In The

Supreme Court of Virginia

RECORD NO. 090674

THOMAS IDOUX,

***Appellant*,**

v.

ESTATE OF RAJA ALEXANDER HELOU,

Appellee.

BRIEF OF APPELLANT

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VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

THOMAS IDOUX,	*	
	*	
Appellant,	*	
	*	
v.	*	Record No. 090674
	*	
	*	
	*	
ESTATE OF RAJA ALEXANDER HELOU,	*	
	*	
Appellee.	*	
	*	

* *

BRIEF OF APPELLANT

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COU-RT OF VIRGINIA:

COMES NOW the Appellant, Thomas Idoux, by and through counsel, David Galinis, Esq. and Berman, Sobin, Gross, Feldman & Darby, LLP and presents this Brief and states that he is aggrieved by an Order of the Circuit Court for Fairfax County, which became final on January 9, 2009.

STATEMENT OF FACTS

The Appellant, Thomas Idoux, was seriously injured on September 19, 2006 when his vehicle was struck by another car operated by Raja Helou, who died on March 29, 2007 of causes unrelated to that accident.

Rosemary Helou was appointed as the administrator of the estate of Raja Helou on October 15, 2007.

On August 14, 2007, Mr. Idoux, acting *pro se*, filed suit papers in general district court against Raja Helou, despite that he was deceased. That suit was dismissed without prejudice three months later, on November 20, 2007, because the decedent was not a proper defendant.

Mr. Idoux subsequently retained counsel, and on September 2, 2008, Mr. Idoux filed suit against the Estate of Raja Helou (hereinafter, the "Estate") within the applicable statute of limitations. The suit papers provided that the personal representative of Mr. Helou's estate – Rosemary Helou – was the party to be served, and indeed on November 17, 2008, Rosemary L. Helou was served with the suit papers.

MATERIAL PROCEEDINGS IN THE COURT BELOW

On November 21, 2008, the Estate filed a Plea in Bar, arguing that Mr. Idoux had filed against the incorrect defendant, having filed against the Estate, rather than the Estate's personal representative. The Estate further argued that the statute of limitations had run over a month earlier – on October 15, 2008 – and that under *Swann v. Marks*, 252 Va. 181, 476 S.E.2d 170 (1996) Mr. Idoux could not amend his suit papers to substitute

the personal representative as the defendant. Thus, the Estate argued, Mr. Idoux's claim should be dismissed with prejudice.

Mr. Idoux responded to the Estate's Plea in Bar and moved for leave to amend the suit papers on December 11, 2008, arguing that Va. Code § 8.01-6.2(B), which became law after *Swann* was decided, specifically tolls the statute of limitations when a plaintiff mistakenly files suit against an estate and thus overrules *Swann*. Mr. Idoux further argued that Va. Code § 8.01-229(B)(2)(b) provides that when a prospective defendant in a personal action dies before the filing of suit papers naming that person as defendant, the suit may be amended to substitute the decedent's personal representative as the party defendant within two years of the filing of the suit papers, if the suit was filed within the statute of limitations, thus entitling Mr. Idoux to amend his suit papers under the facts of this case.

A hearing on the Plea in Bar and Mr. Idoux's opposition and motion for leave to amend his suit papers was held on January 9, 2009 in the Circuit Court of Fairfax County. On that same date the trial court granted the Defendant's Plea in Bar, denied the Plaintiff's Motion for Leave to Amend, and dismissed the case with prejudice.

ASSIGNMENTS OF ERROR

I. The trial court erred in granting the Plea in Bar and denying the Motion for Leave to Amend the Complaint because Va. Code § 8.01-6.2(B) tolled the statute of limitations when Mr. Idoux mistakenly filed suit against the Estate of Raja Helou, rather than the personal representative of that Estate, Rosemary Helou. Thus, the case should not have been dismissed and Mr. Idoux should have been permitted to amend his complaint to substitute the personal representative as the defendant.

II. The trial court erred in granting the Plea in Bar and denying the Motion for Leave to Amend the Complaint because Raja Helou died before Mr. Idoux filed his complaint, and Mr. Idoux's Complaint was filed before the statute of limitations ran, and thus under Va. Code § 8.01-229(B)(2)(b) Mr. Idoux had two years from the filing of his Complaint to amend his Complaint to substitute the personal representative as the defendant, and thus should have been permitted to do so in this case.

QUESTIONS PRESENTED

1. Whether, as a matter of first impression, the trial court erred in granting the Plea in Bar, denying the Motion for Leave to Amend the Complaint, and dismissing the case with prejudice where Mr. Idoux mistakenly filed suit against the Estate of Raja Helou, rather than the personal representative of that Estate, Rosemay Helou, and where Va. Code § 8.01-6.2(B) tolls the statute of limitations under such circumstances? (Assignment of Error I)

2. Whether the trial court erred in granting the Plea in Bar, denying the Motion for Leave to Amend the Complaint and dismissing the case with prejudice where Raja Helou died before Mr. Idoux filed his Complaint, and Mr. Idoux's Complaint was filed before the statute of limitations ran and where Va. Code § 8.01-229(B)(2)(b) provides that under such circumstances a plaintiff has two years from the filing of a complaint to amend his complaint to substitute the personal representative as the defendant? (Assignment of Error II)

ARGUMENT

I. VA. CODE § 8.01-6.2(B) TOLLS THE STATUTE OF LIMITATIONS WHEN A PLAINTIFF MISTAKENLY FILES SUIT AGAINST AN ESTATE, RATHER THAN THE PERSONAL REPRESENTATIVE OF AN ESTATE, JUST AS MR. IDOUX DID HERE. THUS, THE TRIAL COURT ERRED IN DISMISSING THE CASE AT BAR AND MR. IDOUX SHOULD HAVE BEEN PERMITTED TO AMEND HIS COMPLAINT TO SUBSTITUTE THE PERSONAL REPRESENTATIVE AS THE DEFENDANT.

Pursuant to Va. Code § 8.01-299(B)(2) the proper defendant in the case at bar was Rosemary Helou, the personal representative, rather than the Estate of Raja Helou itself. However, in the event that (1) suit is filed against the estate of a decedent, (2) within the applicable statute of limitations and (3) service on the personal representative is effectuated or attempted, Va. Code § 8.01-6.2(B) tolls the statute of limitations. Thus, the statute of limitations in the case at bar has not expired because it has been tolled by Mr. Idoux's suit against the Estate of Mr. Helou. Va. Code § 8.01-6.2(B), provides:

> In the event that *suit is filed against the estate of a decedent*, and filed within the applicable statute of limitations, naming the proper name of estate of the deceased and service is effected or attempted on an individual or individuals as executor, administrator or other officers of the estate, such filing tolls the statute of limitations for said claim in the event the executor, administrator or other officers of the estate are unable to legally receive service at the time service was attempted, or defend suit because their authority as executor, administrator or other officer of the estate excludes defending said actions, or their duties as executor, administrator or other officer of the estate

> had expired at the time of service or during the time of defending said action.

(emphasis added). The statute quite clearly contemplates the circumstance presented by the case at bar, i.e., a suit that is incorrectly filed against an estate of a decedent, and that in such a circumstance the statute of limitations is tolled. Here, suit was filed against the Estate of Raja Helou, naming "the proper name" of that Estate, service was effected on the personal representative, Rosemary Helou, and she was unable to "legally receive service or defend the suit" because, pursuant to Va. Code § 8.01-229(B)(2), the Estate itself was not a proper party and thus could not legally defend the suit.

A. A personal representative cannot "legally receive service" for an estate.

Suit against an estate is a nullity; therefore, a personal representative cannot "legally receive service" when suit is filed against an estate, because there is no suit to receive service for or defend against.[1] Aside

[1] In *Estate of James v. Peyton*, 277 Va. 443, 674 S.E.2d 864 (2009), this Court stated in *dicta* that a personal representative is legally able to receive service of a suit where the estate, rather than the personal representative is named. *Id*. at 453, 869 n. 3. Neither party in *Peyton* had even cited to Va. Code § 8.01-6.2(B), or made the argument Mr. Idoux makes herein, that a personal representative cannot legally receive service or defend a suit that incorrectly names an estate as the defendant because the suit against an estate is a nullity. Furthermore, neither party reviewed the statutory history of Va. Code § 8.01-6.2(B), as Mr. Idoux does herein.

from being legally unable to receive service because there is no suit, there is no statute governing a "legal" way to serve an estate. *See* § 8.01-296, *et seq*. The closest statute is Va. Code § 8.01-296, which describes the manner of serving a "party." It provides that process may be served on "the party in person," which is not possible for an estate, or:

> If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of 16 years or older….

Va. Code Ann. § 8.01-296(2)(a). Because the "party" at issue in the case at bar is the Estate, Va. Code § 8.01-296 describes no manner in which any person could legally accept service on behalf of an estate as a party. An estate has no "usual place of abode," let alone family members or guests because an estate is merely a collection of property and not a person. *Swann v. Marks*, 252 Va. 181, 184, 476 S.E.2d 170, 172 (1996) ("The personal representative of a decedent and the decedent's "estate" are two separate entities; the personal representative is a living individual while the "estate" is a collection of property. Thus, one cannot be substituted for another….") An estate is incapable of having anyone legally accept service on its behalf as a "party" under Va. Code § 8.01-296 (or any statute dealing with service of process) and therefore service cannot be

legally effected on anyone when a suit is filed against an estate, not even a personal representative.

This interpretation makes the most sense, because there do not appear to be any other circumstances when a personal representative is "legally unable to receive service." The statute describing the manner of serving process, Va. Code § 8.01-296, is very broad. It does not require that a person receiving be competent (such a requirement would be nearly impossible to enforce and would require process servers to perform competency examinations). It also provides that the minimum age to receive process for a person accepting process on a party's behalf is 16 and it is highly unlikely that a personal representative would ever be younger than 16, especially given the requirements of Va. Code § 64.1-116, regarding to whom administration of an estate may be granted. The "legally unable to receive service" clause of Va. Code § 8.01-6.2(B), appears to be a "catch-all" provision, given that the other two clauses pertaining to when the statute applies are far more specific. The other two clauses in the statute provide that the statute of limitations is tolled if (1) the authority of the personal representative excludes defending the action, or (2) the duties of the personal representative had expired at the time the suit was filed. The Legislature must have intended that the phrase, "unable to

legally receive service at the time service was attempted," be given a broader, "catch-all" meaning; otherwise, the Legislature would have simply expanded on its specific list.

B. Remedial statutes, such as Va. Code § 8.01-6.2(B) should receive a broad construction.

Va. Code § 8.01-6.2(B) should be interpreted broadly, including the clause regarding who is not capable of "legally receiving service or defending a suit," under the rule of statutory interpretation that remedial statutes should receive broad construction. *Goodman v. Goodman*, 150 Va. 42, 45, 142 S.E. 412, 413 (1928); *McIntyre v. Smyth*, 108 Va. 736, 62 S.E. 930, 934 (1908); *Southern Ry. Co. v. Hill*, 106 Va. 501, 56 S.E. 278, 279 (1907); *Hewitt v. Firestone Tire & Rubber Co*., 490 F. Supp. 1358, 1366 (E.D. Va.1980). This Court has held that statutes such as the one at issue here, which allow amendments to pleadings and the substitution of parties, are for the "promotion of justice" and, "have always been liberally construed by the Supreme Court of Appeals as remedial in purpose." *Dillow v. Stafford*, 181 Va. 483, 489, 25 S.E.2d 330, 333 (1943) (holding that the substitution of plaintiffs was but a continuation of the original action, therefore the court was right in permitting the substitution, and erred in holding that the statute of limitations was applicable); *accord Russell*

Lumber Co. v. Thompson & Lambert, 137 Va. 386, 119 S.E. 117, 119 (1923) and cases cited therein.

C. The case *Swann v. Marks*, 252 Va. 181, 476 S.E.2d 170 (1996), cited by Appellees below and relied upon by the circuit court, is inapplicable to an argument under Va. Code § 8.01-6.2(B), which became law several years after *Swann* was decided. In addition, Va. Code § 8.01-6.2(B) was enacted in response to *Swann*.

In the trial court, the Estate cited *Swann v. Marks*, 252 Va. 181, 476 S.E.2d 170 (1996) for the proposition that, "Plaintiff cannot rely on the misnomer statute to substitute Rosemary Helou…as the party defendant because such a substitution is not the correction of a misnomer." Virginia's misnomer statute, Va. Code § 8.01-6, is addressed by the *Swann* case; however, Mr. Idoux never sought to amend his suit papers under the misnomer statute, but rather under Va. Code § 8.01-6.2(B) and/or Va. Code § 8.01-229(B)(2)(b). At the outset of its decision, the *Swann* court set forth the questions before it and made clear that its holding was an application of the misnomer statute: "In this personal injury action, we consider whether a motion for judgment filed against the 'estate' of a deceased person tolls the statute of limitations, and whether substitution of the personal representative for the 'estate' is the correction of a misnomer under Code § 8.01-6." *Id*. at 182, 170.

The court held:

> Marks [the defendant] contends that suit against an "estate" is a nullity and cannot toll the statute of limitations. We agree. To toll the statute of limitations, a suit must be filed against a proper party. Virginia statutes do not authorize an action against an "estate." Code §§ 8.01-229(B)(1) and (B)(2) direct the decedent's personal representative to file any personal action which the decedent may have been entitled to bring and to defend any personal action which could be brought against the decedent.

Id. at 184, 171. This holding is premised on an interpretation of the misnomer statute only, and does not include any discussion of Va. Code § 8.01-6.2(B) (because the decision pre-dates that statute) and is in direct conflict with the language of Va. Code § 8.01-6.2(B), which makes clear that suit against an estate tolls the statute of limitations: "In the event that suit is filed against the estate of a decedent…such filing tolls the statute of limitations." Thus, the *Swann* holding that a suit against an estate cannot toll the statute of limitations has been overturned by Va. Code § 8.01-6.2(B), which not only contemplates the circumstance of suit being filed against an estate, but tolls the statute of limitations in such a circumstance.

The *Swann* court's ultimate holding, that the plaintiff could not amend his complaint to substitute the personal representative as the party

defendant, hinged on Virginia's misnomer statute, Va. Code § 8.01-6,[2] and with respect to that statute the court stated:

> [T]he substitution of a personal representative for the "estate" is not the correction of a misnomer. Misnomer arises when the right person is incorrectly named, not where the wrong defendant is named. *Rockwell v. Allman*, 211 Va. 560, 561, 179 S.E.2d 471, 472 (1971). The personal representative of a decedent and the decedent's "estate" are two separate entities; the personal representative is a living individual while the "estate" is a collection of property. Thus, one cannot be substituted for another under the concept of correcting a misnomer.

Id. at 184, 172. While this part of the court's holding may still stand – that the substitution of a personal representative for an estate as party defendant may not occur under the misnomer statute, Va. Code § 8.01-6 – it stands only as an interpretation of the misnomer statute, Va. Code §

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[2] Va. Code § 8.01-6 provides:

> A misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name. An amendment changing the party against whom a claim is asserted, whether to correct a misnomer or otherwise, relates back to the date of the original pleading if (i) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, (ii) within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party or its agent received notice of the institution of the action, (iii) that party will not be prejudiced in maintaining a defense on the merits, and (iv) that party knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

8.01-6, and not the subsequently passed Va. Code § 8.01-6.2(B). The *Swann* case, decided in 1996, was published three years before Va. Code § 8.01-6.2(B) was made law in 1999. Here, Mr. Idoux does not rely on the old misnomer statute and instead relies on the specific new mandates of Va. Code § 8.01-6.2(B), which tolls the statute of limitations and allows him to amend his suit papers.

Not only does the *Swann* decision not contemplate Va. Code § 8.01-6.2(B), because it had not yet been enacted, but Va. Code § 8.01-6.2(B) appears to have been passed specifically in response to *Swann*. The Legislative Draft File for House Bill 2582 (which when passed became Va. Code § 8.01-6.2) was obtained from the Legislative Reference Center and appears at page 19 of the Joint Appendix. As originally introduced HB 2582 was devised to toll the statute of limitations whenever a party incorrectly asserted a claim against the wrong party because the trade name of the incorrectly named party was substantially similar to the trade name of the intended defendant. (Bill tracking of HB 2582, page 37 of the Joint Appendix) The bill was amended to add subsection (B), which provided for the tolling of the statute of limitations when an estate was sued. (Joint Appendix at 39-40) The Legislative Draft File for the bill contains several letters regarding the problem of incorrect defendants

being named due to confusingly similar trade names and, importantly, a copy of the *Swann* decision. This indicates that the Legislature had the *Swann* case in mind when drafting Va. Code § 8.01-6.2(B).

Not only has *Swann* been statutorily overturned, but the case at bar is also distinguishable from *Swann*. In *Swann*, no personal representative was named in the complaint or served with a copy of it. 252 Va. at 182-83, 476 S.E.2d at 170-71. The personal representative of the estate did not have notice of the claim until almost two years after suit had been filed because no personal representative had been named until that time. *Id*. Unlike *Swann*, the personal representative had timely notice of the suit and the personal representative was the person actually served with the suit papers. (Joint Appendix at 1)

II. BECAUSE RAJA HELOU DIED BEFORE MR. IDOUX FILED HIS SUIT PAPERS, AND MR. IDOUX'S SUIT PAPERS WERE FILED BEFORE THE STATUTE OF LIMITATIONS RAN, UNDER VA. CODE § 8.01-229(B)(2)(B) MR. IDOUX HAS TWO YEARS FROM THE FILING OF HIS SUIT PAPERS TO AMEND THEM TO SUBSTITUTE THE PERSONAL REPRESENTATIVE AS THE DEFENDANT. THUS, THE TRIAL COURT ERRED IN DISMISSING THE CASE AT BAR AND MR. IDOUX SHOULD HAVE BEEN PERMITTED TO AMEND HIS SUIT PAPERS TO SUBSTITUTE THE PERSONAL REPRESENTATIVE AS THE DEFENDANT.

Va. Code § 8.01-229(B)(2)(b) provides that when a person against whom a personal action may be brought dies before the filing of the suit papers naming that person as defendant, the suit papers may be amended

to substitute the decedent's personal representative as the party defendant within two years of the filing of the suit papers, if the suit was filed within the statute of limitations. Specifically, the statute provides:

> If a person against whom a personal action may be brought dies before suit papers naming such person as defendant have been filed with the court, then such suit papers may be amended to substitute the decedent's personal representative as party defendant before the expiration of the applicable limitation period or within two years after the date such suit papers were filed with the court, whichever occurs later, and such suit papers shall be taken as properly filed.

Va. Code § 8.01-229(B)(2)(b).

A. Mr. Idoux's circuit court suit papers.

Here, Mr. Helou died before the filing of Mr. Idoux's suit papers against Mr. Helou's Estate: Mr. Helou died on March 29, 2007 and Mr. Idoux's instant suit was brought on September 2, 2008. The statute describes a circumstance where a decedent is named as a defendant after their death, and there is functionally no difference between naming a decedent and naming the decedent's estate, given that a suit against neither can be maintained because a suit against either is a nullity. *Rennolds v. Williams*, 147 Va. 196, 200, 136 S.E. 597, 598 (1927) ("Suits must be defended by living parties. You cannot sue a dead man."); *Swann*, 252 Va. 184, 476 S.E.2d at 171-72.

Mr. Idoux thus has two years from the date his suit was brought on September 2, 2008, i.e., until September 2, 2010, to amend his suit papers "to substitute the decedent's personal representative as party defendant." Va. Code § 8.01-229(B)(2)(b). Therefore, the trial court erred in denying Mr. Idoux's Motion for Leave to Amend and dismissing his suit.

B. Mr. Idoux's general district court suit papers.

If the court is not persuaded that filing suit against the estate of a decedent (as Mr. Idoux did in his September 2, 2008 suit papers) and filing suit against a decedent are sufficiently similar to invoke the protection of Va. Code § 8.01-229(B)(2)(b), the instant case should still be allowed to be amended because Mr. Idoux's Motion to Amend was filed within two years of the filing of Mr. Idoux's original *pro se* suit papers. Mr. Idoux filed his original suit papers in the general district court on August 14, 2007 acting *pro se*.[3] (Joint Appendix at 48-49; Appellee's Brief in Opposition to Petition for Appeal at 3) That suit was filed against the decedent, Raja Helou – not the Estate of Raja Helou. While such a suit is normally considered a nullity, Va. Code § 8.01-229(B)(2)(b) clearly contemplates that a complaint bringing suit against a decedent who dies before the suit is brought can be

[3] Mr. Idoux's *pro se* suit papers were before the court below and were attached to the Estate's opposition to Mr. Idoux's motion to amend his complaint.

amended within two years of the filing of the suit papers. Mr. Idoux's *pro se* suit was dismissed without prejudice on November 20, 2007 because Raja Helou was deceased. (Joint Appendix at 4) Therefore, Mr. Idoux had two years from August 14, 2007 to amend his original action under Va. Code § 8.01-229(B)(2)(b).

Mr. Idoux's circuit court suit papers (filed on September 2, 2008) and motion for leave to amend those suit papers (filed on December 11, 2008) were both filed prior to two years from Mr. Idoux's original *pro se* suit papers in general district court. Together, these documents sought to amend Mr. Idoux's original general district court suit. Re-filing a case in circuit court is an appropriate way to amend a case that is dismissed or nonsuited in general district court. *Conner v. Rose*, 252 Va. 57, 471 S.E.2d 478 (1996) (holding that re-filing in the circuit court after a nonsuit was taken in the general district court was permissible because the new motion for judgment contained an *ad damnum* clause that exceeded the statutory jurisdiction of the general district court.) As the Motion for Leave to Amend was filed before the two-year period under Va. Code § 8.01-229(B)(2)(b), the trial court should have granted Mr. Idoux's Motion to Amend. The two-

year period to amend had not expired when Mr. Idoux moved to amend his circuit court suit papers.[4]

C. The case at bar is distinguishable from *Estate of James v. Peyton*, 277 Va. 443, 674 S.E.2d 864 (2009).

The recent case, *Estate of James v. Peyton*, 277 Va. 443, 674 S.E.2d 864 (2009), does not affect Mr. Idoux's argument under Va. Code § 8.01-229(B)(2)(b). In that case, three months after filing his complaint, the plaintiff amended the name of the defendant from the decedent to the estate of the decedent, supposedly under Va. Code § 8.01-229(B)(2)(b). *Id*. at 448-49, 865-66. Four years later[5], the defendant filed a motion for summary judgment, alleging the plaintiff had not complied with Va. Code § 8.01-229(B)(2)(b) because the complaint had been amended to include the estate as the defendant, not the personal representative of the estate. *Id*.

The court held that the plaintiff in *Peyton* failed to comply with Va. Code § 8.01-229(B)(2)(b) because that statute allows a plaintiff to amend a complaint to name the personal representative of an estate, not to amend the complaint to name an estate itself. The plaintiff in *Peyton* had

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[4] In an abundance of caution, Mr. Idoux has filed another action in the Circuit Court of Fairfax County against Rosemary Helou, as personal representative on August 13, 2009. (Civil No. 2009-11793)

[5] It is unclear from the court's opinion why the litigation languished for four years.

amended his complaint to name the estate instead of the personal representative. Mr. Idoux has complied with Va. Code § 8.01-229(B)(2)(b) by attempting to amend his suit papers to name the personal representative of the Estate, rather than the Estate itself.

D. Virginia disfavors dismissal and instead favors resolution of dispute on their merits.

The Commonwealth of Virginia disfavors the result of the trial court proceedings here – dismissal – and instead favors the resolution of disputes on their merits. That is why Virginia allows for the amendment of pleadings when trade names are confusingly similar, and when an estate is named instead of a personal representative. Virginia has also codified this policy in Va. Code § 8.01-275, which provides:

> No action or suit shall abate for want of form where the motion for judgment or bill of complaint sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. The court shall not regard any defect or imperfection in the pleading, whether it has been heretofore deemed misleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given.

This policy has particular applicability to the case at bar, where two statutes allow Mr. Idoux to amend his suit papers to substitute the personal representative as the defendant. These statutes should be construed with the policy of Va. Code § 8.01-275 in mind as well as the policy that

remedial statutes, “have always been liberally construed by the Supreme Court of Appeals….” *Dillow v. Stafford*, 181 Va. 483, 489, 25 S.E.2d 330, 333 (1943).

CONCLUSION

The trial court erroneously granted the Estate’s Plea in Bar, denied Mr. Idoux’s Motion for Leave to Amend the Complaint and dismissed the case at bar. The decision of the trial court should be reversed, and the case at bar should be remanded to the Circuit Court for Fairfax County with instructions that Mr. Idoux be permitted to amend his suit papers to substitute Rosemary Helou, the Personal Representative of the Estate of Raja Helou as the party defendant.

Respectfully submitted,

Thomas Idoux
By Counsel

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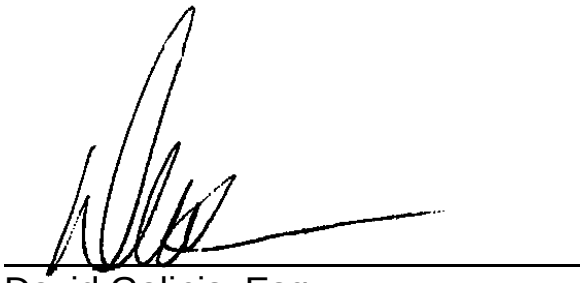
CERTIFICATE OF COMPLIANCE WITH RULE 5:26(d)

Fifteen paper copies and one electronic copy of the Brief of Appellant and Joint Appendix have been hand-filed with the Clerk of this Court and three paper copies of the same have been sent via U.S. Mail, postage prepaid, to Steven W. Bancroft and Dana L. Tubb, Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C., 3920 University Drive, Fairfax, VA 22030, (703) 385-1000, Counsel for Appellee, this 4th day of September, 2009.



David Galinis, Esq.