the trial court made no findings with respect to whether Hawes was or was not properly served. Instead, the court agreed with Hawes and concluded it could not exercise *in personam* jurisdiction over him, regardless of whether he had been timely and properly served; despite the court’s status as a court of general jurisdiction; despite the fact that Hawes—a Virginia licensed attorney—had signed, filed, and for two years had prosecuted *in that very court*, the complaint that was the subject of Leiser’s motion for sanctions; despite Hawes’ residence, the location of his law office, and his frequent practice of law in the Fauquier

County courts;³¹ and despite timely and proper personal service of the sanctions pleadings upon him, 4.5 months prior to the hearing date; and despite his attendance in court that morning. So much for the “long arm” of the law. The trial court amputated it at the shoulder.

B. VSC’s refusal of Leiser’s petition for appeal, and its characterization of that denial as a decision “on the merits,” violated Leiser’s right to substantive due process of law

Under Virginia’s sanctions statute, if sanctionable misconduct occurs, sanctions *shall be* imposed. Reasonable minds could not differ that the complaint filed by McCarthy and Hawes that was the subject of Leiser’s sanctions motion was indeed sanctionable. Moreover, all of the procedural obstacles to the adjudication of that sanctions motion were created by the trial court—not by Leiser. And all of those procedural obstacles remained within the power of the trial court to correct. Its refusal to do so and VSC’s refusal to require the trial court to do so were unquestionably reversible error.

VSC can exercise discretionary appellate review, *or* it can characterize its decisions denying appellate review as decisions that are “on the merits.” But it *cannot* constitutionally do both. To prove that, Leiser postulates for this Court’s consideration, a hypothetical timely-filed petition for appeal clearly identifying unambiguous reversible error in the lower court proceedings, and containing no technical defects that would warrant

31. See “Additional Comments” section of Affidavit of Service (Appx. H).

dismissal of the Petition on purely procedural grounds. If such a Petition were to come across this Court’s desk, could this Court exercise its discretion and refuse that petition for appeal? The answer is clearly, yes. That is because this Court’s decisions denying discretionary appellate review are *not* decisions on the merits of the case. *Boumediene v. Bush*, 550 U.S. 1301 (2007). When this Court denies discretionary appellate review, it is simply staying out of that particular fight—even when the Record of the proceedings below reflects clearly identified unambiguous reversible error—presumably, because this Court has limited resources and bigger fish to fry.

By contrast, when VSC refuses a petition for appeal, its decision is one that is “on the merits.” *Sheets v. Castle*, 559 S.E.2d 616, 619 (2002)³² (emphasizing that, “a decision to grant or refuse a petition for [appeal] is based upon . . . the merits of the case.”). *Id.* Thus, VSC’s refusal of a petition for appeal indicates that it “found the petition without merit.” *Id.* And “. . . the effect of a denial [of a petition for appeal] is to affirm the judgment . . . on the merits.” *Id.*

Those critical distinctions are fatal to VSC’s ability to exercise discretionary appellate review, without offending notions of substantive due process of law. Because according to *Sheets*, VSC’s refusal of our postulated procedurally pristine petition for appeal that clearly identified unambiguous reversible error by the trial court below, would constitute a tacit affirmance of the decision below—a decision—*on the merits*—that the decision

32. There are some exceptions to this general rule, including, *inter alia*, cases with procedural defects. *Id.*

below was correct. But that contradicts the very premise with which we began—that the postulated petition clearly identified unambiguous reversible error in the trial court proceedings.

And so for VSC to claim it can exercise discretionary appellate review, while simultaneously characterizing its decisions denying appellate review as decisions “on the merits,” is tantamount to that court’s declaration that in any particular case, it can arbitrarily decide to abandon well-settled legal doctrines—whether procedural, evidentiary, substantive, or constitutional—and can do so, *sub silentio*—without ever informing the adversely-affected litigant it is abandoning legal principles that ought to govern his case, and without ever informing the hapless litigant what it is substituting in place of those well-entrenched legal principles.

Litigants have a vested right in their expectation that relevant well-settled legal principles will govern their disputes. That is what distinguishes a justice system governed by the rule of law from one governed by the whim of individual judges. Those legal principles inhere in every claim and affirmative defense to a claim, both of which VSC has recognized as property rights,³³ and which, for that reason, cannot be arbitrarily extinguished by the judicial branch of government, without doing violence to the substantive due process clause of the 14th amendment.

33. *Huaman v. Aquino*, 630 S.E.2d 293 (2006); (characterizing a lawsuit as a personal property right); *Starnes v. Cayouette*, 419 S.E.2d 669, 674 (1992) (characterizing a statute of limitations defense as a property right).

In the case at bar, Leiser had a vested right to invoke the protections of Virginia's sanctions statute after being served with McCarthy's complaint that was frivolous on its face. Under those circumstances, the trial court was statutorily compelled to impose sanctions against McCarthy and his counsel. Instead, the trial court created procedural obstacles to the imposition of those sanctions—obstacles that at all times remained within its power to remove. That the trial court refused to do so, and VSC tacitly affirmed its decision as correct “on the merits,” was without support in Virginia law. Therefore, VSC was complicit in the denial of Leiser's substantive due process rights.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

APPENDIX

**APPENDIX A — OPINION OF THE SUPREME
COURT OF VIRGINIA, DATED JULY 17, 2017**

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING
IN THE CITY OF RICHMOND ON MONDAY,
THE 17TH DAY OF JULY, 2017.

Record No. 170182
Circuit Court No. CL13-508

PHILLIP B. LEISER, ESQ., *et al.*,

Appellants,

against

AUGUST MCCARTHY, ESQ., *et al.*,

Appellees.

From the Circuit Court of Fauquier County

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.

2a

Appendix A

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:

/s/ _____
Deputy Clerk

**APPENDIX B — ORDER OF THE CIRCUIT
COURT OF FAUQUIER COUNTY, DATED
NOVEMBER 1, 2016**

VIRGINIA:

IN THE CIRCUIT COURT
OF FAUQUIER COUNTY

Case No.: CL 13-508

AUGUST McCARTHY,

Plaintiff,

v.

PHILLIP LEISER, *et al.*,

Defendants.

ORDER

THIS MATTER came before the Court on October 13, 2016 upon Defendants' Motion for Sanctions against Plaintiff and his Counsel; upon Plaintiff's Motion to Strike; upon Plaintiff's Motion for Sanctions against Defendant Phillip Leiser; upon Plaintiff's Motion to Withdraw Voluntary Nonsuit; upon Plaintiff's oral motion to withdraw his Motion to Withdraw Voluntary Nonsuit; upon the special appearance of Daniel Hawes, Esquire, to contest the Court's jurisdiction; upon the oral motion of Defendants to keep the case open for the purpose of allowing Defendants to argue a motion for sanctions; and upon the argument of counsel; and

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IT APPEARING to the Court, upon consideration of the arguments of counsel and the written motions filed in this case, that Plaintiff wishes to withdraw his Motion the [sic] Withdraw Voluntary Nonsuit; that Daniel Hawes, Esquire has made a special appearance only and is not subject to this Court's jurisdiction; that on February 24, 2016 when the order was entered suspending the nonsuit order entered on February 10, 2016 there was no motion for sanctions pending; and that the following relief is proper and this order should be entered, it is hereby

ADJUDGED, ORDERED AND DECREED as follows:

Plaintiff's Motion to Strike is granted; the pleadings and attachments filed by Defendants after entry of the suspending order on February 24, 2016 are hereby stricken; Plaintiff's Motion for Sanctions is denied; the Court finds that Daniel Hawes, Esquire is not subject to the Court's jurisdiction with respect to the subject motions; Plaintiff's oral motion to withdraw his Motion to Withdraw Voluntary Nonsuit is granted; Defendants' oral motion to keep the case open is denied; the nonsuit order entered on February 10, 2016 is hereby reinstated; and this matter is accordingly dismissed upon the voluntary nonsuit of Plaintiff.

Entered this 1st day of November, 2016.

/s/
Judge J. Martin Bass

**APPENDIX C — OBJECTIONS TO FINAL
ORDER OF THE CIRCUIT COURT OF VIRGINIA,
FAUQUIER COUNTY, CIVIL DIVISION**

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY
(Civil Division)

Case No. CL13-508

AUGUST McCARTHY, ESQ.,

Plaintiff,

v.

PHILLIP BEN-ZION LEISER, ESQ.,

and

KAREN A. LEISER, ESQ.,

and

THE LEISER LAW FIRM, PLLC F.K.A. LEISER,
LEISER & HENNESSY, PLLC,

Defendants.

*Appendix C***LEISERS' OBJECTIONS TO COURT'S 10/13/16
BENCH RULINGS, REDUCED TO FINAL ORDER**

1. The trial court was wrong as a matter of law in ruling that, because Daniel L. Hawes, Esq. had previously withdrawn as counsel of record in the case, he was therefore no longer subject to the *in personam* jurisdiction of the Court. First, on 5/31/16, Hawes was personally served with the motion for sanctions, memorandum of law in support thereof, exhibits and exhibit list, and accompanying motion for leave to file motion/memorandum exceeding 20 pages. He therefore received ample notice of the pendency of Defendants' motions. Second, Hawes signed and filed the complaint that was the subject of Defendants' motion for sanctions. Third, Hawes is a licensed VA attorney who regularly practices in the Fauquier County Circuit Court and who selected that venue in which he filed the complaint that is the subject of Defendants' motion for sanctions. Fourth, Hawes cited no legal authority in support of his argument that by withdrawing as counsel of record, he removed himself from the *in personam* jurisdiction of the Court. This Court is a court of general jurisdiction whose jurisdiction to sanction an attorney does not cease merely because that attorney has withdrawn from a case before such motion has been filed or heard. Fifth, the Court should have declined to hear Hawes' objection to the Court's exercise of *in personam* jurisdiction because Leiser was ambushed with Hawes' pleading when he walked into Court, thus having received no prior notice or meaningful

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opportunity to be heard, and was thereby deprived of his due process rights under both the Virginia Constitution, Art. I, § 11, and U.S. Const., Amend. XIV, § 1. The due process deprivation is particularly egregious because Hawes' ambush was clearly deliberate, since he was served with Leiser's motion and memorandum and supporting affidavit on 5/31/16, yet waited until 10/12/16, the day before the scheduled hearing, to file his "Notice of Special Appearance," and failed to serve Leiser with a copy.¹

2. The Court's ruling that Leiser could not be heard on his motion for sanctions because the suspending order erroneously referenced a "pending" motion for sanctions against McCarthy and Hawes, was an abuse of discretion. The Court's ruling holds Leiser accountable for the incompetence of the trial court judge who was initially assigned to adjudicate this case. First, there was nothing "premature" about the filing of Leiser's motion for sanctions, as part of his responsive pleading, on 10/11/13. Any competent trial court judge would have recognized that McCarthy's/Hawes' complaint was sanctionable *on its face*, and would not have allowed their vexatious and frivolous lawsuit to be litigated for two-and-a-half years. Second, the trial court's 6/23/14 order "removed [Leiser's motion for sanctions] from the docket but

1. Hawes' representation to this court, under oath, that he was not served with Leiser's motion for sanctions is demonstrably false, as the Affidavit of Service expressly identifies the particular pleadings and exhibits that were served upon him by private process server on 5/31/16, and includes the motion/memorandum.

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[did] *not* dismiss [it].” (emphasis in original). Then, inexplicably, on 5/4/15, the Court entered an order “den[ying], without prejudice, [Leiser’s] prematurely filed [motion for sanctions].” That order purported to *deny* Leisers’ motion for sanctions, despite the Court’s refusal to conduct a hearing, and therefore, without affording Leiser a meaningful opportunity to be heard. The 5/4/15 denial of Leiser’s motion for sanctions was, therefore, in violation of fundamental notions of due process of law, under the Constitutions of both VA and the U.S.

3. In declining to exercise its discretion to allow Leiser’s motion for sanctions to be heard, this Court abused its discretion by relying exclusively on the language of the 2/24/16 suspending order. It ignored the 2/10/16 scheduling order, by which the Court “ORDER[ED] that this matter be set for a contested hearing on Leiser’s motion for sanctions against McCarthy *and* Hawes.” (emphasis in original). That order was not superseded by the suspending order; it should have been read in conjunction therewith, so as to determine the previous trial court judge’s intention. Had this Court properly considered that order, the only reasonable conclusion it could have reached was that the previous trial court judge intended to hear Leisers’ motion for sanctions against both McCarthy and Hawes. Moreover, in view of the fact that there never was a “pending” motion for sanctions against both McCarthy and Hawes, the only reasonable inference is that the Court intended to grant leave to Leiser to file such a motion.

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4. In declining to keep this case open so as to allow the Leisers an opportunity to be heard on their timely-filed and wrongly-denied motion for sanctions; in entering the nonsuit order without affording Leiser the opportunity to be heard on the motion for sanctions; in striking Leisers' motion for sanctions and the pleadings/exhibits filed in support thereof, all of which occurred after entry of the nonsuit order, but after such order was suspended for the express purpose of affording Leiser an opportunity to be heard on that motion; in "denying" the motion for sanctions this Court never considered on its merits; and in dismissing this case without first hearing that motion, this Court abused its discretion, and demonstrated that its paramount goal was finality rather than justice, which, under all of the circumstances surrounding this case, constitutes an elevation of form over substance, and is therefore an abuse of discretion.

Respectfully submitted,

PHILLIP B. LEISER, Esq.
KAREN A. LEISER, Esq.
THE LEISER LAW FIRM, PLLC
Pro se and by Counsel

**APPENDIX D — ORDER OF THE CIRCUIT
COURT FOR THE COUNTY OF FAUQUIER,
DATED JUNE 23, 2014**

IN THE CIRCUIT COURT FOR
THE COUNTY OF FAUQUIER

Case No.: CL 13000508-00

AUGUST McCARTHY,

Plaintiff,

v.

PHILLIP BEN-ZION LEISER, KAREN A. LEISER,
THOMAS HENNESSY, AND THE LEISER LAW
FIRM, PLLC,

Defendants.

ORDER

THIS MATTER, having come before the Court upon motion of the Leiser defendants for an award of sanctions against the Plaintiff and his attorney pursuant to Va. Code § 8.01-271.1; and

FINDING THAT, the said motion for sanctions is premature, and it is therefore:

ORDERED, ADJUDGED, AND DECREED, that the motion for sanctions be, and hereby is removed from the docket but *not* dismissed, and

11a

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THIS CASE continues.

ENTERED this 23 day of June, 2014 by:

/s/ _____

Hon. Gaylord Finch, Jr.
Judge Designate, County of Fauquier Circuit Court

12a

**APPENDIX E — EXCERPTS OF THE
TRANSCRIPT OF THE CIRCUIT COURT OF
FAUQUIER COUNTY, FILED DECEMBER 29, 2016**

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

CASE NO.: CL13000-508-00

AUGUST McCARTHY,

Plaintiff,

-vs-

PHILLIP BEN-ZION LEISER

and

KAREN A. LEISER

and

THOMAS F. HENNESSY

and

THE LEISER LAW FIRM, PLLC,

Defendants.

South Courtroom
Fauquier County Courthouse
Warrenton, Virginia
Thursday, October 13, 2016

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The above-entitled matter came on to be heard before the HONORABLE J. MARTIN BASS, Judge Designate, in and for the Circuit Court of Fauquier County, in the Courthouse, 26 Ashby Street, Warrenton, Virginia, beginning at approximately 10:07 o'clock a.m.

[2]APPEARANCES:

On Behalf of the Plaintiff:

AUGUST McCARTHY, ESQUIRE

On Behalf of Defendants Phillip Ben-Zion Leiser and Karen A. Leiser and The Leiser Law Firm, PLLC:

PHILLIP B. LEISER, ESQUIRE

Also present:

DANIEL L. HAWES, ESQUIRE

[3]PROCEEDINGS

THE COURT: Thank you much, Madam Clerk. Good morning. The clerk has introduced me to you. My name is Martin Bass. I sit by designation in this matter, file CL13-508, McCarthy versus Leiser?

MR. LEISER: Yes, sir.

* * *

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[4]THE COURT: Thank you very much. Good morning.

MR. HAWES: My name is Daniel Hawes. I formerly represented Mr. McCarthy in this case. It was subsequently dismissed. Since Mr. Leiser's filed his motion for sanctions, his new motion for sanctions naming me, I'm here as well.

THE COURT: Thank you, Mr. Hawes.

MR. HAWES: Certainly.

THE COURT: It's nice to meet you. I was aware that you had filed a praecipe and notice of special appearance.

MR. HAWES: Thank you, Judge.

THE COURT: Gentlemen, let me begin by telling [5]you what I have been provided.

* * *

The last document that I received and have had an opportunity to read and review is, as I referenced, Mr. Hawes' praecipe and notice of special appearance in which he asks the Court for entry of an order finding that he is not subject to the Court's jurisdiction with respect to the motion for sanctions filed by Leiser.

* * *

[27]THE COURT: Mr. Hawes, I think it might be [28]appropriate if I let you, at this point, address your

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praecipe and notice of special appearance since it's clearly related to the incident motion. And I'll do that now.

MR. LEISER: And Your Honor, just for the record, I'd like to comment that the first I received this was walking into court today, and that's been pretty standard, so.

THE COURT: Well, the first I received it was this morning as well, and I've read it, so I think we're going to go ahead.

MR. HAWES: I did in fact fax it to Mr. Leiser yesterday. I have the confirmation with me 'cause Mr. Leiser's often complained that he's had trouble with faxing.

But my position is that—and, again, I am appearing specially because, as Mr. McCarthy pointed out, I had not been named in that original motion for sanctions. There wasn't a motion for sanctions pending against me at the time of the withdrawal, the order of withdrawal. And I had no reason to think there was anything going on with that.

[29]The original motion for sanctions, there were actually three occasions when that was considered by Judge Finch. On the first occasion, he entered an order saying it was premature, and it was taken off the docket at that time.

On another occasion, I put it back on the docket later after Mr. Leiser's demurrers and pleas in bar had been heard and overruled because I felt like this should be

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considered at this point because clearly there is a basis for it.

Judge Finch had effectively ruled that if the demurrers and pleas in bar were no good, then the complaint was okay, and so there was nothing sanctionable about that. The Court declined to consider that, and no order was entered regarding that. It was simply not considered that day.

And then finally, as the Court already knows, there was a subsequent order in which the motion for sanctions was definitively denied, although without prejudice.

* * *

[30]There has never been a trial in this case. And any motion for sanctions would be premature until the factual basis for the complaint is fully developed through evidence.

* * *

Finally, I was given leave to withdraw for basically health related reasons, and I have not re-[31]entered an appearance in this case. I don't believe that I'm properly before the Court with respect to this. No process has been issued by the clerk's office or served on me.

And I don't believe -- I think there's a clear distinction, as the Supreme Court has pointed out, between the Court's inherent authority over lawyer discipline and the purely statutory scheme that underlies 8.01-271.1. And I don't believe that I'm properly a party to this present action.

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Thank you, Judge.

MR. LEISER: May I respond to Mr. Hawes?

THE COURT: You may.

MR. LEISER: Thank you, Your Honor. Well, first of all, Your Honor, Mr. Hawes signed the pleading. He filed the pleading that the defendants contend was sanctionable when it was filed. It doesn't require taking of evidence and testimony. It was sanctionable as a matter of law. That's our position.

* * *

[32]Regardless, Mr. Hawes signed the pleading. He's an officer of the Court. He was personally served on May 31st by a private process server with the motion, the memorandum, and all the exhibits.

So, you know, I understand he wants to make this some technical argument as to why he shouldn't be before the Court, but he's an officer of the Court, he signed the pleading that is alleged to be sanctionable. He's been on notice of the basis for those sanctions. This Court specifically suspended its nonsuit order for the purpose of conducting a hearing on Leiser's motion for sanctions against both McCarthy and Mr. Hawes.

And for that reason, I think, Your Honor, the Court should, in fact, proceed with our sanctions motion hearing. Thank you.

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MR. HAWES: May I make one more observation, Your Honor?

[33]THE COURT: Yes, sir. This last one was yours. You were up first.

MR. HAWES: Thank you, Judge. I would point out, as I stated in my praecipe and notice of special appearance, that Mr. Leiser made no reference to me in the original motion for sanctions which was subsequently denied. And he made no objection. In fact, I think that he -- no, he made no objection when I moved to withdraw. There's no reflection in the record that he objected to my withdrawing or that he attempted to preserve any rights that he may have had at that time.

And I believe that the doctrine of waiver applies. He was on notice as to what the facts and circumstances are. He voluntarily allowed the order of withdrawal to be entered without objection. And that was his decision at the time, and now he's coming back and doing something different.

So I think that he has waived his rights with respect to me. Thank you, Judge.

THE COURT: Thank you, gentlemen.

In this first item on our calendar this morning asked to be addressed by the Court is the plaintiff, [34]Mr. McCarthy's motion to strike, and I'll characterize it as he did, everything that was filed subsequent to the suspending order; namely, the motion for sanctions and

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the exhibits and attachments that were filed in May of this year.

I said a moment ago in response to one of your objections, well, Courts speak through their orders, gentlemen, so let's refocus on what we're dealing with.

* * *

But ultimately, that principal [sic] of a Court speaking through its orders has to govern what I do and what this Court does in response to the first item argued this morning.

The suspending order language, characterized by each of you in slightly different ways, is specific as to what it says. On page one, the third whereas paragraph reads, "Whereas, it is this Court's specific intent to afford defendants the opportunity to be heard concerning [35] their pending motion for sanctions against plaintiff and his former counsel of record, Daniel Hawes."

It goes on to say with other whereas paragraphs, "It is hereby adjudged, ordered that the entry of the nonsuit order is hereby suspended until further order of this Court and shall be a final order only after more than 21 days have elapsed from entry of an order by this Court disposing of the merits of Leiser's motion for sanctions against McCarthy and Hawes." Okay.

I don't know which of you prepared the order. I heard one of you say Mr. Leiser did. I don't know that that

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matters. The Court entered it. If there's a problem with that, the time to have taken that up with the language has long passed.

As of the time this was entered, there was no pending motion for sanctions against Mr. Hawes. He'd withdrawn. He wasn't identified in the original motion for sanctions, which everybody acknowledges.

Second, there was no pending motion for sanctions at all because, one of you has said at least once, Mr. Hawes has said twice, the Court had it docketed and either ruled that it was premature or didn't rule.

[36]But in 2015, there was an order dismissing the motion for sanctions with prejudice.

MR. LEISER: No, without prejudice.

THE COURT: I'm sorry, without prejudice. You're right, I'm wrong. Without prejudice. But it wasn't pending at the time of this suspending order.

So the question then becomes should the Court do what Mr. Leiser asks today and exercise discretion retroactively—I believe that's the request, that's the way I understood it—to allow the motion for sanctions, which apparently it's not vigorously argued that it exceeds the page limit, and it is not argued at all that it was granted with leave of court to file it.

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But the request is that this Court retroactively grant leave of court to have a hearing on the motion for sanctions filed May 31, 2016 after the suspending order was entered. And the suspending order isn't accurate based on what you all have just told me as to what was pending and not pending.

The motion to strike filed by Mr. McCarthy to strike the pleadings filed post suspending order is granted.

[37]The special appearance noting your objection to this Court's having jurisdiction over you, Mr. Hawes, has been received and reviewed. I find that you are correct that the Court no longer has authority over you with respect to a pending motion for sanction, which is identified as having been against both McCarthy and you, but from the papers does not indicate that.

And so I believe you're correct that this Court has no authority over you today.

MR. HAWES: Thank you.

* * *

[40]MR. LEISER: Your Honor, I don't have any objection to the withdrawal of the motion to vacate the nonsuit. But I do have an objection to that concluding the matter, and I would ask that the matter be kept open and that the defendants be granted leave to file a motion for sanctions against Mr. McCarthy and against Mr. Hawes.

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THE COURT: Well, tell me how you think I can do that, Mr. Leiser, if you don't object to the nonsuit being a final order now. I mean, I understand why, so you don't have to reinvent the wheel, ultimately, if you believe, and clearly you do believe, that there's a reason for the Court to consider a motion for sanctions.

MR. LEISER: Correct.

* * *

[41]THE COURT: —but what authority does the Court have to keep a case open for the purpose of filing a motion for sanctions when it's nonsuited without objection? It's an initial nonsuit.

MR. LEISER: Well, the Court retains jurisdiction, obviously, for 21 days until that order is final. In this case, * * * I think it was * * * February 23rd?

* * *

THE COURT: It was February 24.

MR. LEISER: Okay. So the order was not final. And during that time that the Court retains jurisdiction, of course it is within the Court's discretion whether or not to entertain a sanctions motion or to allow leave to file.

And the reason for that is that sanctions are a separate and special category. They exist to protect the integrity of the justice system. That should be the [42]paramount concern.

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Finality is also a concern, and being done with litigation, but when there has been a good faith basis for asserting that sanctions are appropriate in a situation like this, there is no reason that this Court cannot exercise its discretion and grant that.

I don't see any reason why the Court would be precluded from doing that, and I would ask the Court to grant that leave to refile the motion and memorandum. Thank you.

* * *

[46]THE COURT: And so the question that I asked Mr. Leiser is if you don't object to his withdrawing the motion to withdraw the nonsuit, that means you don't object to the nonsuit, what authority do you believe this Court has to, [47]quote, "keep the case open?" Which was the relief he asked for. And I haven't heard any authority other than discretion.

* * *

The case as I have it, there was a request to nonsuit. It was acknowledged that it was absolutely your right to do so. And then, I don't know, a day or two or a few days later, a suspending order was entered pending a hearing on the pending motion.

I just made the finding that there wasn't a pending motion for sanctions.

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* * *

And this Court declines to grant the specific relief requested. I've not heard authority other than discretion, and I decline to exercise discretion to keep this case open for a motion for sanctions to be refiled.

* * *

[48]THE COURT: * * * That order granting the original motion to [49]strike should acknowledge and find that Mr. Hawes—* * * that Mr. Hawes made a special appearance and that the Court found it had no authority over him, jurisdiction over him, and that he had previously been withdrawn from the case at a time when no motion for sanctions was pending specifically against him.

* * * *

**APPENDIX F — DENIAL OF REHEARING
OF THE SUPREME COURT OF VIRGINIA,
DATED OCTOBER 23, 2017**

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING
IN THE CITY OF RICHMOND ON MONDAY
THE 23RD DAY OF OCTOBER, 2017

Record No. 170182
Circuit Court No. CL13-508

PHILLIP B. LEISER, ESQ., *et al.*,

Appellants,

against

AUGUST MCCARTHY, ESQ., *et al.*,

Appellees.

UPON A PETITION FOR REHEARING

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 17th day of July, 2017 and grant a rehearing thereof, the prayer of the said petition is denied.

26a

Appendix F

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:

/s/ _____
Deputy Clerk

**APPENDIX G — E-MAIL CHAIN BETWEEN
MICHELE O'HALLORAN AND PHILLIP B.
LEISER, DATED MAY 5-8, 2015**

From: OHalloran, Michele
[Michele.OHalloran@fauquiercounty.gov]
Sent: Friday, May 08, 2015 4:28 PM
To: Phillip B. Leiser
Subject: RE: CL 13-508 Order I left out before

Will do.

From: Phillip B. Leiser
[mailto:PBLeiser@leiserlaw.com]
Sent: Friday, May 08, 2015 3:55 PM
To: OHalloran, Michele; 'Daniel L. Hawes'
Subject: RE: CL13-508 Order I left out before

Hi Michele,

I am attaching copies of my objections to the orders entered by Judge Finch on Monday, 5/4/15. I told him I would get these to him by the end of this week—today. Could you forward these to him?

I will be in FQR on Monday to file some other pleadings; I will file hard copies of these objections then, as well.

Thanks, and have a good weekend.

PBI

Appendix G

Phillip B. Leiser, Esq.
The Leiser Law Firm, PLLC
1749 Old Meadow Road, Suite 630
Tysons Corner, Virginia 22102
TEL: (703) 734-5000, ext. 101
FAX: (703) 734-6000
pbleiser@leiserlaw.com
www.legalproblemsolvers.com

From: OHalloran, Michele
Sent: Tuesday, May 05, 2015 9:08 AM
To: pbleiser@leiserlaw.com; Daniel L. Hawes
(info@virginialegaldefense.com)
Subject: CL13-508 Five Orders

Michele Gerchow O'Halloran
Deputy Clerk
Fauquier County Circuit Court
540-422-8107
Michele.OHalloran@fauquiercounty.gov

**APPENDIX H — AFFIDAVIT OF SERVICE,
DATED JUNE 6, 2016**

AFFIDAVIT OF SERVICE

Case: CL13000508-00	Court: FAUQUIER COUNTY CIRCUIT COURT	County: Fauquier County, VA	Job: 892019
Plaintiff/Petitioner: AUGUST McCARTHY, Esq.		Defendant/ Respondent: PHILLIP BEN-ZION LEISER, Esq., KAREN A. LEISER, Esq., and THE LEISER LAW FIRM, PLLC <i>f.k.a</i> Leiser, Leiser & Hennessy, PLLC	
Received by: Patriot Process Service		For: The Leiser Law Firm, PLLC	
To be served upon: Daniel L. Hawes, Esq.			

I, Charles Proffitt, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Recipient Name/Address: Daniel L. Hawes, Esq., 5037
Lee Hwy, Warrenton, VA 20187**

Manner of Service: Personal/Individual, May 31, 2016,
5:59 pm EDT

Appendix H

Documents: Motion for Leave of Court to File Motion and Memorandum of Law, Each Exceeding Twenty Pages, Motion for Sanctions Against Plaintiff and His Counsel, Memorandum of Law in Support of Defendants' Motion for Sanctions Against Plaintiff and His Counsel, Exhibit List for Motion for Sanctions, Exhibits: 1. 2(A)-(C), 3(A)-(F), 4, 5(A)-(B), 6, 7(A)-(C), 8, 9(A)-(B), 10(A)-(E), 11(A)-(D), 12(A)-(E), 13(A)-(J), 14(A)-(U), 14(AA), 15(A)-(M), 16(A)-(F), 17, 18(A)-(B), 19(A)-(D), 20(A)-(J), 21 (A)-(C), 22(A)-(C), 23, 24, 25(A)-(D), 26(A)-(B), 27(A)-(C), 28(A)-(D), 29(A)-(E)

Additional Comments:

1) Unsuccessful Attempt: May 31, 2016, 1:12 pm EDT at Home: 683 5 Chestnut Oak Lane, New Baltimore, VA 20187 Defendant/Recipient not at home/office at this time.

2) Successful Attempt: May 31, 2016, 5:59 pm EDT at 5037 Lee Hwy, Warrenton, VA 20187 received by Daniel L. Hawes, Esq., Ethnicity: Caucasian; Gender: Male; Height: 5'10"; Hair: Gray;

Recipient accepted paperwork personally.

/s/ _____ June 6, 2016
Charles Proffitt Date

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Appendix H

*Subscribed and sworn to before me by the affiant who
is personally known to me in the Commonwealth of
VIRGINIA, County of PRINCE WILLIAM.*

/s/
Notary Public

<u>June 6, 2016</u>	<u>July 31, 2019</u>	<u>7637186</u>
Date	Commission Expires	Reg. No.

Patriot Process Service
3900 Jermantown Rd Suite 300
Fairfax, VA 22030
703-385-5300