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Virginia Local Government Law

Local Government Strikes Back: Sanctions (Part 2)

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In our September 10 post, we discussed Augusta County's success in seeking sanctions against a *pro se* attorney for improper assessment challenge.

This post will discuss how Louisa County, with help from Sands Anderson PC's Mike Charnoff, successfully obtained sanctions against an environmental group's lawyer and some of his clients, and reference other successes that Sands Anderson's attorneys have had in obtaining sanctions on behalf of their clients.

In Louisa County, representatives of The Historic Green Springs, Inc. ("Historic Green Springs"), a local environmental and conservation advocacy group, appealed the granting of a renewal VPDES discharge permit for the wastewater treatment plant that borders the Historic Landmark District and discharges into an 11 acre lake and ultimately into Camp Creek. Among others, the petition named Louisa County and Louisa County Water Authority as Respondents. The Petitioners were various landowners/members of Historic Green Springs, including its president, Rae Ely.

Petitioners took certain legal and factual positions in an apparent effort to increase their claims to legal standing to bring the suit. Unfortunately for the Petitioners, the circuit court eventually found those legal and factual positions violated Virginia Code section 8.01-271.1.

Specifically, some Petitioners claimed that Camp Creek passed through their property when it did not. Even though those Petitioners retreated from that factual allegation when challenged by the Respondents, the circuit court held that the Petitioner's and their counsel had a duty to make a good faith reasonable inquiry as to the location of Camp Creek, but did not. In addition, Rae Ely, the president of the advocacy group and a licensed Virginia attorney, tried to claim individual standing solely on the basis of her position as president. The Circuit Court held that well-established Virginia law did not support such standing and the claim was frivolous and wasteful.

Louisa County Attorney Greg Hoffman, along with Dick Sedgley, conceived of and filed a Motion for Sanctions in late December of 2009, along with a memorandum in support. The Petitioners demanded discovery, some written discovery was exchanged, and the sanctions hearing was delayed at least twice as complicated discovery disputes developed.

In Summer of 2010, Greg Hoffman contacted Sands Anderson PC's Mike Charnoff to assist him in the depositions and sanctions hearing. Mike had recently been successful in achieving a substantial sanctions award for his clients in the Northern Virginia Real Estate, Inc. v. Martins case in the Fairfax Circuit Court.

After somewhat combative depositions, the Louisa County legal team tried the case to the local judge. In the end, citing Virginia Code section 8.01-271.1, the circuit court sanctioned one Petitioner for the ungrounded claim that the creek ran through her property, and sanctioned the lawyer and the president (who is also a lawyer) for advancing a representative officer standing theory that was contrary to law going back to the 1800s. The Court denied the remaining claims for sanctions, including an assertion that the lawsuit was brought for an improper purpose.

Afterwards, Mike Charnoff stated, "I was honored that Greg [Hoffman] sought out my assistance with this matter…." Louisa County Attorney Greg Hoffman stated, "The Historic Green Springs, Inc. and its counsel has a long history of litigation against Louisa County; Louisa County insists any and all litigation brought against the County, by them or any other party, is well grounded in fact and supported by Virginia law."

In Virginia, sanctions were traditionally regarded as an extraordinary remedy. As discussed in our last post, in general, lawyers did not want to bring sanctions motions and judges did not want to grant them. A somewhat rare exception was the case of *Concerned Taxpayers of Brunswick County v. County of Brunswick*, 249 Va. 320, 455 S.E.2d 712 (1995), which interestingly also involved former and current Sands Anderson attorneys, Allan Heyward and Jim Cornwell, representing individual supervisors and the County, respectively.

But the door seems to have been opened wide, as a practical matter, by the case of *Ford Motor Co. v. Benitez*, 273 Va. 242, 639 S.E.2d 203 (2007). Ultimately, *Benitez* does not state much more than the sanctions statute says what it says, the statute ought to be enforced, and sanctions are mandatory in light of a finding of a violation of the statute. However, the ruling appears to have freed at least some judges to award sanctions that they previously may have been reluctant to make.

There have only been a handful of notable Virginia cases since *Benitez*, but the clear trend is towards punishing frivolous cases instead of letting sloppy lawyering or plaintiffs with unfounded cases off the hook. Failing to make reasonable inquiry or pursuing baseless legal theories is onerous to defendants and to the judicial system.

This case, along with the Augusta County case discussed in the last post and the 1995 *Concerned Citizens of Brunswick County* case, shows that sanctions can be obtained by a local government, provided that the proper motion, supported and proven, can be brought to the court. And, of course, if the local government is willing to hold the other parties to the standard of Virginia Code section 8.01-271.1.

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