082345

ASSIGNMENTS OF ERROR

1. The circuit court erred by awarding attorney fees more than twenty-one days after the entry of an order granting a non-suit.

2. Where the City of Suffolk, Virginia took a first nonsuit as a matter of right and where the instant case did not involve the same cause of action or the same parties as a previously nonsuited delinquent tax sale case, the circuit court erred in granting attorney fees to Mills Staylor, Kay Simmons, Lewis B. Smith, David B. Smith, and William B. Smith.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

City of Suffolk, Virginia
a Municipal Corporation,

Complainant,

v. CL06-167

LUMMIS GIN COMPANY, *et als,*

Defendants.

FINAL ORDER

On this day came Defendants, Mills Staylor, Kay Simons, Louis B. Smith, David B. Smith and William B. Smith, by counsel, and moved for an award of Attorney Fees and Costs in the above case.

UPON CONSIDERATION WHEREOF the Court finds that the above case is a second or additional nonsuit of the case styled City of Suffolk, Virginia v. Western Branch Crossing, LP, *et als* (Case No: CH95-285), and doth sustain Defendants' motion and award attorney fees and cost sought by Mr Pretlow up until the time of the non-suit, and the Court doth deny Complaint's request for a ruling pursuant to Rule 1:1 that the Court lacked jurisdiction to decide the matters raised in the request for attorney's fees, it is therefore,

ADJUDGED, ORDERED and DECREED that the City of Suffolk shall pay the Defendants' attorney fees and cost in the amount of $1,113.00.

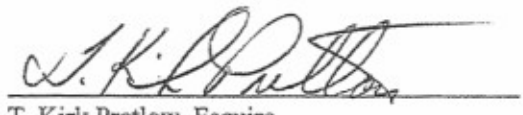
There being nothing further to be done in this matter, this cause is removed from the docket and placed among the ended causes.

ENTERED this 22d day of September, 2008.

JUDGE

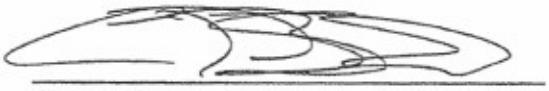
Ch 06-167

I ASK FOR THIS:



T. Kirk Pretlow, Esquire
200 North Main Street
Suffolk, VA 23434
(757) 539 - 3488
Counsel for Defendants Mills Staylor,
Kay Simons, Louis B. Smith,
David B. Smith and William B. Smith

SEEN AND OBJECTED TO:



Clarence H. Brooks, Esquire
William E. Hutchings, Jr, Esquire
Counsel for Complainant

Complainant's Exceptions

1. Pursuant to Rule 1:1 of the Rules of the Supreme Court, the Court lacked Jurisdiction to award Attorney Fees.

2. The Defendants are not entitle to Attorneys Fees because the Non-Suit was Taken as a matter of right pursuant to Section 8.01-380 of the Code of Virginia (1950), as amended.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

City of Suffolk, Virginia
a Municipal Corporation,

Complainant,

v. CL06-167

LUMMIS GIN COMPANY, *et als,*

Defendants.

NON-SUIT ORDER

On this day came the Complainant, City of Suffolk, by counsel, and moved for a Non-Suit in the above case.

UPON CONSIDERATION WHEREOF the Court doth sustain Complaint's motion and doth ORDER that this case be, and it is hereby Non-Suited, without prejudice, ~~and removed from the docket and placed among the ended causes~~. This suit shall remain on the docket for the Court to determine issues concerning attorney fees, costs and expenses incurred by the defendant

ENTERED this 12 day of February, 2008.

JUDGE

I ASK FOR THIS:

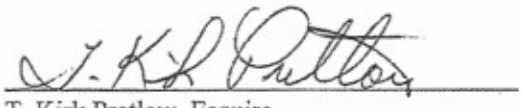
Clarence H. Brooks, Esquire
Counsel for Complainant

SEEN AND AGREED:

Dispensed with Signature Pursuant to Rule 1:13

Johnnie E. Mizelle, Esquire
Guardian *Ad Litem* of Record

SEEN AND OBJECTED



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Suffolk, VA 23434
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Counsel for Defendants Mills Staylor,
Kay Simons, Louis B. Smith, David B. Smith
and William B. Smith