

MAR 29 2018

TWENTY-THIRD JUDICIAL CIRCUIT
OF VIRGINIA



DAVID B. CARSON, JUDGE
ROANOKE CITY COURTHOUSE
315 CHURCH AVENUE, S.W.
P.O. BOX 211
ROANOKE, VIRGINIA 24002-0211
(540) 853-2436
FAX (540) 853-1040
DCARSON@VACOURTS.GOV

CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

COMMONWEALTH OF VIRGINIA

March 16, 2018

Michelle M. Trout, Clerk
Rockbridge County Circuit Court
20 S. Randolph Street, Suite 101
Lexington, VA 24450

Re: *Rockbridge Area Conservation Council v. Virginia Outdoors Foundation*
Circuit Court for Rockbridge County
Case No. CL15-186

Dear Michelle:

Please find enclosed the following:

- (1) Final Order that I have entered; and
- (2) An Order that I have declined to enter.

Please forward a certified copy of the entered Order to each counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David B. Carson', with a long horizontal flourish extending to the right.

David B. Carson

DBC:mpr

Enclosures

cc: Jared R. Jenkins, Esquire (w/enclosures)
Victor O. Cardwell, Esquire (w/enclosures)
Patice L. Holland, Esquire (w/enclosures)
Leah M. Stiegler, Esquire (w/enclosures)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROCKBRIDGE

ROCKBRIDGE AREA CONSERVATION)
COUNCIL,)

Plaintiff,)

v.)

CASE NO.: CL15-186

VIRGINIA OUTDOORS FOUNDATION,)

Defendant.)

FINAL ORDER

On December 6, 2017, came the Plaintiff, Rockbridge Area Conservation Council ("Plaintiff"), by its corporate representative and by counsel, and the Defendant, Virginia Outdoors Foundation ("Defendant"), by its executive director and by counsel, and the Court called the case to order. The parties announced that they were ready for trial upon the pleadings previously filed with the Court.

Before the trial commenced, and out of the presence of the jury, the Court instructed counsel that it would designate
Whereupon, came a jury of 19 persons, and Plaintiff and Defendant each having struck *the jury expanded in this case as an advisory jury, without objection for the parties.*
five (5) of said jurors, with 9 remaining. Preliminarily, the Court directed the selection of two (2) alternate jurors and advised that counsel would be required to decide unanimously whether the alternate jurors could remain before the jury deliberated, to which counsel for the parties unanimously agreed. There was no objection by any party to the swearing in of the jury or of the plan for selecting the two (2) alternate jurors. Thereafter, the following 9 persons were selected as jurors and the jurors were duly sworn to well and truly try the issues joined between Plaintiff and Defendant and a true verdict according to the law: Jeanne M. Beard; Vickie T. Chambers; Kendis R. Dunn; Benjamin A. Hamilton; Iana I. Konstantinova; Benjamin B. Marshall; Allison P. McClung; Brita K. Palmquist; Chris A. Paulk. ~~On day two (2) of the jury trial, the Court~~

~~instructed counsel, out of the presence of the jury, that it would designate the jury empaneled in this case as an advisory jury, without objection from the parties. Further,~~ ^T the Court directed that all motions to strike shall be made on the record at the conclusion of both parties' case-in-chief and shall be deemed a contemporaneous motion as if made after a party rested its case-in-chief.

Whereupon Plaintiff presented its evidence and rested its case in chief. Counsel for the Defendant, out of the presence of the jury and at the conclusion of all of the evidence, then moved the Court to strike Plaintiff's evidence and to enter judgment in Defendant's favor on the grounds appearing in the record. Said motion was noted and taken under advisement by the Court for the reasons stated in the record.

Whereupon Defendant then presented its evidence and rested its case. Plaintiff announcing that there would be no rebuttal evidence, Defendant, by counsel and out of the presence of the jury and on the record following the close of the evidence in the case, renewed its motion to strike Plaintiff's evidence and to enter judgment in the Defendant's favor on the grounds appearing in the record. Likewise, Plaintiff, by counsel, and out of the presence of the jury and on the record following the close of the evidence in the case, noted all of its objections and motions to Defendant's evidence for the reasons stated in the record.

The Court, having stated that the parties' motions to strike were timely and that there was no waiver regarding the timing of said motions, again took both parties' motions under advisement, for the reasons stated in the record.

On December 7, 2017, the jury then heard arguments from counsel. Following arguments from counsel on December 7, 2017, the Court instructed the jury, with each side tendering objections to certain instructions, and to the failure to give certain instructions, as reflected in the record.

The jury then retired to the jury room to deliberate and reach a verdict. The jury deliberated for a period of time before issuing one question. The Court and counsel then agreed upon a proper answer to be given to the question, which was given to the jury by the Court, without objection from either party. The jury then resumed its deliberations. After some time, the jury announced that it had reached a unanimous verdict. The Court called the jurors into the courtroom and the jury's answers to Jury Interrogatories and general verdict were read.

Below is the jury's general verdict:

The plaintiff is Rockbridge Area Conservation Council (RACC). The Defendant is Virginia Outdoors Foundation (VOF).

We, the Jury, find in favor of Rockbridge Area Conservation Council, and against Virginia Outdoors Foundation.

Signed by:

/s/ B.
Foreperson

7 Dec. 2017
Date

Following the reading of the verdict, the jurors were polled individually, and each of them affirmed his or her verdict. The jury was then discharged. The Court directed the parties to file post-trial briefing in support of their requests for relief in the case. The Court ordered that Defendant shall file post-trial motions and memoranda and limited such briefing to 10 pages. Due to the upcoming holidays, the Court instructed the parties that this briefing schedule was flexible and that the initial brief would trigger the remaining deadlines. Likewise, the Court ordered that Plaintiff shall file its response not later than 14 days after Defendant filed its initial post-trial brief and ordered that Defendant shall have five (5) days to file its Reply thereafter.

On January 22, 2018, Defendant filed its post-trial motions and memoranda, which was Defendant's Motion to Set Aside the Jury's General Verdict and Answers to Jury Interrogatories and Defendant's Motion for Judgment Notwithstanding the Verdict, along with an accompanying memorandum of law in support. On February 5, 2018, Plaintiff timely filed its Opposition to Defendant's Motion to Set Aside the Verdict and For Judgment Notwithstanding the Verdict and Renewed Motion for Reasonable Expenses and Motion for Costs. On February 9, 2018, Defendant filed its Reply.

By letter opinion dated February 23, 2018, the Court granted Defendant's Motion to Set Aside the Jury's General Verdict and Answers to Jury Interrogatories and Defendant's Motion for Judgment Notwithstanding the Verdict. The Court denied Plaintiff's Motion for Reasonable Expenses Incurred as a result of Defendant's Special Plea in Bar and Demurrers and denied Plaintiff's Motion for Costs. The Court hereby incorporates its ruling and findings set forth in its February 23, 2018, letter opinion.

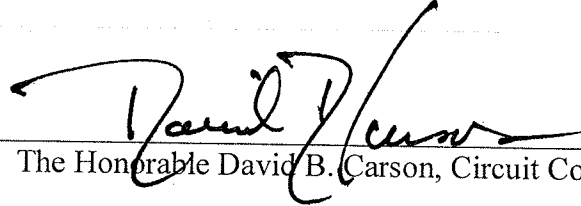
It appearing to this Court that the jury's advisory verdict and answers to the specific interrogatories were contrary to the evidence presented at trial and were a plain deviation from right and justice, it is, therefore, ORDERED that the jury's verdict be set aside. The Court hereby finds that sufficient evidence exists to decide the case on its merits and concludes that Defendant is not liable for breach of contract in this case, because the contract expired by its terms, and in effect left no contract to breach. Likewise, the Court denies specific performance as a remedy to Plaintiff. It is ORDERED that a final judgment is hereby entered in favor of Defendant, Virginia Outdoors Foundation.

It is ORDERED and ADJUDGED that this matter is now concluded and it is to be stricken from the Court's active docket.

The Clerk is directed to mail attested copies of this Order to all counsel of record.

IT IS SO ORDERED.

ENTER this 16th day of March, 2018.


The Honorable David B. Carson, Circuit Court Judge

WE ASK FOR THIS:

Victor O. Cardwell, Esq. (VSB No. 27747)

cardwell@woodsrogers.com

Patice L. Holland, Esq. (VSB No. 76016)

pholland@woodsrogers.com

Leah M. Stiegler (VSB No. 89602)

lstiegler@woodsrogers.com

WOODS ROGERS PLC

10 South Jefferson Street, Suite 1400

Roanoke, Virginia 24011

Telephone: (540) 983-7600

Facsimile: (540) 983-7711

Counsel For Defendant Virginia Outdoors Foundation

SEEN AND _____:

1. Endorsements Waived - 1:13
2. All objections made on the record are noted and preserved.
3. Specific objections of RACC to entry of this order are attached.

Jared R. Jenkins, Esquire (VSB #76025)

jared@jenkinesq.com

14 East Nelson Street, Suite 103

Lexington, Virginia 24450

Telephone: (540) 572-4574

Counsel for Plaintiff

SEEN and OBJECTED to for the following reasons: the jury's findings of fact and determination of legal issues should be binding on the Court as they were supported by, and consistent with, the evidence presented; the verdict in Plaintiff's favor was not a deviation from right and justice as it stated that contracts between two sophisticated parties are in effect and enforceable; the relevant issue at trial was the intent of the parties in entering the contracts and the meaning of the terms of the contracts – determination of whether or not one of the contracts had expired was an issue for the jury, on which they explicitly found in Plaintiff's favor; Va. Code § 8.01-430 does not give the Court the authority to decide the case on the merits if the verdict is overturned because of a "deviation from right and justice"; Plaintiff's request for specific performance was reasonable and not inequitable; Plaintiff's Motion for Reasonable Expenses Incurred as a result of VOF's Special Plea in Bar and Demurrers should be granted as that filing was made for an improper purpose; and for any and all other reasons stated in Plaintiff's Opposition to Defendant's Motions To Set Aside the Verdict and Judgment Notwithstanding the Verdict.

Jared R. Jenkins, Esq.
Counsel for Plaintiff Rockbridge Area Conservation Council
VSB #76025
JenkinsEsq, PLLC
jared@jenkinesq.com
(540) 572-4574
14 East Nelson Street, Suite 103
Lexington, Virginia 24450

VIRGINIA: IN THE CIRCUIT COURT FOR ROCKBRIDGE COUNTY

Rockbridge Area Conservation Council,
Plaintiff,

v.

Virginia Outdoors Foundation,
Defendant.

Case No.: CL15-186

ORDER

THIS MATTER CAME TO BE HEARD upon the filing of a Complaint by Plaintiff Rockbridge Area Conservation Council; and a trial having been held on December 6-7, 2017 before a duly appointed and sworn jury; and the filing of Defendant's Motion to Set Aside the Jury's General Verdict and Answers to Jury Interrogatories and Motion for Judgment Notwithstanding the Verdict and Plaintiff's Motion for Reasonable Expenses Incurred as a result of VOF's Special Plea in Bar and Demurrers; and the Court having examined the memoranda of law filed in support of those motions; it is ordered that:

For the reasons stated in the Court's Opinion Letter dated February 23, 2018, which is incorporated herein, Defendant's Motions to Set Aside the Jury's General Verdict and Answers to Jury Interrogatories and for Judgment Notwithstanding the Verdict are GRANTED and Plaintiff's Motion for Reasonable Expenses Incurred as a result of VOF's Special Plea in Bar and Demurrers is DENIED; and

All objections made on the record at the trial are deemed timely and preserved.

The Clerk is directed to provide a copy of this Order to all counsel.

After consideration, the Court declines to enter this. The Clerk will copy to counsel and any unrepresented party.

3/16/2018


Judge

ENTER THIS _____ DAY OF March, 2018.

Judge

SEEN:

Victor O. Cardwell, Esq.
VSB # _____
Counsel for Defendant Virginia Outdoors Foundation
Woods Rogers PLC
cardwell@woodsrogers.com
(540) 983-7600
10 South Jefferson Street, Suite 1400
Roanoke, Virginia 24011

SEEN and OBJECTED to for the following reasons: the jury's findings of fact and determination of legal issues should be binding on the Court as they were supported by, and consistent with, the evidence presented; the verdict in Plaintiff's favor was not a deviation from right and justice as it stated that contracts between two sophisticated parties are in effect and enforceable; the relevant issue at trial was the intent of the parties in entering the contracts and the meaning of the terms of the contracts – determination of whether or not one of the contracts had expired was an issue for the jury, on which they explicitly found in Plaintiff's favor; Va. Code § 8.01-430 does not give the Court the authority to decide the case on the merits if the verdict is overturned because of a "deviation from right and justice"; Plaintiff's request for specific performance was reasonable and not inequitable; Plaintiff's Motion for Reasonable Expenses Incurred as a result of VOF's Special Plea in Bar and Demurrers should be granted as that filing was made for an improper purpose; and for any and all other reasons stated in Plaintiff's Opposition to Defendant's Motions To Set Aside the Verdict and Judgment Notwithstanding the Verdict.

Jared R. Jenkins, Esq.
Counsel for Plaintiff Rockbridge Area Conservation Council
VSB #76025
JenkinsEsq, PLLC
jared@jenkinesq.com
(540) 572-4574
14 East Nelson Street, Suite 103