In The

Supreme Court of Virginia

RECORD NO. 090972

JUDITH HAFNER,

Appellant,

v.

WALTER D. HANSEN,

Appellee.

BRIEF OF APPELLEE

Robert J. Duffett (VSB No. 33120)
BASKIN, JACKSON & DUFFETT, P.C.
301 Park Avenue
Falls Church, Virginia 22046
(703) 534-3610 (Telephone)
(703) 536-7315 (Facsimile)
robert.duffett@baskinjackson.com

Counsel for Appellee

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

QUESTIONS PRESENTED 2

STATEMENT OF THE NATURE OF THE CASE 3

COUNTERSTATEMENT OF FACTS 4

ARGUMENT 8

1. Whether the pleadings and evidence presented at trial were sufficient for the trial court to find that a trespass by Hansen did not occur based upon a finding that a prescriptive easement had been established in favor of Hansen? 8

2. Whether the evidence and all reasonable inferences and deductions drawn therefrom, established that the predecessors in title to Hafner's interest in 511 N. Fillmore Street, had knowledge of the presence of the subject sewer line and failed to object to its presence for a period of at least twenty years resulting in the establishment of a prescriptive easement for the sewer line serving the apartment located on 2807 N. Pershing Drive? 9

   Adverse 12

   Open and Notorious 13

3. Whether Hafner presented sufficient evidence for the trial court to award damages where the contractor who performed the work did not testify and Hafner could not testify as to the specific work and costs associated with repair versus relocation of the subject sewer line? 18

CONCLUSION..... 20

CERTIFICATE 22

TABLE OF AUTHORITIES

Page(s)

CASES

Calhoun v. Woods,
246 Va. 41, 431 S.E.2d 285 (1993)..... 12, 14

Clark v. Reynolds,
125 Va. 626, 100 S.E. 468 (1919)..... 13

Davis v. Wilkinson,
140 Va. 672, 125 S.E. 700 (1924)..... 13

Dillingham v. Hall,
235 Va. 1, 365 S.E.2d 738 (1988)..... 20

Grappo v. Blanks,
241 Va. 58, 400 S.E.2d 168 (1991)..... 12

Johnson v. DeBusk Farm, Inc.,
272 Va. 726, 636 S.E.2d 388 (2006)..... 9, 10

Martin v. Moore,
263 Va. 640, 561 S.E.2d 672 (2002)..... 20

Smith v. Alderson,
116 Va. 986, 83 S.E. 373 (1914)..... 11

Smith v. Sink,
247 Va. 423, 442 S.E.2d 646 (1994)..... 8, 9

Turpin v. Saunders,
73 Va. (32 Gratt.) 27 (1879) 14

Wade v. Moore,
139 Va. 765, 124 S.E. 201 (1924)..... 10, 11

BRIEF OF APPELLEES

TO: THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF VIRGINIA:

The Appellee, Walter D. Hansen ("Hansen"), by counsel, files this Brief of Appellee in opposition to the Brief of Appellant filed by Judith Hafner ("Hafner"). Hansen asserts that the Circuit Court of Arlington County, the Honorable Joanne F. Alper presiding, properly found that based upon the evidence presented at trial and all the reasonable inferences and deductions drawn therefrom, the predecessors in title of Hafner to the 511 N. Fillmore Street property had knowledge of the presence of the subject sewer line and failed to object to its presence for a period of at least twenty years resulting in the creation of a prescriptive easement in favor of the owner of the 2807 N. Pershing Drive property.

The court properly held that a trespass did not exist based upon the evidence presented at trial and that Hafner should be enjoyed from interfering with the sewer line so long as the use of the sewer line continues under its current use of serving the existing apartment building located on 2807 N. Pershing Drive. The trial court further properly rejected Hafner's claim for monetary damages based upon

lack of sufficient evidence thereof. The trial court's decision should be affirmed.

QUESTIONS PRESENTED

1. Whether the pleadings and evidence presented at trial were sufficient for the trial court to find that a trespass by Hansen did not occur based upon a finding that a prescriptive easement had been established in favor of Hansen?
2. Whether the evidence and all reasonable inferences and deductions drawn therefrom, established that the predecessors in title to Hafner's interest in 511 N. Fillmore Street, had knowledge of the presence of the subject sewer line and failed to object to its presence for a period of at least twenty years resulting in the establishment of a prescriptive easement for the sewer line serving the apartment located on 2807 N. Pershing Drive?
3. Whether Hafner presented sufficient evidence for the trial court to award damages without speculation where the contractor who performed the work did not testify and Hafner could not testify as to the specific work and costs associated with repair versus relocation of the subject sewer line?

STATEMENT OF THE NATURE OF THE CASE

This case involves a Complaint in Trespass filed by Hafner, the 2006 purchaser of a 1927 single family residence, seeking to enjoin a neighboring property owner, Hansen, from using a sewer lateral line running through Hafner's property. In addition to alleging trespass, Hafner sought a judgment for $15,000 in alleged actual damages.

In response to the Complaint in Trespass, Hansen pled, in part, that his use of the sewer line was lawful and that Hafner be ordered by the trial court not to interfere with the sewer line. The case came before the trial court on January 29, 2009 for a bench trial. The trial court rendered its decision for the record and requested counsel for Hansen to prepare a final order consistent therewith.

Counsel for Hansen placed the matter on the trial court's February 20, 2009 docket for entry of the final order. Counsel for Hafner attempted to place a Motion for Reconsideration on the same February 20, 2009 docket; however, the matter was not placed on the docket and the trial court declined to hear argument on said Motion for Reconsideration. The trial court entered the final order on the morning of February 20, 2009. Later that date a Judicial Law Clerk advised respective counsel that Judge Joanne F. Alper had reviewed

the motion and declined to grant a hearing on the mater. No hearing was ever held on the Motion for Reconsideration.

Hafner filed a timely appeal from the final order.

COUNTERSTATEMENT OF FACTS

This case relates to presence of a lateral sewer line leading from an apartment building located on 2807 N. Pershing Drive in Arlington, currently owned by Hansen. The lateral sewer line leads from the apartment and through the middle of an adjacent property located down grade. The adjacent property contains a single family residence with a street address of 511 N. Fillmore Street and is currently owned by Hafner.

Both properties were created as part of a 1921 subdivision deed. (App. at 115). The properties have not been further subdivided since 1921 and retain the same boundaries as reflected in the plat recorded along with the 1921 deed. (App. at 36, Line 4-10 & App. at 116).

The single family residence located on 511 N. Fillmore Street property was built in approximately 1927. (App. at 51, Line 1-3). Hafner's predecessor in title constructed the single family residence prior to the construction of the apartment building on 2807 N.

Pershing Drive parcel. The 1921 subdivision deed as well as the deed to Hansen's predecessor in title both contain a restrictive covenant prohibiting two-family or apartments from being erected on the 2807 N. Pershing Drive property prior to December 31, 1930. (App. at 115).

Both the 2807 N. Pershing Drive and 511 N. Fillmore Street properties were owed by different individuals in 1940. (App. at 29, Line 18-20). Hafner's Complaint in Trespass pled that on or about July 18, 1940, Hansen's predecessor in title obtained a sewer tap permit from the Arlington County Department of Sewers to connect the apartment building into the counter sewer on N. Fillmore Street. (App. at 2, para. #6). Hafner further pled that on or about July 18, 1940, Hansen's predecessor in title dug across Lot #486 of 511 N. Fillmore Street and further installed a sewer line across the property without any easement or other instrument of record. (App. at 2, para. #6).

The 1940 lateral sewer line leading to the apartment passed on the left side of the home located on 511 N. Fillmore Street and connected to the public sewer main located on N. Fillmore Street. The 1940 lateral sewer line leading from 511 N. Fillmore Street did

not connect directly to the public sewer main located on N. Fillmore Street but instead lead from the left side of the house and connected to the lateral sewer line leading the apartment.

Hansen's stepfather purchased the 2807 N. Pershing Drive property in 1944. (App. at 59, line 4-8 and App. at 60, line 12-14). He obtained a title insurance policy at the time of his purchase; however, the title insurance company excluded from coverage the sewer line leading from the subject apartment building across Lot #486 of 511 N. Fillmore Drive noting that there was no deed of record from the owner of the 511 N. Fillmore Street granting an easement for the maintenance and repair of the sewer line. (App. at 30, line 18-22 and App. at 31, line 1-5)

In 1940, Hafner's predecessor in title to 511 N. Fillmore Street was D. E. Horrigan. (App. at 38, line 14-16 and App. at 156). D. E. Horrigan later conveyed the property to Raymond and Dorothy Walters in 1944. (App. at 159). In 1946, Hafner's predecessor in title, Raymond and Dorothy Walters, relocated the lateral sewer line leading from 511 N. Fillmore Street from the left side of the house to the right side of the house. When doing so, the new 1946 sewer lateral no longer fed into the lateral line leading from the apartment

building on 2807 N. Pershing Drive but instead connected directly to the public sewer main on N. Fillmore Street.

Dorothy Walters survived her husband and owned 511 N. Fillmore Street until 1963. She conveyed to property to Better Homes Realty in 1963. (App. at 38, line 20-22 and App. at 39, line 1-2). This conveyance occurred some seventeen years after disconnecting her sewer line from the sewer lateral line leading from the 2807 N. Pershing Drive apartment building and her relocation of the 511 N. Fillmore Street sewer line to the right side of her home. The 1963 conveyance occurred approximately twenty-three years after the 1940 installation of the subject sewer line serving 2807 N. Pershing Drive through the middle of the 511 N. Fillmore Street property.

The apartment building located on 2807 N. Pershing Drive has never been expanded or changed since its initial construction prior to 1940. The apartment has been continuously used as a rental property without interruption. The sewer lateral leading from the apartment through 511 N. Fillmore Street has been the only sewer line leading from the property since 1940 and use of the line has never changed.

ARGUMENT

1. Whether the pleadings and evidence presented at trial were sufficient for the trial court to find that a trespass by Hansen did not occur based upon a finding that a prescriptive easement had been established in favor of Hansen?

The decree of the trial court is consistent with the pleadings and evidence presented at trial. Hafner was well aware that Hansen was seeking to enjoin her from interfering with the sewer line over Hafner's property based, in part, upon the establishment of a prescriptive easement. In response to Hafner's Complaint in Trespass, Hansen specifically alleged that his continued use of the subject sewer line was lawful. (App. at 5. para. 10). In addition, Hansen's prayer for relief requested the trial court to order Hafner not to interfere with the subject sewer line. (App. at 5, last para.). Furthermore, Hansen specifically plead that he had a prescriptive easement over Hafner's property. (App. at 6, #2).

In *Smith v. Sink*, 247 Va. 423, 442 S.E.2d 646, 648 (1994), the Court reversed the decree of a trial court establishing a prescriptive easement were none of the pleadings in the case stated facts suggesting a prescriptive easement and where no evidence was presented supporting the existence of a prescriptive easement.

Hansen's did not merely pray for general unspecified relief as the party in *Smith v. Sink*. Instead, Hansen specifically pled the existence of a prescriptive easement and presented evidence supporting all necessary elements for its creation.

2. Whether the evidence and all reasonable inferences and deductions drawn therefrom, established that the predecessors in title to Hafner's interest in 511 N. Fillmore Street had knowledge of the presence of the subject sewer line and failed to object to its presence for a period of at least twenty years resulting in the establishment of a prescriptive easement for the sewer line serving the apartment located on 2807 N. Pershing Drive?

On appeal, the Court views the evidence in the light most favorable to Hansen, the prevailing party at trial. *Johnson v. DeBusk Farm, Inc.*, 272 Va. 726, 730, 636 S.E.2d 388, 390 (2006). Great deference is given to the trial court's decision is it should not be disturbed unless it is plainly wrong or without evidence to support it. *Id*.

In order to establish a prescriptive easement, Hansen had the burden of proving, by clear and convincing evidence, that installation and use of sewer line through the middle of the 511 N. Fillmore Street property was adverse, under a claim of right, exclusive, continuous, uninterrupted, and with the knowledge and acquiescence of the owner of the land through which it passes, and that the use has

continued for at least twenty years. See *Johnson v. DeBusk Farm, Inc.* supra.

The 1924 case of *Wade v. Moore*, 139 Va. 765, 124 S.E. 201 (1924) involved establishment of use in a right of way by prescription that had been used continuously without interruption since about 1867. This is significant because the approximate length of the continuous use is the same duration as the use of the sewer line in the present case. The Court noted:

> . . . It may be unfortunate for the defendant that owing to the long period of time that has elapsed the nearer facts cannot be shown. But this lack of evidence accompanied by the fact that from time to time or until the trouble out of which the present suit grew, in 1922, there was complete acquiescence on the part of [current property owner] and his successors in title to his property in the use of the roadway. *Id*. at 774, 204.

The Court has noted that where there has been such a use for more than twenty years, "the bona fides of the claim of right is established, and the owner of the land through which the way passes must rebut that presumption by showing permission or license from him or those under whom he claims, or denials or objections to such use under circumstances that will rebut the presumption." *Wade v. Moore*, 139 Va. 765, 772, 124 S.E. 201, 203 (1924).

Hafner asserts in the Brief of Appellee that the evidence presented could have equally supported either sides' position. While, Hafner may make this assertion, the trial court did not agree that the evidence was equally conflicting and found that all the necessary elements of an easement by prescription were established in favor of Hansen.

The trial court properly made findings of fact based, in part, upon the public records of Arlington County and it was proper for the trial court to make reasonable conclusions based upon any conflicting evidence that may have been offered by Hafner. The Court noted that the evidence in *Wade v. Moore* was to some extent conflicting, and in many respects vague and unsatisfactory; but on the whole "we are unable to find that the circuit court was not justified in holding that the plaintiff's had established their right to the use of the roadway, as claimed, by prescription. *Id*. The Court further noted that as has been frequently held, the burden is upon the appellant here to overcome the presumption in favor of the correctness of the decree below and to satisfactory show that there was error in his prejudice. *Id.* at 205-06; citing *Smith v. Alderson*, 116 Va. 986, 83 S.E. 373 (1914).

Adverse

Proof of actual possession may be by use and occupation of the property; a person is in hostile possession if the possession is under claim of right and adverse to the right of the true owner; and possession is exclusive when it is not in common with others. *Calhoun v. Woods*, 246 Va. 41, 44, 431 S.E.2d 285, 287 (1993); citing *Grappo v. Blanks*, 241 Va. 58, 62, 400 S.E.2d 168, 171 (1991). Hansen's predecessor in title knew that a recorded easement did not exist for the subject easement when a title insurance policy was issued in 1944. Despite, such knowledge Hansen's predecessors in title continued to use the sewer lateral and evidence was presented that no one complained about its presence until Hafner did so. Walter Hansen testified that prior to Ms. Hafner, no one had ever complained about the sewer line passing through 511 N. Fillmore Street. (App. at 84, line 20-22 and App. at 85, line 1-6).

The failure of Hafner's predecessors in title to object to the presence of the sewer line assists Hansen with establishing an easement by prescription. Holding that a neighboring property owner was entitled to a right of way by prescription over an adjoining tract of

land, the Court in *Davis v. Wilkinson*, 140 Va. 672, 679, 125 S.E. 700, 702-3 (1924) the Court noted:

> In dealing with a case of this character, while the terms *permission* and *consent* occur with frequency in the testimony of witnesses designating the acquiescence of the owner, care must be taken not to confuse those terms with legal permission. Acquiescence in the use of the way carries with it an implication of consent or permission to its use on the part of the person acquiescing. The distinction between *acquiescence* and *permission* or *consent* is made clear by Judge Kelly in *Clark v. Reynolds*, 125 Va. 626, 100 S.E. 468 (1919) **Failure to object to the use of the way is very often stated by witnesses as consent to its use, yet such consent is mere acquiescence, and acquiescence is one of the elements upon which the ripening of the use into a legal right rests.** (Italicized emphasis in the original. **Bold emphasis added.**)

The installation of the sewer line through the middle of the 511 N. Fillmore Street property was a major disturbance that would put the property owner on notice of its existence. The sewer line runs from the back to the front of the property in very close proximity to the house.

Open and Notorious

Hafner cites an A.L.R article and several cases from other jurisdiction for the proposition that pipes buried under land cannot be considered open or notorious. (Appellee Brief, page 15). It should be noted that these results from other jurisdictions provide that this rule

is applied where there was an absence of evidence that the servient parties had any notice or information of the existence of the buried pipe.

This Court has noted that proof possession is “visible” when the use is so obvious that the true owner is presumed to know of it. *Calhoun v. Woods*, 246 Va. 41, 44, 431 S.E.2d 285, 287 (1993); citing *Turpin v. Saunders*, 73 Va. (32 Gratt.) 27, 34 (1879). Sufficient evidence was introduced at trial establishing that the Hafner’s predecessors in title had to have been reasonably aware of the presence of the subject sewer line passing through the middle of the 511 N. Fillmore property. Knowledge of the existence of the subject sewer line by previous owners on the property was established based upon the Arlington County tap cards and the County’s street records presented in evidence as well as the fees paid for sewer line taps by Hafner’s predecessor’s in title.

Joe Cogswell, of the Water and Sewer and Streets Bureau of Arlington County presented testimony as to various public records showing the location of the subject sewer line since 1940. Mr. Cogswell testified that a tap card refers to a tap as the physical connection that a private sewer line lateral makes to the public sewer

main. Tap cards also contain a sketch of the location of sewer laterals and where they are connect to the public sewer main or reference point. (App. at 70, line 5-11). Tap cards are matter of public record. (App. at 70, line 12-14). Tap cards are available for inspection by members of the public. (App. at 70, line 15-17).

Hansen presented evidence of a July 18, 1940, Tap card (Defendant Exhibit #1) recorded for 2807 N. Pershing Drive providing the approximate location of the private sewer line connection to the public sewer main. (App. at 71, line 4-12). Said tap card indicates that the plumbing work was connected by the County. (App. at 71, line 15-18). The sketch on Exhibit #1 shows the apartment sewer lateral passing through the 511 N. Fillmore Street property to the apartment building located on 2807 N. Pershing Drive.

Mr. Cogswell also testified as to a separate July 18, 1940, tap card for 511 N. Fillmore Street. (Defendant Exhibit #2) (App. at 73, line 1-9). The sketch attached to this tap card shows the sewer lateral line serving 511 N. Fillmore Street to located on the left side of the house. (App. at 73, line 10-18). The tap card for 511 N. Fillmore Street, also shows the sewer lateral line serving the apartment building to pass directly through 511 N. Fillmore Street in a sketch

with specific reference to the apartment abbreviation “APBT facing Pershing D.” (App. at 73, line 1-22 and App. at 74, line 1).

Defendant Exhibit #2 also shows that in 1940 the later sewer line for 511 N. Fillmore Street did not connect directly to the public sewer main on N. Fillmore Street. Instead, the sketch indicates that the 511 N. Fillmore Street sewer lateral connected to the sewer lateral line for the subject apartment building. (App. at 71, line 8-14).

Mr. Cogswell further testified that Defendant Exhibit #3 was a tap card dated May 31, 1946 which was subsequently prepared for 511 N. Fillmore Street showing that the sewer line for 511 N. Fillmore was tapped to the public sewer main in 1946 and that the lateral line serving the property was moved to right side of the house. (App. at 76, line 20-22 and App. at 77, line 1-17). The tap card indicates that the owner of the property was Raymond Walters and that a permit number was issued. Furthermore, it shows that the property owner was charged a fee for this tap by Arlington County.

In addition, to maintaining tap cards, Arlington County maintains street plans showing various improvements. Mr. Cogswell testified that a May 3, 1963 Arlington County street plan shows various improvements made on N. Fillmore Street. (Defendant

Exhibit #10). The 1963 Arlington County street plan indicates a lateral sewer line serving 511 N. Fillmore Street located on the right side of the house. (App. at 75, line 7-22 and App. at 76, line 1-11). It should be noted that the 1963 Arlington Street plan also shows a lateral line in the approximate same location as Defendant Exhibits1 and 2 and that it passes through Lot 486 of 511 N. Fillmore Street in the direction of the apartment building but does not specifically state where the lateral leads. The Arlington County Street Plans admitted as Defendant Exhibits 10 and 11 are matters of public record. (App. at 83, line 11-13).

The trial court properly found that the sewer line has crossed 511 N. Fillmore Street since at least 1940. The trial court properly found that the apartment building on 2807 Pershing Drive served by the sewer pipe has not changed, expanded or anything else since at least 1940. The trial court properly found that use of the sewer pipe by the apartment building on 2807 Pershing Drive has been continuous and uninterrupted since at least 1940. In addition, the trial court properly found that based upon the evidence presented at trial and all reasonable inferences and deductions drawn there from, the predecessors in interest of Hafner to 511 N. Fillmore Street had

knowledge of the presence of the sewer line and failed to object to its presence for a period of at least twenty years.

The trial court properly found that Hansen proved all elements necessary to establish a prescriptive easement across the 511 N. Fillmore Street property for the sewer line for its current use serving the existing apartment building, which use shall not include any expansion or modification, demolition or addition to the existing apartment building located on 2807 N. Pershing Drive.

3. Whether Hafner presented sufficient evidence for the trial court to award damages where the contractor who performed the work did not testify and Hafner could not testify as to the specific work and costs associated with repair versus relocation of the subject sewer line?

Hafner did not produce sufficient evidence at trial to recover monetary damages from Hansen. Hafner testified at trial that she paid a contractor $12,500. Hafner testified that her contractor quickly repaired the damaged sewer line on the day it was struck and damaged by her contractor. (App. at 2, para. 7). Hafner later routed a new sewer line around the new construction at her home. (App. at 2, para. 7 and App. at 42, line 1-50). After doing so, Hafner now claims that she moved the sewer line to an area where she plans

extensive landscaping and that it will be again in the way. (App. at 2, para. 13).

Hafner did not personally observe the contractor relocate the sewer pipe. (App. at 54, line 16-18). The contractor was not called to testify and the bill Hafner attempted to enter into evidence was properly excluded by the trial court on the basis of hearsay and because it did not distinguish the costs associated with repairs versus relocation of the sewer line.

Hafner could only testify that she paid a contractor $12,500 for the above referenced work. Hafner did not testify as to the specific costs of the work allegedly performed by her contractor. In addition to properly excluding the bill from evidence, the trial court properly found that testimony was not presented by Hafner as to how much of the $12,500 spent was for repairs versus actually moving the sewer line in order not to interfere with construction of improvements to Hafner's own property.

In addition, the trial court properly found that Hafner took certain actions with respect to moving the sewer pipe that were for her benefit and without any consultation or information to Hansen. While the water was shut off by Hafner's contractor to the apartment

building (App. at 41, line 19-22), Hafner made no effort to contact Hansen prior to relocating the sewer line. (App. at 52, line 9-10).

When finding that a party failed to present sufficient evidence as to the amount of damages this Court noted in *Martin v. Moore*, 263 Va. 640, 651, 561 S.E.2d 672, 679 (2002) that:

> The burden to establish the amount of damages with reasonable certainty does not require proof with mathematical precision; at a minimum, however, the claimant must present sufficient evidence to permit an intelligent and probable estimate of the amount. *Dillingham v. Hall*, 235 Va. 1, 3-4, 365 S.E.2d 738, 739 (1988).

Hafner did not properly present evidence in a way that the trial court could make assessment of damages without speculation and the trial court properly denied Hafner's claim for monetary damages.

CONCLUSION

The decision of the trial court is supported by the evidence and reasonable inferences and conclusions drawn therefrom. The trial court's decision is supported by well-established principles of law and is not plainly wrong. For the reasons stated above, this Court should affirm the decision of the trial court.

Respectfully submitted,

WALTER D. HANSEN
By Counsel

BASKIN, JACKSON & DUFFETT, P.C.

By: _____

Robert J. Duffett (VSB No. 33120)
301 Park Avenue
Falls Church, VA 22046
(703) 534-3610 (Telephone)
(703) 536-7315 (Facsimile)
robert.duffett@baskinjackson.com

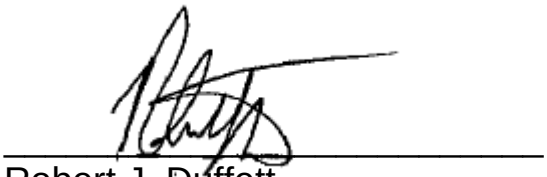
CERTIFICATE

Pursuant to Rule 5:26(d), I hereby certify that fifteen bound copies and one electronic copy on CD, of the foregoing Brief of Appellee were hand-filed with the Clerk of the Supreme Court of Virginia, and three bound copies of the same were sent via U.S. mail, postage prepaid, to opposing counsel on September 28, 2009 at the address listed below:

Mark P. Friedlander, Jr. (VSB No. 4773)
Friedlander, Friedlander & Earman, P.C.
1364 Beverly Road, Suite 201
McLean, Virginia 22101
(703) 893-9600 (Telephone)
(703) 893-9650 (Facsimile)
mpfriedlander@verizon.net

Counsel for Appellant

Given under my hand this the 28th day of September, 2009.



Robert J. Duffett