

# IN BRIEF

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## An Insurance Industry Newsletter of Recent Issues and Opinions in Virginia Law By

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### SHOULD TIME BE EXTENDED?

What are the requirements, if any, for granting extensions? When presented with a request for an extension of time to file a pleading, do the dictates of “professionalism” require that the extension be voluntarily granted? Does the court have a role to play in disciplining an attorney who fails to voluntarily grant an extension of time? All of these issues are addressed by the Circuit Court of Stafford County in the case of Environmental Specialist, Incorporated, t/a/ Howell’s Heating and Air Conditioning Co. v. Wells Fargo Bank Northwest, N.A. as trustee of the GSA Fredricksburg FBI 2013 Pass-Through Trust, 782 S.E.2d 147 (Stafford County Cir. 2016).

The proceedings which led to the extension issue began when Environment Specialists, Inc. (ESI) filed a Complaint on October 21, 2013 in the Stafford Circuit Court to enforce a mechanics lien against multiple defendants, Wells Fargo among them. The following events occurred: October 29: the Complaint was forwarded to Wells Fargo via the Secretary of the Commonwealth; October 30: The Secretary filed a Certificate of Compliance with the trial court; November 21: Counsel for Wells Fargo first learned of the Complaint and contacted ESI counsel to request a brief extension of time to file responsive pleadings (an Answer) on or before November 26. ESI counsel did not agree to the extension.

Counsel for Wells Fargo filed a Motion for Leave to file an Answer out of time which included a request for its “fees and costs incurred with regard to the Motion”. Subsequently, on January 2, 2014, several other defendants agreed that the mechanics lien was valid and judgment was entered against them. Nonetheless, ESI filed a Motion for Default Judgment against all defendants based on the fact that none had filed a responsive pleading within the 21-day period allotted by Rule 3:8 of the Virginia Supreme Court.

On February 3, 2014, the trial court held a hearing to consider Wells Fargo’s Motion for Leave to file an Answer out of time and ESI’s Motion for Default Judgment. Default Judgment was granted against defendant Lawyers Title Realty. By separate Order, the court granted the Wells Fargo Motion and Ordered ESI’s counsel to reimburse Wells Fargo’s counsel \$1,200 for “fees and costs” involved in filing its motion for an extension. In its Final Order, the trial court states that the sanctions it awarded against ESI’s counsel were “for its failure to

voluntarily extend the time in which Wells Fargo might file its Answer”<sup>1</sup>, however, the court does not cite any authority for its action and does not invoke any inherent authority to take this action.

ESI appealed the sanctions award against it to the Stafford Circuit Court which found that the trial court had erred “by awarding sanctions against Counsel for the Plaintiff/Appellant for his failure to voluntarily agree to extend the time in which Counsel for the Defendant/Appellee was to file its Answer, as required by Rule 3:8(a) of the Rules of the Supreme Court of Virginia.” The courts of the Commonwealth have an “inherent power to supervise the conduct of attorneys practicing before them and to discipline any attorney who engages in misconduct.”<sup>2</sup>

However, this disciplinary power includes removal of “an attorney of record in a case<sup>3</sup>” and suspension or annulment of the license “of an attorney practicing in a particular court.”<sup>4</sup> The power does not include monetary sanctions against an attorney because the purpose of such sanctions is to protect the public, not to punish.<sup>5</sup> The trial court may impose a monetary sanction if the authority to do so is stated in a statute or rule, but no such authority was cited by the trial court in the instant case.

Although the trial court did not cite Virginia Code §8.01-271 as authority for its decisions, the Circuit Court did consider whether or not this statute justified the sanctions or award of fees and costs.<sup>6</sup> The Court examined two factors: the decision to sanction, and the choice of which type of sanction to employ. The Court found that because the action by ESI’s counsel does not involve a “pleading, motion or other paper”, the court’s sanctions violate the provisions of Code §8.01-271 which states that the attorney’s signature constitutes “a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”<sup>7</sup>

In its appeal, for the first time Wells Fargo argues, in accordance with this statute, that ESI filed its motion for default judgment with an improper purpose and this allowed the trial court to impose sanctions. However, the trial court never made or mentioned any finding of any improper purpose on the part of ESI, rather it based its order entirely on counsel’s voluntarily failure to extend the time limit.

Finally, in its brief, Wells Fargo argues that counsel for ESI had acted unprofessionally in refusing the extension and that the trial court’s sanctions were intended to educate ESI counsel as to the level of professionalism expected by the court. While extolling the virtues of professionalism, the Circuit Court again notes that the trial court had based its decision solely on the voluntary failure of plaintiff’s counsel with no mention of professionalism. Further, the Court stated that when the interests of the client conflict with the perceived professionalism of the attorney, the client’s best interests must always supersede.

This opinion reinforces two basic principles of the legal system. Courts must always base opinions on valid authority and, although professionalism is important in all business relationships, for attorneys, the client’s best interest must take precedence.

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<sup>1</sup> Pg 3.

<sup>2</sup> Pg. 3

<sup>3</sup> Pg 4.

<sup>4</sup> Pg 4

<sup>5</sup> Pg 4

<sup>6</sup> Pg 5

<sup>7</sup> Pg 5

**DECISIONS BY THE SUPREME COURT OF VIRGINIA  
REGARDING INSURANCE INDUSTRY ISSUES  
June 6-10, 2016 SESSION**

The following case summary involves insurance litigation issues. We have downloaded this summary directly from the Virginia Supreme Court website. We offer it to you without further legal analysis. However, if you would like a brief legal analysis or the full text of any of this case, please make your request by return e-mail. If you would like to discuss the ramifications of this decision, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

[151193](#) **Pike v. Hagaman** 06/02/2016 In an appeal from dismissal of a medical malpractice action against a registered nurse employed in a state facility, on the basis of sovereign immunity, the circuit court did not err in sustaining the plea in bar and dismissing the action. Applying the four-factor test recognized in Virginia case law, focusing on the state interests and control of the activities of the defendant and her exercise of judgment and discretion in rendering nursing care to the plaintiff, the facts of the present case, in light of legislation enacted by the General Assembly, demonstrate that it was not error to sustain the plea. The judgment is affirmed.

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