Record No. 091661

IN THE

Supreme Court of Virginia

VIRGINIAN-PILOT MEDIA COMPANIES, LLC,

Appellant,

v.

DOW JONES & COMPANY, INC.,

Appellee.

BRIEF OF APPELLEE

Brian A. Coleman, VSB No. 41352
Kenneth M. Vorrasi, VSB No. 68749
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Washington, DC 20005
(202) 842-8800 phone
(202) 842-8465 fax
brian.coleman@dbr.com
kenneth.vorrasi@dbr.com

Counsel for Appellee

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STATEMENT OF THE CASE

This is an appeal from an order of the Circuit Court of the City of Virginia Beach ruling that the Virginian-Pilot Media Companies, LLC ("Virginian-Pilot") did not have standing to challenge or a right to intervene in Dow Jones & Company, Inc.'s ("Dow Jones") Petition seeking a determination whether its newspaper, *The Wall Street Journal*, is qualified to publish legal notices under Va. Code § 8.01-324(A).

Dow Jones recently began the process of seeking approval to publish foreclosure sale notices in Virginia. In the Commonwealth, the foreclosure trustee has a statutory duty to advertise a sale under a deed of trust ("foreclosure sale") in a newspaper that meets the requirements of Va. Code § 8.01-324. The role of the trustee is supervised by the Commissioner of Accounts and ultimately the circuit court in the jurisdiction of the foreclosure sale. *See* Va. Code Ann. § 26-8; *In re Brown*, 67 Va. Cir. 204, 208 (Norfolk 2005).[1] In overseeing the fiduciary duties of foreclosure trustees, the Commissioners in each city or county have a general practice

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1. The judges of each circuit court appoint as many Commissioners of Accounts as necessary to carry out the duties of their office. Va. Code Ann. § 26-8. The Commissioners' primary responsibility is to supervise all fiduciaries in his or her jurisdiction, including those of foreclosure trustees. *Id*.

of maintaining a “list” of approved newspapers that can advertise foreclosure sales. Ultimately, the Commissioner “state[s], settle[s] and report[s] to the [circuit] court an account” of the foreclosure sale, Va. Code Ann. § 26-15, and can withhold approval of an account if it “reveals a failure by a fiduciary to comply with a statutory duty,” *In re Brown*, 67 Va. Cir. at 212.

Dow Jones sought to place *The Wall Street Journal* on the Commissioners’ lists of approved newspapers in areas where Dow Jones desired to enter the market for publication of foreclosure sale notices. In response, several Commissioners informed Dow Jones that *The Wall Street Journal* could not be added to their approved list unless Dow Jones obtained an order from the circuit court stating that it qualified under Va. Code § 8.01-324(A). Dow Jones followed the Commissioners’ instructions, as well as Virginia circuit court precedent requiring court approval, *see In re Wash. Newspaper Publ’g Co., Inc*., 72 Va. Cir. 186, 192 (Fairfax 2006) (Oct. 26, 2006 Opinion Letter), and petitioned several circuit courts seeking qualification of *The Wall Street Journal* under § 8.01-324(A). Without court approval, Dow Jones understood from various Commissioners that it would be precluded from the opportunity to compete for legal foreclosure sale notices.

Upon Dow Jones's Petition to the Circuit Court of the City of Virginia Beach, the Court correctly found that *The Wall Street Journal* meets the five qualifications set forth in Va. Code § 8.01-324(A). Subsequently, the Circuit Court denied the Virginian-Pilot's motion to intervene and to vacate its order granting Dow Jones's Petition, ruling that the Virginian-Pilot lacked standing with regard to Dow Jones's Petition and had not demonstrated a right to intervene, and reaffirming that the Circuit Court had subject matter jurisdiction to hear Dow Jones's Petition.

The Circuit Court correctly decided the issues of standing and intervention. With regard to standing, the Virginian-Pilot failed to demonstrate any immediate, pecuniary, or substantial interest in Dow Jones's qualifications under Va. Code § 8.01-324(A) as is required under settled Virginia law. Indeed, the Virginian-Pilot fails even to articulate the governing standard and makes only a passing reference to just one of this Court's seminal cases on this fundamental prerequisite to civil practice. As to intervention, the Virginian-Pilot failed to articulate any right or claim germane to the proceeding below to establish intervention as is required under Va. Sup. Ct. R. 3:14. Before this Court, the Virginian-Pilot fails to provide any substantive analysis of applicable intervention principles, nor does it demonstrate that it satisfies the relevant standard. These deficiencies were

correctly identified by the Circuit Court below, and are fatal to the Virginian-Pilot's appeal.

While this should dispose of the Virginian-Pilot's appeal, should the Court reach the question of whether the Circuit Court had subject matter jurisdiction to enter the May 14, 2009 Order that the Virginian-Pilot purported to challenge, the Circuit Court's conclusion was correct. The language and purpose of Va. Code § 8.01-324(A) is consistent with an exercise of jurisdiction, particularly when that provision is harmonized with other provisions of the Virginia Code authorizing circuit courts to publish legal notices. Circuit courts cannot meet their statutory obligations to provide legal notice if they lack subject matter jurisdiction to decide whether a particular newspaper meets the requirements of Va. Code § 8.01-324(A). At a minimum, circuit courts have inherent authority to hear such procedural petitions consistent with their statutory obligations to publish notice in many contexts. Accordingly, none of the Virginia-Pilot's assignments of error have merit and the Circuit Court's decision should be affirmed.

In filing its Petition below, Dow Jones sought only to have *The Wall Street Journal*'s qualifications under Va. Code § 8.01-324(A) determined so that it could compete in the marketplace for legal advertisements. Should this Court hold that the Circuit Court lacked subject matter jurisdiction over

the Petition, it will be unclear how Dow Jones can establish its legal rights given the position of many of the Commissioners. For this reason, if this Court holds that the Circuit Court did not have jurisdiction to hear Dow Jones's Petition, Dow Jones respectfully requests that the Court clarify the process by which the § 8.01-324(A) status of newspapers, like *The Wall Street Journal*, should be determined.

QUESTIONS PRESENTED

1. Whether the Circuit Court was correct in ruling that the Virginian-Pilot failed to articulate any immediate, pecuniary, and substantial interest in the underlying proceedings and thereby lacked standing.

2. Whether the Circuit Court was correct in ruling that the Virginian-Pilot failed to satisfy Va. Sup. Ct. R. 3:14's intervention standard.

3. Whether the Circuit Court was correct in ruling that it had jurisdiction to enter the May 14, 2009 Order in the underlying proceedings.

STATEMENT OF FACTS

On May 7, 2009, Dow Jones filed a Petition in the Circuit Court of the City of Virginia Beach pursuant to Va. Code § 8.01-324(A) seeking a determination whether its newspaper, *The Wall Street Journal*, was qualified to publish legal notices ("Dow Jones's Petition"). (J.A. 1-3.) On May 14, 2009, the Circuit Court entered an Order granting Dow Jones's Petition,

finding that *The Wall Street Journal* fulfilled the requirements of § 8.01-324(A) and authorizing Dow Jones to publish legal notices in the City of Virginia Beach. (J.A. 16-17.) On June 4, 2009, the Virginian-Pilot filed its Motion to Intervene and to Set Aside Order (the "Motion"), seeking to present arguments in opposition to Dow Jones's Petition. (J.A. 20.) Later that same day, before Dow Jones had an opportunity to submit a written response, the Circuit Court conducted a telephonic hearing on the Virginian-Pilot's Motion. (J.A. 45-46.)

After considering arguments from the parties, the Circuit Court denied the Motion. (J.A. 35.) On June 11, 2009, it issued an order stating that "the Court had subject matter jurisdiction to grant Dow Jones's Petition and enter the Order; that the Virginian-Pilot has not shown that it has or will suffer a cognizable legal injury arising out of the [May 14, 2009] Order or that it has a right germane to this proceeding; [and] that the Virginian-Pilot lacks standing to challenge this Court's jurisdiction to adjudicate the Petition or the Order this Court entered pursuant to Va. Code § 8.01-324(A)." (J.A. 35-36.) The Virginian-Pilot filed its Notice of Appeal of that Order on June 12, 2009. (J.A. 37.)

ARGUMENT

I. The Circuit Court Correctly Ruled That The Virginian-Pilot Lacks Standing Because It Does Not Have An Immediate, Pecuniary, And Substantial Interest In This Litigation.

The Circuit Court found that the Virginian-Pilot "lacks standing to challenge this Court's jurisdiction to adjudicate [Dow Jones's] Petition or the Order this Court entered pursuant to Va. Code § 8.01-324(A)." (J.A. 35-36.) Instead of addressing this finding at the outset, the Virginian-Pilot relegates the matter to the end of its Brief, in an abbreviated discussion that conflates the issues of standing and intervention and fails to recognize the threshold nature of the inquiry. A complete analysis, however, demonstrates that the Circuit Court's conclusion was correct.

Indeed, in challenges by other newspapers to similar orders obtained by Dow Jones in other circuits, the circuit courts that directly addressed the issue of a competing publisher's standing to challenge a court's order granting a petition brought pursuant to Va. Code § 8.01-324(A) – the precise issue presented on appeal – *unanimously* ruled that such competitors lack standing. *See* Orders from the Circuit Courts of the City of

Richmond, and the Counties of Henrico, Stafford, and Spotsylvania, attached hereto as Exhibit A to the Addendum.[2]

Standing is a preliminary jurisdictional issue having no relation to the substantive merits of an action, *Andrews v. Am. Health & Life Ins. Co*., 236 Va. 221, 226, 372 S.E.2d 399, 402 (1988), and "concerns itself with the characteristics of the person or entity who files suit," *Cupp v. Bd. of Supervisors of Fairfax County*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (1984). A party has standing only if it can "show an *immediate, pecuniary, and substantial interest* in the litigation, and not a remote or indirect interest." *Westlake Props., Inc. v. Westlake Pointe Prop. Owners Ass'n*, 273 Va. 107, 120, 639 S.E.2d 257, 265 (2007) (emphasis added). In other words, "[t]he point of standing is to ensure that the person who asserts a position has a *substantial legal right* to do so and that his rights will be affected by the

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2. *See, e.g*., Order, *In re Dow Jones & Co., Inc*., No. CL09-1945-3 (Richmond Cir. Ct. July 16, 2009) ("Media General is without standing to assert its position."); Order, *In re Dow Jones & Co., Inc*., No. CL09-1141 (Henrico Cir. Ct. July 20, 2009) ("Media General has no standing to assert its position."); Order, *In re Dow Jones & Co., Inc*., No. CL09-472 (Stafford Cir. Ct. Aug. 24, 2009) ("The Free Lance-Star is without standing to assert its position."); Order, *In re Dow Jones & Co*., Inc., No. CL09-482 (Spotsylvania Cir. Ct. Aug. 27, 2009) ("The Free Lance-Star Publishing Co. of Fredericksburg, Va. is without standing to assert its position.").

disposition of the case." *Cupp*, 227 Va. at 589, 318 S.E.2d at 411 (emphasis added).

Although these standards are well-established in Virginia, the Virginian-Pilot's Motion lacks any allegations sufficient to confer standing. The Virginian-Pilot not only fails to contend otherwise, but it continues to ignore the applicability of this settled law before this Court, as it still has not articulated an immediate, pecuniary, or substantial interest in *The Wall Street Journal*'s qualifications under Va. Code § 8.01-324(A). The Virginian-Pilot does not identify any property right or other legal interest in *The Wall Street Journal*'s qualifications, aside from its unsupported, conclusory assertion that "[i]f the Virginian-Pilot does not meet the standard [for standing], . . . then no party meets the standard."[3] Appellant's Br. 22.

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3. Insofar as the Virginian-Pilot implies with this statement that no one will be permitted to challenge a circuit court's order, that is not the case. The purpose of Va. Code § 8.01-324 is to protect the interests of the intended recipients of the notice being published. *See In re Wash. Newspaper Publ'g Co*., 72 Va. Cir. 186, 188 (Fairfax 2006) (Oct. 24, 2006 Opinion Letter). It stands to reason that persons within that class are free to assert due process challenges and contest a newspaper's qualification to effectuate notice. *See, e.g.*, *Little Piney Run Estates, LLC v. Loudoun County Bd. of Supervisors*, 74 Va. Cir. 400, 404-05 (Loudoun 2007) (due process challenge by property owners subject to notice by publication contending that notice in local newspaper was insufficient).

Even reading its Brief and its previous filings generously, the Virginian-Pilot asserts nothing more than a remote or indirect, unarticulated impact from the Circuit Court's May 14, 2009 Order. This is insufficient. *See, e.g.*, *Nicholas v. Lawrence*, 161 Va. 589, 592, 171 S.E. 673, 674 (1933) (residents and taxpayers lacked standing because they could only assert an "indirect interest"); *Harbor Cruises, Inc. v. State Corp. Comm'n*, 219 Va. 675, 676, 250 S.E.2d 347, 348 (1979) (cruise operator did not have standing to challenge the State Corporation Commission's decision certifying a competitor to operate a charter boat over a fixed route); *compare with Westlake Props.*, 273 Va. at 120, 639 S.E.2d at 265 (property owners association had standing to bring an action for negligent construction of a septic system because the association "owned, and was the party legally responsible for the maintenance and repair of, the fixtures of the septic system").[4]

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4. To the extent that the Virginian-Pilot may claim standing based on its purported status as a competitor, a mere increase in competition is not sufficient to convey standing. *See Harbor Cruises*, 219 Va. at 676, 250 S.E.2d at 348. That is especially evident in this case given that the purpose of Va. Code § 8.01-324 is "to protect the interests of parties whose rights may be affected by proceedings in the state's courts," *In re Wash. Newspaper Publ'g Co.*, 72 Va. Cir. at 188, not publishers, like the Virginian-Pilot, from having to face competition in the marketplace.

The only precedent from this Court that the Virginian-Pilot cites in support of its standing is a single line from *Cupp v. Bd. of Supervisors of Fairfax County*, in which this Court explained that the question of standing generally addresses whether a party "has a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed." Appellant's Br. 22 (quoting *Cupp*, 227 Va. at 589, 318 S.E.2d at 411). From this clause, the Virginian-Pilot appears to contend that its willingness to litigate the issue is sufficient proof in and of itself to establish standing. However, the Virginian-Pilot misapplies the Commonwealth's established standards for standing, and misapprehends *Cupp* itself.

In that case, the appellant owners of Wolf Trap Nursery brought a declaratory judgment action against a county board attacking its authority to impose conditions that would have prohibited the appellants from selling certain plant accessories at the nursery. *Cupp*, 227 Va. at 586-88, 318 S.E.2d at 409-10. This Court held that the property owners had standing to bring the action because they:

> owned Wolf Trap Nursery and the land on which that business operated. They had a direct stake in any ordinance that would curtail or control what they could sell in their business. They were directly af-

> fected by any condition that would require them to turn over a portion of their land to the County.

Id. at 590, 318 S.E.2d at 412. The facts of *Cupp*, as well as those of the other cases cited above, demonstrate the kind of "substantial legal right" necessary to establish standing in Virginia. The Virginian-Pilot falls far short of this standard.

Unable to articulate any immediate, pecuniary, and substantial interest, the Virginian-Pilot attempts to circumvent this Court's threshold standing requirements. The Virginian-Pilot asserts that, because it claims the Circuit Court's Order is void *ab initio*, it "can be challenged by any person at any time." Appellant's Br. 25. In support of this assertion, the Virginian-Pilot quotes from an oft-repeated passage in *Barnes v. Am. Fertilizer Co.*, 144 Va. 692, 705, 130 S.E. 902, 906 (1925), asserting that a void *ab initio* order "may be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner . . . ." From this broad language, the Virginian-Pilot apparently assumes that this Court's jurisdictional prerequisites (including standing) and the usual strictures of the Rules of the Supreme Court of Virginia (including Rule 3:14 on intervention) do not apply where a non-party is challenging the validity of an order. Indeed, it would seem that the Virginian-Pilot contends that under *Barnes* and its progeny, it or any

other person or entity may walk into any court at any time and challenge any order involving any parties whatsoever as being "void." That is a misreading of *Barnes*.

The context of *Barnes* and this Court's subsequent cases establish that a person asserting that a given order is void must *properly be before the court in which it is making that argument*. That is, nothing in *Barnes* or subsequent cases authorizes circumvention of bedrock requirements of standing and pleading to assert that a given order is void.

The broad language in *Barnes* refers to the right of party litigants to assert that a given order, even if entered in a case involving different parties, may be challenged if the court lacked subject matter jurisdiction. *Barnes* involved a petition for attachment brought by American Fertilizer against O.O. and Linda Barnes, the propriety of which turned on the validity of two prior decrees entered in divorce proceedings between O.O. and Linda Barnes to which American Fertilizer was not a party. *Barnes*, 144 at 704-06, 130 S.E. at 905-07. In determining whether the lower court had authority to pass upon the validity of those decrees, the Court cited the aforementioned rule applicable to orders entered without subject matter jurisdiction, and contrasted it to the rule that, so long as subject matter jurisdiction is present, "however erroneous [the orders] may have been,

[they] cannot be collaterally attacked by a third person, unless he shows they were procured through fraud or collusion . . . ." *Id*. at 706, 130 S.E. at 906. Thus, the relevance of the rule here is that the Virginian-Pilot, *if it was a proper party below*, could have attempted to challenge the Circuit Court's authority to enter the May 14, 2009 Order, even though it was not a party to that order and even without a showing of fraud, if it otherwise could have shown that subject matter jurisdiction is lacking. However, nothing in *Barnes* permits the Virginian-Pilot to sidestep Virginia's underlying standing and pleading requirements.

Subsequent cases have stated more expressly that which already was implied: "A *party* may assail a void judgment at any time, by either direct or collateral assault." *Garritty v. Va. Dep't of Soc. Servs. ex rel. Sinift*, 11 Va. App. 39, 42, 396 S.E.2d 150, 151 (1990) (emphasis added) (quoting *Morse v. Commonwealth*, 6 Va. App. 466, 468, 369 S.E.2d 863, 864 (1988)). Moreover, in every case that refers to the aforementioned passage in *Barnes*, the person who sought to void an order was *already* properly before the court.[5] The Virginian-Pilot cites no case, nor has Dow

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5. *See, e.g.*, *In re Commonwealth*, 278 Va. 1, 13-14, 677 S.E.2d 236, 241-42 (2009) (Commonwealth could not use mandamus in guise of appeal to challenge trial court's judgment setting aside death sen-

Jones been able to locate one, in which a challenge to a court's authority to enter an order was, as here, brought by a non-party that (a) lacked standing or (b) had not filed an initiating pleading or been made a party to the action. Indeed, the law is to the contrary. *See George v. King*, 208 Va. 136, 137-39, 156 S.E.2d 615, 616-618 (1967) (holding that a husband did not have standing to challenge his wife's decree of divorce from her first marriage as "void for want of jurisdiction"). Each of the circuit courts that addressed this issue in other § 8.01-324 cases effectively reached the same conclusion. *See* Addendum, Exhibit A.

Accordingly, because the Circuit Court committed no error in ruling that the Virginian-Pilot lacked standing, the June 11, 2009 Order should be affirmed.

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tence); *Hicks v. Mellis*, 275 Va. 213, 220, 657 S.E.2d 142, 146 (2008) (father's limitations plea that resulted in dismissal of mother's motion for judgment was error, but within trial court's jurisdiction, and therefore voidable, not void); *Collins v. Shepherd*, 274 Va. 390, 403, 649 S.E.2d 672, 678 (2007) (circuit court lacked authority to dismiss plaintiff's personal injury action, and therefore order was void *ab initio*); *Janvier v. Arminio*, 272 Va. 353, 366, 634 S.E.2d 754, 761 (2006) (patient's failure to provide notice to podiatrist of second motion for nonsuit in second malpractice suit did not deprive court of jurisdiction to enter order); *Singh v. Mooney*, 261 Va. 48, 54, 541 S.E.2d 549, 552-53 (2001) (trial court lost jurisdiction of case 21 days after order to dismiss was issued and so could not enter order vacating earlier order).

II. The Circuit Court Was Correct In Ruling That The Virginian-Pilot Failed To Satisfy The Intervention Standard Embodied In Rule 3:14.

Although the Virginian-Pilot mentions Rule 3:14 in its Brief, its treatment of the intervention issue is no more persuasive than its consideration of standing. The Virginian-Pilot claims to be entitled to intervene "as a newspaper of general circulation," "as a corporate citizen," and under "[notions] of due process, fairness, and comity." Appellant's Br. 24 & n.4. However, there is no precedent for such a thin and untethered standard for intervention in Virginia. Rather, Virginia has a well-developed body of law delineating the limited circumstances under which a non-party may intervene in a civil proceeding, which is now set forth in Rule 3:14: "A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding." Va. Sup. Ct. R. 3:14.

As the language of the Rule indicates, "a new party may not intervene and assert a claim in a pending suit unless the claim is germane to the subject matter of the suit." *Layton v. Seawall Enters., Inc*., 231 Va. 402, 406, 344 S.E.2d 896, 899 (1986) (citation and internal quotation marks omitted). The Rule does not permit intervention by strangers to litigation unless they "'assert some right involved in the suit.'" *Eads v. Clark*, 272 Va.

192, 196, 630 S.E.2d 502, 504 (2006) (quoting *Layton*, 231 Va. at 406, 344 S.E.2d at 899); *see also Hudson v. Jarrett*, 269 Va. 24, 32, 606 S.E.2d 827, 831 (2005). Virginia courts have consistently denied attempts to intervene when, like here, non-parties are unable to assert cognizable rights or claims germane to the proceeding. *See, e.g.*, *Eads*, 272 Va. at 197, 630 S.E.2d at 505 (an attorney could not intervene to seek attorney's fees in a suit involving his former client because he lacked "a right involved in that proceeding"); *Hudson*, 269 Va. at 33, 606 S.E.2d at 831 (denying intervention where non-parties sought to "protect[] their right to reimbursement" in a tort action, finding the "allegations of the intervenors here fall far short of showing any claim that they could assert as a plaintiff or defendant that is germane to the issues in the tort case").[6]

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6. *See also Layton*, 231 Va. at 406, 344 S.E.2d at 899 (finding intervenors' claim that a title dispute may impact the title on their land was not germane to the suit and "conclud[ing] that the interveners did not 'assert some right' that was involved in the pending suit"); *Stephen v. Dickens*, 63 Va. Cir. 403, 404 (Norfolk 2003) (concluding employer intervenors did not "assert rights that are 'germane'" to a tort action when it sought to recover monies paid previously to plaintiff employee related to the alleged injuries and holding that intervenors were only "requesting to intervene in this action on the mere prospect that judgment will be entered in favor of Plaintiff."); *Aquia Harbour Prop. Owners Ass'n v. Stafford County Bd. of Supervisors*, 12 Va. Cir. 114, 116 (Stafford 1987) (holding that a homeowner, who sought to intervene into a tax dispute between a homeowners' association and the

The Virginian-Pilot claims to have a right based on its status as a newspaper of general circulation and a corporate citizen. Appellant's Br. 24. But a "right" does not exist merely upon the prospective party's say-so; to the contrary, a "party is *not* entitled to intervene in litigation . . . merely because one byproduct . . . may be that he is *adversely affected*." *Cluverius v. James McGraw, Inc*., 44 Va. Cir. 426, 427-28 (Richmond 1998) (emphasis added); *see also Stephen*, 63 Va. Cir. at 405 (same). The Virginian-Pilot cannot assert a cognizable right because it has not been denied the right to continue its practice of publishing legal notices. Presumably, then, the only conceivable impact on it is increased competition in the marketplace. Competition, however, cannot be considered a "*right* involved in this suit."

Furthermore, the fact that a Virginian-Pilot affiliate was once denied a similar certification, *see* Appellant's Br. 24 n.4, is irrelevant to the issue of *The Wall Street Journal*'s qualifications under Va. Code § 8.01-324(A). Dow Jones's Petition concerning its own qualifications does not give the Virginian-Pilot a right to re-litigate a previous case that it filed in a different circuit court, and the Virginian-Pilot cites no authority that supports such a

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county, "has asserted no right involved in the suit and has asserted no claim germane to the subject matter of the suit").

novel proposition. The one case that the Virginian-Pilot cites in support of this assertion, *Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426, 442 S.E.2d 391 (1994), did not even involve Rule 3:14 intervention and is otherwise inapposite.

In *Black & White Cars*, the City of Norfolk had granted licenses and corresponding privileges to a finite group of taxicab companies. Under the local penal statute, other companies were barred from holding themselves out as taxicabs. *Black & White Cars*, 247 Va. at 429-30, 442 S.E.2d at 394-95. Licensed cab companies challenged an alternative transportation provider's advertisement practices under that statute. This Court concluded that, while such penal statutes do "not automatically create a private right of action," when a plaintiff can demonstrate "both a property right and special damage to that right," a claim can be asserted. *Id*. at 430, 442 S.E.2d at 394. Because the licensed taxicab companies held a property right in the form of franchise taxicab certificates and pled special damages, the Court concluded that they had standing to enforce the restrictions on non-franchised transportation companies. *Id*. at 431, 442 S.E.2d at 395.

Here, Va. Code § 8.01-324(A) is a civil – not a penal – statute. It creates no property rights for newspapers. In fact, an unlimited number of newspapers can qualify under the statute to publish legal advertisements.

The Virginian-Pilot cannot assert some exclusive governmental right to engage in the legal advertisement business, nor has the Virginian-Pilot alleged – and cannot now allege – any "special damages" resulting from lawful competition. Far from supporting the Virginian-Pilot's position, *Black & White Cars* demonstrates why it lacks an interest "germane to the subject matter of the proceeding" pursuant to Va. Sup. Ct. R. 3:14.[7]

Lacking a germane right or interest, the Virginian-Pilot contends that it should be allowed to intervene in this case under Subsection A of Va. Code § 8.01-324 because a petition under Subsection B of that statute requires notice. *See* Appellant's Br. 21-23. This argument misses the mark because Subsections A and B address qualifications for completely different types of publications. Subsection A applies to publications that

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7. Having articulated no right or claim germane to this proceeding under Virginia law, the Virginian-Pilot cites to a handful of cases from other jurisdictions seeking support for its intervention. *See* Appellant's Br. 25. These cases involve different statutory schemes and applicable law and are unpersuasive at best. Indeed, some of these cases are readily distinguishable on their face, and one even supports Dow Jones's position when examined in context. *See Daily Journal of Commerce, Inc. v. Daily Journal Corp.*, 936 P.2d 1179, 1185 (Wash. Ct. App. 1997) (statute at issue expressly contemplated the termination of an order approving newspaper to publish legal notices whenever it was brought to the attention of the court); *Record Publ'g Co. v. Kainrad*, 551 N.E.2d 1286, 1291 (Ohio 1990) (allowing a challenge to a newspaper's qualifications where a state trial court had granted *exclusive* publication rights to one newspaper).

have a second-class mailing permit, while Subsection B applies only to publications that do not have a second-class mailing permit. Holders of second-class mailing permits necessarily have already demonstrated to the U.S. Postal Service ("USPS") that they have a legitimate list of paying subscribers of which the USPS maintains circulation records.[8] The General Assembly rationally could have concluded that procedural safeguards that are appropriate under Subsection B are not necessary for publishers that already satisfied the USPS regulations necessary to obtain a second-class mailing permit.[9]

Furthermore, the absence from Subsection A of any requirement to give notice to competitors is not surprising in light of the purpose of the

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8. Under the regulations of the USPS, a publication that qualifies for second-class mailing privileges (today, known as "Periodicals" privileges by USPS) must, among other qualifications, have a legitimate list of paying subscribers, *see* Mailing Standards of the U.S. Postal Serv. Domestic Mail Manual, 707 § 6.1.2, and maintain circulation records at a known office of publication for USPS inspection, *id*. § 4.6.1.

9. The procedural safeguards in Subsection B ensure that a publication has verifiable circulation records as if it held a second-class mailing permit. *See* Va. Code Ann. §§ 8.01-324(B)(iii), (B)(iv). Subsection (B)(ii) ensures that the publication will be read by the community in absence of a bona fide list of subscribers. The bona fide list of paying subscribers requirement ensures that the notice by publication reaches a wide audience within the community. *In re Wash. Newspaper Publ'g Co., Inc*., 72 Va. Cir. at 189.

statute: "to protect the interests of *parties whose rights may be affected by proceedings in the state's courts*." *In re Wash. Newspaper Publ'g Co.*, 72 Va. Cir. at 188 (emphasis added). The publication statute was written to protect those who rely on legal advertisements to provide notice, not to protect the business interests of legal advertisers themselves. *See id*.

III. The Circuit Courts Have Subject Matter Jurisdiction To Enter An Order Under Va. Code § 8.01-324.

A. The General Assembly Authorized The Circuit Courts To Determine Whether Publications Satisfy Va. Code § 8.01-324(A).

If the Court reaches the issue of subject matter jurisdiction in the underlying matter, the Circuit Court was correct in concluding that it had jurisdiction over Dow Jones's Petition. While the language of Va. Code § 8.01-324(A) does not require such a petition in order for a newspaper to begin publishing legal advertisements, a petition is certainly permitted, and the circuit courts are authorized to determine whether publications with second-class mailing permits satisfy the statutory qualifications.

The mandates of Va. Code § 8.01-324, when read together with other statutes requiring its application and compliance, compel the conclusion that circuit courts may exercise jurisdiction to entertain petitions of this nature. Consistent with the General Assembly's broad conferral of jurisdic-

tion to circuit courts over civil matters,[10] courts "constru[e] all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious . . . ." *Tyson v. Scott*, 116 Va. 243, 253, 81 S.E. 57, 61 (1914).

While the Virginian-Pilot relies on the lack of an expressly delineated petitioning procedure in § 8.01-324(A) to strip the circuit courts of jurisdiction to determine compliance with that section, it ignores the reality that multiple provisions of the Virginia Code require courts to interpret and apply that very section. In this regard, § 8.01-324(A) should be read together with the many statutes that expressly confer upon the circuit courts the responsibility to publish legal notices in various contexts. *See, e.g.*, Va. Code Ann. § 4.1-121 (Referendum on Establishing Government Stores) ("the clerk of the circuit court shall publish . . . ."); *id*. § 4.1-123 (Referendum on Sunday Wine & Beer Sales) ("The clerk of the circuit court shall publish . . . ."); *id*. § 8.01-317 (Publication Requirements for Service of Process) ("Such order of publication shall be published . . . in such news paper as the court may prescribe . . . ."); *id*. § 15.2-1602 (Sharing an Officer by Two or More Units of Government) ("The clerk of the circuit court . . .

10. Circuit courts "shall have original and general jurisdiction of *all* civil cases." Va. Code Ann. § 17.1-513 (emphasis added).

shall publish notice . . . .”); *id*. § 15.2-1702 (Establishing a County Police Force) (“The clerk of the circuit court . . . shall publish notice . . . .”); *id*. § 15.2-1703 (Abolishing a County Police Force) (“The clerk of the circuit court . . . shall publish notice . . . .”); *id*. § 21-114 (Hearings on Proposed Sanitary Districts) (“notice of such hearing shall be [published] . . . in some newspaper of general circulation . . . designated by the court.”); *id*. § 24.2-219 (County Supervisor Elections) (“The clerk of the court shall publish notice . . . .”).

Thus, circuit courts are faced with twin legislative mandates: First, circuit courts must publish legal notices in conformity with the numerous statutes; and second, circuit courts must publish those notices in *only* those newspapers with second-class mailing permits that satisfy § 8.01-324(A)(1) through (A)(4). It would be wholly inconsistent with these legislative mandates if circuit courts, despite being charged with the obligation to publish notices in publications that meet certain requirements, lack jurisdiction to decide whether publications, in fact, meet those requirements. It necessarily follows, when Va. Code § 8.01-324(A) is read *in pari materia* with other statutory provisions regarding publication of legal notices, that the circuit courts have the authority to determine which newspapers meet the statutory requirements of Va. Code § 8.01-324(A).

Furthermore, the Virginian-Pilot's interpretation of the plain language of the statute would lead to an absurd result. If each public official within a given circuit court's jurisdiction is the sole arbiter of whether a newspaper meets the requirements of the statute in connection with various types of notices, presumably with no oversight from the circuit courts, there would be a serious risk of inconsistency in the statute's interpretation. Some officials might find that a newspaper meets the requirements while others within the same county or city might not. *Cf. Boynton v. Kilgore*, 271 Va. 220, 228, 623 S.E.2d 922, 926 (2006) ("[l]anguage giving simultaneous, unrestricted authority to two elected officials is 'absurd'" in light of the manifest difficulties). In contrast, circuit courts would ensure a uniform application of the statute's provisions. This would allow public officials to select the most appropriate publication for the particular type of notice from those that the circuit courts have determined meet the statutory qualifications.

In arguing that the Circuit Court did not have subject matter jurisdiction over Dow Jones's Petition under Va. Code § 8.01-324(A), the Virginian-Pilot's relies on this Court's decision in *Garrett v. Majied*, 252 Va. 46, 471 S.E.2d 479 (1996). *Garrett* is inapposite. That case centered on the statutory conditions under which a buried body could be exhumed. *Id.* at

48, 471 S.E.2d at 480. Subsection A of the statute at issue in *Garrett* provided that a body could be exhumed only under certain specifically enumerated situations relating to the death of the person, which did not include obtaining a paternity test as sought by the petitioner. *Id.* at 47-48, 471 S.E.2d at 480. Subsection B of that statute, which the lower court had relied upon for jurisdiction, contained no additional substantive basis for such a petition. *Id*. at 48, 471 S.E.2d at 480. Quite properly, this Court held that the court lacked jurisdiction to afford such relief because it was outside the scope of the statute. *Id.* at 49, 471 S.E.2d at 480-481. In contrast, Dow Jones sought to determine its rights under Subsection A of the publication statute, which imposes several specific requirements. It did not ask the Court, as in *Garrett*, to read new substantive law into the statute. Dow Jones merely sought to effectuate the provisions of Subsection A itself, which is properly construed to confer jurisdiction as discussed above.[11]

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11. The Virginian-Pilot's additional argument that finding jurisdiction under Va. Code § 8.01-324(A) would render the declaratory judgment statutes "meaningless," Appellant's Br. 9, compares apples to oranges. The declaratory judgment statutes provide a mechanism for resolving disputes between opposing parties where legal rights are uncertain "without requiring one party to invade the asserted rights of another in order to allow an ordinary civil action for damages." *See,*

Accordingly, even if the requirements of standing and intervention were met, the Circuit Court correctly ruled that it had subject matter jurisdiction to entertain Dow Jones's Petition.

B. At A Minimum, Circuit Courts Have Inherent Authority To Determine Which Publications Are Qualified Under The Publication Statute.

At a minimum, the Circuit Court's May 14, 2009 Order was within its inherent authority to manage matters in its court. This Court reaffirmed the circuit courts' inherent authority just last month in *Singleton v. Commonwealth*, 278 Va. 542, __ S.E.2d __ (2009), in which the Court explained that "we are not unmindful of the trial court's 'inherent authority to administer cases on its docket.'" *Id*. at 551 (quoting *Yarbrough v. Commonwealth*, 258 Va. 347, 361, 519 S.E.2d 602, 608 (1999)).

In *Yarbrough*, this Court examined whether circuit courts have the inherent authority to appoint special prosecutors in the absence of an express grant of authority from the General Assembly. There, the trial court ordered the appointment of a special assistant prosecutor pursuant to

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e.g., *Logan v. City Council of Roanoke*, 275 Va. 483, 499, 659 S.E.2d 296, 304 (2008). This is entirely different from the petitioning procedure at issue in this case, which does not provide a preliminary resolution of inter-party disputes. Moreover, the Circuit Court had subject matter jurisdiction to determine the qualification of *The Wall Street Journal* under § 8.01-324(A) as explained above.

Va. Code § 19.2-155, but based the appointment on grounds not enumerated in that statute. *Yarbrough*, 258 Va. at 360, 519 S.E.2d at 608. The circuit court later vacated its order and entered a new order appointing the special assistant prosecutor based "solely on its inherent authority to administer cases on its docket." *Id.* at 361, 519 S.E.2d at 608. This Court affirmed the circuit court's exercise of inherent authority, finding that the court's appointment of a special prosecutor based on an unenumerated ground to be within its discretion. *Id*. at 361-62, 519 S.E.2d at 608-09.

In support of this finding of inherent authority, the Court cited another Virginia statute, Va. Code § 15.2-1628(C), which provided that "no attorney for the Commonwealth . . . shall receive any additional compensation . . . for substituting for or assisting any other attorney for the Commonwealth or his assistant in any criminal prosecution or investigation." *Id.* at 361, 519 S.E.2d at 608. The Court reasoned that the "clear import" of § 15.2-1628(C) was that "prosecutors from one locality may call upon the prosecutors of another locality to assist in complex litigation." *Id.*

Consistent with this precedent, circuit courts have the inherent authority to determine whether publications satisfy the requirements of Va. Code § 8.01-324(A). Like the authorizing statute in *Yarbrough*, Va. Code § 8.01-324 does not expressly describe a procedure for circuit courts to

determine a publication's qualifications under Subsection A. However, just as related provisions of the Virginia Code supported the circuit court's inherent authority to appoint a special assistant prosecutor, as noted above, several Virginia statutes require circuit courts to publish legal notices. *See supra*, at 23-24. In directing the circuit courts to publish, these statutes inherently require the circuit courts to determine whether a publication satisfies the requirements of § 8.01-324(A) while administering cases on their dockets. The "clear import" of these provisions is that the circuit courts have the authority to determine whether a publication satisfies the requirements of § 8.01-324(A).

Moreover, it makes sense that circuit courts have inherent authority to determine which publications qualify under Va. Code § 8.01-324(A) as publication is a procedural rather than substantive issue in litigation. As discussed above, the purpose of § 8.01-324 is "to protect the interests of parties whose rights may be affected by proceedings in the state's courts," *In re Wash. Newspaper Publ'g Co.*, 72 Va. Cir. at 188. This stands in sharp contrast to the circumstances in *Norton v. City of Danville*, 268 Va. 402, 407-08, 602 S.E.2d 126, 129 (2004), and *Earley v. Landsidle*, 257 Va. 365, 370-71, 514 S.E.2d 153, 156 (1999), relied upon by the Virginian-Pilot. *See* Appellant's Br. 15. In those cases, the litigants were attempting to

expand the parameters of the substantive relief that they were entitled to under statute. By contrast, in its Petition, Dow Jones only sought a determination from the Circuit Court that its newspaper may be used as a procedural mechanism to provide notice to those whose rights could be affected, so long as publication in *The Wall Street Journal* would satisfy due process in a given individual case. *See, e.g*., *Oak Hill Nursing Home, Inc. v. Back*, 221 Va. 411, 417, 270 S.E.2d 723, 726 (1980) (due process analysis must show "due regard for the practicalities and peculiarities of the case") (quoting *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)). Pursuant to this Court's precedents, the circuit courts have the inherent authority to make such determinations in order to properly administer the matters on their dockets.

This Court has authorized the circuit courts to exercise their inherent authority in the absence of an express statutory provision in other contexts as well. For example, circuit courts have exercised inherent jurisdiction to entertain claims for separate maintenance without an express grant of jurisdiction from the General Assembly. *See Rochelle v. Rochelle*, 225 Va. 387, 391, 302 S.E.2d 59, 62 (1983); *Heflin v. Heflin*, 177 Va. 385, 396, 14 S.E.2d 317, 320 (1941); *Hart v. Hart*, 41 Va. Cir. 456, 457 (Virginia Beach 1997). Prior to 2005, the General Assembly expressly provided circuit

courts with jurisdiction to award alimony in divorces while providing no express grant of jurisdiction to award alimony in independent actions from divorce.[12] During this period, however, courts exercised inherent authority to decide claims for separate maintenance.

In *Rochelle*, the wife filed a Petition in the Franklin County Circuit Court requesting custody, child support, spousal support and costs. *Rochelle*, 225 Va. at 389, 302 S.E.2d at 60-61. The husband argued that the circuit court lacked jurisdiction over his wife's claims for child custody because the juvenile and domestic relations courts have exclusive original jurisdiction for all cases involving child custody. *Id.* at 390-91, 302 S.E.2d at 61. Without an express grant of authority, this Court found that the wife's prayer for an award of spousal support constituted a claim for separate maintenance, holding that such claims are within the "inherent jurisdiction of a court of equity, even in the absence of statute." *Id.* at 391, 302 S.E.2d at 62.

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12. Va. Code § 20-96 was amended in 2005 to give circuit courts original jurisdiction for claims of separate maintenance. Currently, the statute reads: "[t]he circuit court shall have jurisdiction of suits for annulling or affirming marriage and for divorces, and claims for separate maintenance, and such suits shall be heard by the judge as equitable claims." Va. Code Ann. § 20-96.

Like the circuit court's express grant of jurisdiction to hear spousal support claims incident to divorce actions, the circuit courts have an express grant of jurisdiction to determine whether a newspaper that does not have a second-class mailing permit, satisfies the criteria of § 8.01-324(B). However, the grant to circuit courts of jurisdiction in Subsection A to determine if a newspaper with a second-class mailing permit meets those same statutory requirements is less clear, and a finding of inherent authority properly would fill any perceived interstitial gap. Thus, akin to a circuit court's authority to hear separate maintenance actions, the absence of an express statutory grant of jurisdiction would not foreclose the Circuit Court's inherent authority to determine whether *The Wall Street Journal* meets the qualifications of § 8.01-324(A). The Circuit Court's exercise of authority in this regard was consistent with the intent of the General Assembly and the precedent of this Court.

C. The Virginian-Pilot's Argument On The Merits Of Dow Jones's Petition Is Not Properly Before This Court.

The only issues before this Court concern standing, the availability of intervention, and potentially the existence of subject matter jurisdiction to enter the underlying order. Whether *The Wall Street Journal* meets the statutory definition set forth in Va. Code § 8.01-324(A) is not before the

Court, because it was not a subject of the Order challenged on appeal.[13] However, the Virginian-Pilot has attempted to disguise an attack on the merits of Dow Jones's Petition by describing it as the "need for intervention," Appellant's Br. 26, thereby necessitating a brief response.[14]

The Virginian-Pilot attacks *The Wall Street Journal*'s fitness under one of the five statutory requirements – general circulation. But as the lower court here found, *The Wall Street Journal* does in fact have a general circulation in Virginia Beach.

"Whether a newspaper is of general circulation is a matter of the substance of its content rather than the size of its audience." *In re Petition of*

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13. The Virginian-Pilot may only challenge "specific errors in the rulings below." Va. Sup. Ct. R. 5:17(c). The Virginian-Pilot is appealing from the Circuit Court's June 11, 2009 Order, which did not address *The Wall Street Journal*'s qualifications under Va. Code § 8.01-324(A). Specifically, that Order found that the Virginian-Pilot did not have a right germane to this proceeding and that it lacked standing to challenge the Court's jurisdiction and the May 14, 2009 Order.

14. No error was assigned as to the merits of Dow Jones's Petition, nor could it have been because the Court did not reach that issue in its June 11, 2009 Order. *See* Va. Sup. Ct. R. 5:17(c) ("[o]nly errors assigned in the petition for appeal will be noticed by this Court."); *Orbe v. Commonwealth*, 258 Va. 390, 403, 519 S.E.2d 808, 815 (1999) ("The defendant did not include the issue regarding individual voir dire in an assignment of error. Therefore, we will not consider it."); *Swisher v. Commonwealth*, 256 Va. 471, 484, 506 S.E.2d 763, 770 (1998) ("[T]his argument is beyond the scope of any assignment of error, and it is procedurally defaulted.").

Landmark Commc'ns., *Inc.*, 58 Va. Cir. 433, 434 (Norfolk 2002). In Virginia, there are three criteria for whether a newspaper is of general circulation under the publication statute: "(1) the diversity of interests of its subscribers, (2) the diversity of the news published therein, and (3) the breadth of the area in which the newspaper is circulated or distributed." 1982-83 Va. Op. Att'y Gen. 372, 1982 WL 175548, at *1 (Dec. 28, 1982). "[E]ven though a newspaper is of particular interest to a particular class of persons, yet, if it contains news of general character and interest to the community . . . it qualifies as a newspaper of general circulation." *Landmark*, 58 Va. Cir. at 435 (quoting *Great Southern Media v. McDowell County*, 284 S.E.2d 457, 463 (N.C. 1981)).

The Wall Street Journal satisfies the general circulation criterion of Va. Code § 8.01-324(A).[15] Specifically, *The Wall Street Journal* reports on news that is of general interest to the public and appeals to a broad range of interests. A glance at the headlines and table of contents of any recent issue of *The Wall Street Journal* shows articles on subjects including business, sports, national news, politics, lifestyle, and health. Next, its

15. Again, the fact that a publication meets this statutory definition is merely one step in the process. Notice in the publication must also meet the due process requirements associated with the underlying action. *See supra*, at 30 (discussing authority).

readers have diverse interests and backgrounds, and its readership is not limited to a specific community, trade, profession, or any demographic. Finally, *The Wall Street Journal*'s subscribers extend from within the City of Virginia Beach to the entire Commonwealth of Virginia, and throughout the United States. Indeed, given its broad exposure, *The Wall Street Journal* is ideally suited for certain notices, like foreclosure sales, where the intended audience extends well beyond the local jurisdiction. *See Deep v. Rose*, 234 Va. 631, 635, 362 S.E.2d 228, 230-31 (1988) (explaining that one of the primary goals of Virginia's foreclosure sale statute is for the advertisement to reach possible bidders to generate sufficient interest to obtain the highest possible purchase price); *cf. United States v. Romer*, 148 F.3d 359, 363 (4th Cir. 1998) (Under Virginia law, "the trustee has a fiduciary duty to obtain the highest possible price for the property.").

In *Landmark*, an affiliated publication of the Virginian-Pilot, *Inside Business*, petitioned the circuit court for approval to publish legal advertisements under Va. Code § 8.01-324, as Dow Jones did below. There, *Inside Business* argued that the test for general circulation is one of substance, and not size. *See Landmark*, 58 Va. Cir. at 435. The circuit court agreed and found that *Inside Business* met the general circulation requirement despite only having 19 paid subscribers and having a circula-

tion of 1,711 in Norfolk and only publishing one or two articles per issue covering national news or local events. *Id.* at 433-34. In contrast, *The Wall Street Journal* has 1,839 paying subscribers in Virginia Beach, J.A. 2, and publishes much broader and more diverse content that is of general interest.[16]

The Circuit Court had subject matter jurisdiction to hear Dow Jones's Petition, and at a minimum had inherent authority to enter its May 14, 2009 Order. The Virginian-Pilot's arguments to the contrary lack merit.

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16. The Virginian-Pilot also asserts that, "[if] a litigant wanted to take an action adverse to the interests of a poor member of the community, the litigant could think of no better means to minimize the likelihood of actual notice than advertising in the WSJ." Appellant's Br. 30. The Virginian-Pilot offers scant support for this spurious class-based accusation. Moreover, this allegation incorrectly conflates issues of due process with the qualifications set forth in Va. Code § 8.01-324(A) and assumes that "one size fits all" with respect to publishing legal notices. Different types of notices need to reach different audiences. For example, a newspaper appropriate for publishing a foreclosure sale of a commercial office building may not be appropriate for publishing an adoption notice. *See supra*, at 30, 34 n.15. Inflammatory rhetoric notwithstanding, the Virginian-Pilot's argument on this point is misleading and irrelevant to this appeal.

CONCLUSION

For the foregoing reasons, the Circuit Court's Order of June 11, 2009 should be affirmed.

Respectfully submitted,

DOW JONES & COMPANY, INC.

Brian A. Coleman, VSB No. 41352
Kenneth M. Vorrasi, VSB No. 68749
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Washington, DC 20005
(202) 842-8800 phone
(202) 842-8465 fax
brian.coleman@dbr.com
kenneth.vorrasi@dbr.com

Dated: December 29, 2009

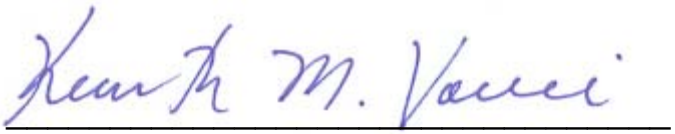
Counsel for Appellee

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing Brief of Appellee were sent via mail, first class pre-paid, to counsel of record for the Appellant at the address below:

Conrad M. Shumadine, VSB No. 4325
Brett A. Spain, VSB No. 44567
WILCOX & SAVAGE, P.C.
1800 Bank of America Center
One Commercial Place
Norfolk, VA 23510
(757) 628-5500 phone
(757) 628-5566 fax
cshumadine@wilsav.com
bspain@wilsav.com

Counsel for Appellant



Brian A. Coleman, VSB No. 41352
Kenneth M. Vorrasi, VSB No. 68749
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Washington, DC 20005
(202) 842-8800 phone
(202) 842-8465 fax
brian.coleman@dbr.com
kenneth.vorrasi@dbr.com

Dated: December 29, 2009

Counsel for Appellee

ADDENDUM

EXHIBIT A

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

IN RE: DOW JONES & COMPANY, INC.
CASE NO. CL09-1945-3

ORDER

On July 15, 2009, came counsel for petitioner, Dow Jones & Company, Inc. and Media General Operations, Inc. on Media General's Motion to Vacate Order and Dow Jones' Motion to Strike Media General Operations, Inc.'s Motion to Vacate Order and argument was heard.

Dow Jones petitioned for authority to publish legal notices claiming authority under Va. Code §8.01-324(A). It filed ex parte and supported its petition by affidavit. An order consistent with the petition was entered on May 22 which purported to authorize Dow Jones to publish legal notices in the City of Richmond.

Media General filed its Motion to Vacate on June 3rd asserting that Va. Code §8.01-324(A) provided no basis for a court proceeding to determine that a petitioner was authorized to publish legal notices. It argues that the court was without subject matter jurisdiction and its order of May 22nd was void ab initio.

Dow Jones responded by objecting to Media General's standing to appear and be heard as it did not meet the criteria upon which standing is based.

The court is of the opinion that Media General is without standing to assert its position. Dow Jones' Motion to Strike Media General Operations, Inc.'s Motion to Vacate Order is sustained.

The court, sua sponte, finds that it was without subject matter jurisdiction to entertain Dow Jones' Petition For Authority To Publish Legal Notices And Other Legal Business Pursuant to Va. Code §8.01-324(A) and to enter the order offered by Dow Jones. That order was void ab initio.

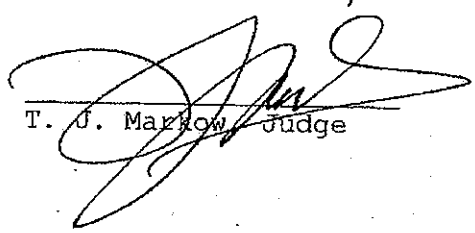
It is, therefore, ORDERED that the order of May 22, 2009 is hereby VACATED.

This order does not address whether Dow Jones qualifies to publish notices under Va. Code §8.01-324.

The objections of parties to rulings adverse to them are noted.

Copies of this order are mailed this day to counsel of record.

ENTER: 7/16/09



T. J. Markow, Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

IN RE: DOW JONES & COMPANY, INC.
Case No. CL09-1141

ORDER

On July 17, 2009, the Court heard arguments from counsel for petitioner, Dow Jones & Company, Inc., and from Media General Operations, Inc., on Media General's Motion to Vacate Order and Dow Jones' Motion to Strike Media General Operations, Inc.'s Motion to Vacate Order.

Dow Jones petitioned *ex parte* for authority to publish legal notices claiming authority under Va. Code §8.01-324 (A). An order consistent with the petition was entered on May 4, 2009, which authorized Dow Jones to publish legal notices in Henrico County, Virginia.

Media General filed its Motion to Vacate asserting that Va. Code §8.01-324 (A) does not require a court proceeding to determine authority to publish legal notices. Media General argues that the Court was without subject matter jurisdiction and its order of May 4, 2009, was void ab initio.

Dow Jones responded by objecting to Media General's standing to appear and be heard as it did not meet the criteria upon which standing is based.

The Court rules that Media General has no standing to assert its position, and sustains Dow Jones' Motion to Strike Media General Operations, Inc.'s Motion to Vacate Order.

The Court, sua sponte, finds that it lacked subject matter jurisdiction to consider Dow Jones' Petition for Authority to Publish Legal Notices and Other Legal Business Pursuant to Va. Code §8.01-324 (A) and to enter the order offered by Dow Jones which is therefore void ab initio.

It is, therefore, ORDERED that the Order of May 4, 2009 is hereby VACATED, and this Order does not address whether Dow Jones qualifies to publish notices under Va. Code §8.01-324.

The objections of parties to rulings adverse to them are noted.

ENTER: 7/20/09

Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF STAFFORD COUNTY

In re: ***Dow Jones & Company, Inc.***
CL 09-472

ORDER

On August 7, 2009, the Court heard argument from counsel for Dow Jones & Company, Inc and counsel for The Free Lance Star, on the Motion filed by The Free Lance-Star to Vacate Order and on the Motion of Dow Jones & Company, Inc. to Strike The Free Lance-Star's Motion to Vacate Order.

The Court took the issues under advisement for entry of its Order within 21 days from the date of the hearing.

Upon consideration whereof, the Court finds and Orders, as follows:

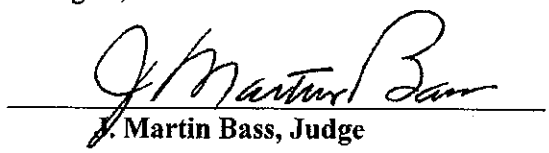
I. Dow Jones petitioned *ex parte* for authority to publish legal notices pursuant to Section 8.01-324 (A), Code of Virginia (1950) as amended.
II. An Order granting the relied requested was entered by this Court on April 20, 2009, authorizing Dow Jones & Company, Inc. to publish legal notices in Stafford County, Virginia.
III. The Free Lance-Star filed its Motion to Vacate Order for lack of jurisdiction.
IV. Dow Jones & Company, Inc. filed its Motion to Strike asserting a lack of standing on the part of The Free Lance-Star.
V. The Court finds that The Free Lance-Star is without standing to assert its position.
VI. Dow Jones & Company Inc.'s Motion to Strike the Motion to Vacate Order is sustained.
VII. While this Court, by judicial action, regularly enters Orders of Publication pursuant to Section 8.01-316, *et seq.*, Code of Virginia (1950) as amended, and in so, doing makes a finding, *de facto*, that the requirements of Section 8.01-324 have been met, the entry of such publication authorizations arise in the context of an existing action then before the Court for adjudication.
VIII. The Court finds, *sua sponte*, that it was without jurisdiction and authority to entertain Dow Jones & Company Inc.'s Petition for Authority to Publish Legal Notices and Other Legal Business pursuant to Virginia Code Section 8.01-324 (A) filed April 13, 2009 and to enter the Order offered by Dow Jones & Company, Inc. *ex parte* on April 20, 2009.
IX. The Order entered by this Court on April 20, 2009, was void *ab initio*.
X. The Order of April 20, 2009 is hereby VACATED.

This Order makes no findings with respect to the qualifications of Dow Jones & Company, Inc. and does not address whether Dow Jones & Company, Inc. does in fact qualify to publish legal notices pursuant to Section 8.01-324, Code of Virginia (1950) as amended.

The objections to parties to rulings adverse to them are noted and preserved.

The Clerk shall mail copies of the Order to counsel for Dow Jones & Company, Inc. and counsel for The Free Lance-Star.

Entered this 24th day of August, 2009.



J. Martin Bass, Judge

Endorsements dispensed with; Rule 1:13, Rules of the Supreme Court of Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

DOW JONES & COMPANY, INC.

v. CL09-482

THE FREE LANCE-STAR PUBLISHING CO.
OF FREDERICKSBURG, VA.

ORDER

On August 5, 2009, the Court heard argument from counsel for Dow Jones & Company, Inc. and counsel for The Free Lance-Star Publishing Co. of Fredericksburg, Va., on the Motion filed by The Free Lance-Star Publishing Co. of Fredericksburg, Va. to Vacate Order and on the Motion of Dow Jones & Company, Inc. to Strike The Free Lance-Star's Motion to Vacate Order.

The Court took the issues under advisement until August 27, 2009 for entry of its Order.

Upon consideration whereof, the Court finds and Orders, as follows:

I. Dow Jones petitioned *ex parte* for authority to publish legal notices pursuant to Section 8.01-324(A), Code of Virginia (1950) as amended.

II. An Order granting the relief requested was entered by this Court on April 27, 2009, authorizing Dow Jones & Company, Inc. to publish legal notices in Spotsylvania County, Virginia.

III. The Free Lance-Star Publishing Co. of Fredericksburg, Va. filed its Motion to Vacate Order for lack of jurisdiction.

IV. Dow Jones & Company, Inc. filed its Motion to Strike asserting a lack of standing on the part of The Free Lance-Star Publishing Co. of Fredericksburg, Va.

V. The Court finds that The Free Lance-Star Publishing Co. of Fredericksburg, Va. is without standing to assert its position.

VI. Dow Jones & Company, Inc.'s Motion to Strike the Motion to Vacate Order is sustained.

VII. While this Court, by judicial action, regularly enters Orders of Publication pursuant to Section 8.01-316 et seq., Code of Virginia (1950) as amended and in so doing makes a finding, *de facto*, that the requirements of Section 8.01-324 have been met, the entry of such publication authorizations arise in the context of an existing action then before the Court for adjudication.

VIII. The Court finds, *sua sponte*, that it was without jurisdiction and authority to entertain Dow Jones & Company, Inc.'s Petition for Authority to Publish Legal Notices and Other Legal Business pursuant to Virginia Code Section 8.01-324(A) filed April 13, 2009 and to enter the Order offered by Dow Jones & Company, Inc. *ex parte* on April 27, 2009.

IX. The Order entered by this Court on April 27, 2009, was void *ab initio*.

X. The Order of April 27, 2009 is hereby **VACATED**.

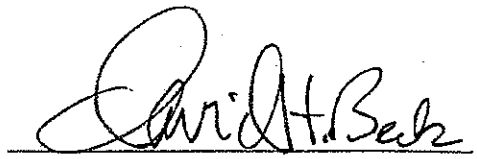
This Order makes no findings with respect to the qualifications of Dow

Jones & Company, Inc. and does not address whether Dow Jones & Company, Inc. does in fact qualify to publish legal notices pursuant to Section 8.01-324, Code of Virginia (1950) as amended.

The objections of parties to rulings adverse to them are noted and preserved.

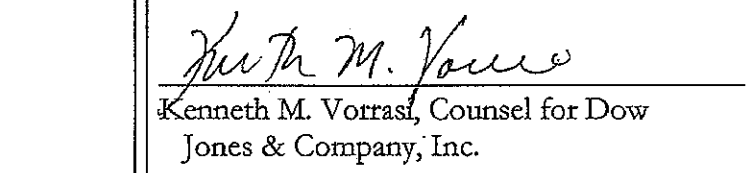
The Clerk shall mail copies of the Order to counsel for Dow Jones & Company, Inc. and counsel for The Free Lance-Star Publishing Co. of Fredericksburg, Va.

Entered this 27th day of August, 2009.



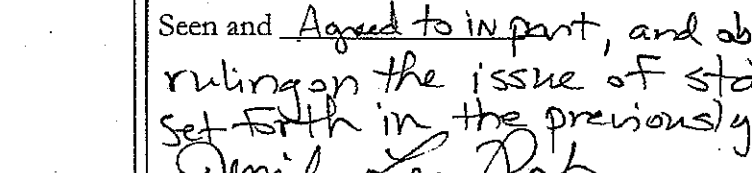
David H. Beck, Judge

Seen and Agreed in part as to the Court's ruling on the Motion to Strike, and objected to as to the Court's ruling on its subject matter jurisdiction for the reasons stated, filed, and presented by Dow Jones.



Kenneth M. Vorrasi, Counsel for Dow Jones & Company, Inc.

Seen and Agreed to in part, and objected to as to the Courts ruling on the issue of standing, for the reasons set forth in the previously-filed memoranda + the oral arguments of The Freelance-Star on August 5, 2009.



Jennifer Lee Parrish, Counsel for The Free Lance-Star Publishing Co. of Fredericksburg, Va.

A COPY TESTE:
Christalyn M. Jett, Clerk
By: [illegible] 8-27-09
Deputy Clerk