IN THE

Supreme Court of Virginia

RECORD NO. 091738

HARRY SHIPE,

Appellant,

V.

MICHAEL J. HUNTER,

Appellee.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

I. The Circuit Court erred in granting Defendant/Appellee Michael J. Hunter's (hereinafter referred to as "Defendant" for simplicity purposes) Motion for Summary Judgment, effectively dismissing Plaintiff's cause of action on the ground that the Plaintiff's Complaint was invalid because it did not contain the actual signature of local counsel for Plaintiff and was, therefore, in violation of Va. Code Ann. § 8.01-271.1 and Va. Sup. Ct. R. 1A:4. (Joint Appendix ["J.A."] 64.)

II. The Circuit Court erred in granting the Defendant's Motion for Summary Judgment without considering other appropriate sanctions where it did not give counsel for Plaintiff an opportunity to cure the omission of his actual signature after the omission was brought to the attention of Plaintiff's counsel, a technical error that could have been corrected before the Motion was heard or acted upon. (Id.)

QUESTIONS PRESENTED

1. Did the Circuit Court err in granting Defendant's Motion for Summary Judgment when the trial court ruled that the Complaint was invalid due to its failure to contain the actual signature, as distinguished from the

authorized signature, of local counsel where the Complaint was otherwise in proper form? (Assignment of Error 1.)

2. Did the Circuit Court err in failing to consider other appropriate sanctions than dismissal of the Complaint with prejudice as addressed and permitted under paragraph 4 of Va. Code Ann. § 8.01-271.1? (Assignment of Error 2.)

STATEMENT OF THE NATURE OF THE CASE AND OF THE MATERIAL PROCEEDINGS

The Plaintiff, Harry Shipe, was injured in an automobile accident that occurred on May 28, 2004 while traveling on Route 395 in Arlington County, Virginia. (J.A. 1.) His injuries were allegedly caused by the Defendant, Michael J. Hunter, whose vehicle struck the rear of Mr. Shipe's vehicle, causing significant property damage and personal injuries. (Id. 2.) A Complaint was filed in the Arlington County Circuit Court on May 16,2008 (following a previous nonsuit entered in Law No. 06-750, originally filed on May 24, 2006 and nonsuited on November 30, 2007). (Id. 1-3.) After service of process was obtained in the refiled action, an Answer was filed by the Defendant, and discovery proceeded. The matter was set for trial on May 26, 2009. The Defendant filed a Motion for Summary Judgment on or about May 1, 2009, and the matter was heard by the court on May 8, 2009. (Id. 4-7.) At

the conclusion of the hearing, the court took the matter under advisement and, on May 27, 2009, it granted the Motion and entered a Final Order on May 27, 2009 dismissing this case with prejudice. (Id. 62-63.) A Notice of Appeal was timely filed on May 28, 2009, and a request for the transcript of the hearing of May 8, 2009, as required by Rule 5:11(a), was made.

STATEMENT OF THE FACTS

The Plaintiff, Harry Shipe, brought suit against the Defendant Michael J. Hunter for injuries he sustained when the vehicle he was operating was struck in the rear portion, causing him to suffer allegedly significant and permanent disabling injuries. (J.A. 1-3.) For purposes of this appeal, the precise nature and extent of his injuries, the amount of medical expenses he incurred, and the length of time that he was off of work are not germane to the issues that this Court is asked to consider.

The parties engaged in pretrial discovery in this case, including Interrogatories propounded to the Plaintiff, to which a response was filed, a Request for Production of Documents propounded to the Plaintiff, to which a response was filed, and the taking of Plaintiff's deposition. In each instance, Defendant and his counsel initially served notice upon local counsel and then, with the consent of both parties, upon out-of-state counsel only. At no time

during discovery did Defendant or his counsel object to the Complaint not being signed by local counsel or to the exchange of discovery material being prepared jointly by local and out-of-state counsel, with out-of-state counsel serving as lead counsel to avoid duplicative mailings.

It was not until approximately three and one-half weeks before trial that the Defendant filed his Motion for Summary Judgment, contending that the Complaint was invalid and in violation of Va. Code Ann. § 8.01-271.1 and the Rules of this Court, specifically Rule 1A:4. The trial court, having heard a similar argument by identical counsel for a defendant in a case captioned Azornu v. Buduan, Law No. CL08-01289, approximately one month before, ruled identically in the present case. In neither of these cases did the court express orally or in written form its reasons for granting the harshest of all sanctions, i.e., dismissal of the Complaints with prejudice. It is from the Court's Order of May 27, 2009 in this case that the instant appeal is brought.

ARGUMENT

I. THE CIRCUIT COURT ERRONEOUSLY CONCLUDED THAT PLAINTIFF'S COMPLAINT WAS NOT SIGNED BY A VIRGINIA ATTORNEY AND WAS A NULLITY. (Assignment of Error 1)

The circuit court granted Hunter's Motion for Summary Judgment on the ground that "the Complaint is invalid, and it is therefore a nullity, as it was not signed by a plaintiff or by an attorney licensed to practice law in the Commonwealth of Virginia." (J.A. 62.) The fundamental flaw in this ruling is the court's implicit conclusion that the signature requirement in Va. Code Ann. § 8.01-271.1 and Va. Sup. Ct. R. 1A:4(2) can be satisfied only when a Virginia attorney personally signs a pleading by his own hand.

Section 8.01-271.1 provides that "every pleading . . . shall be signed by at least one attorney of record in his individual name," Va. Code Ann. § 8.01-271.1, while Rule 1A:4 states that "[a]ny pleading . . . shall be invalid unless it is signed by local counsel." Va. Sup. Ct. R. 1A:4(2). The trial court's implicit interpretation of the term "signed" as requiring a Virginia attorney to sign a pleading by his own hand is both unwarranted and at odds with a substantial body of law. Courts in Virginia and elsewhere have ruled that one may "sign" a document by various means other than by personally endorsing it with his own hand.

In Pierce v. Foreign Mission Bd. of the S. Baptist Convention, 28 Va. Cir. 168, 1992 WL 884679 (City of Richmond 1992), the issue was whether an employment contract could be established by written employment policies that were promulgated over the typewritten name of an administrative assistant to a company's president. Ruling that the alleged contract would not violate the Statute of Frauds, the court observed that "the use of signature stamps and photocopied signatures . . . are accepted as valid and binding signatures in all areas of life." Id. at 174, 1992 WL 884679, at *5. The court recognized "Virginia's adherence to the almost universally held principle that any mark, of whatever character or description, is a signature when so intended by the maker." Id. at 173, 1992 WL 884679, at *4. The court elaborated on this point:

> The signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer.

Restatement (Second) at 348.

Comment a to the above states:

> a. Types of symbol. The traditional form of signature is of course the name of the signer, handwritten in ink. But initials, thumbprint or an arbitrary code sign may also be used; and the signature may be written in pencil, typed, printed, made with a rubber stamp, or impressed into the

> paper. Signed copies may be made with carbon paper or by photographic process.

Id. . . .

Similarly, in 72 Am. Jur. 2d Statute of Frauds § 358 (1974), it is said:

> . . . [I]t is the well established general rule that it is not essential to satisfy the statute of frauds that the memorandum required thereby be signed by the hand of the party to be charged. The general rule is that the signature may be affixed by a stamp, or it may be typewritten or printed mechanically, if, but only if, by signing in any of these methods the party whose signature is essential intends to authenticate the instrument as his act.

Id. at 883 . . . .

And in 37 C.J.S. Statute of Frauds § 204 (1943), the authors state:

> Where employed with intent to authenticate the writing, a printed, stamped, or typewritten signature will satisfy the requirements of the statute of frauds.

Id. at 697 . . . .

In fact, the principle that any mark, when coupled with an intent by the maker that it be a signature, will satisfy the statute of frauds is so well settled that citations to the legions of cases so holding are unnecessary. The curious reader will, of course, find many such cases in the notes to the three treatises cited above. It is important to note, however, that the principle stated in the treatises is fully consistent with Virginia cases. Thus, while there appear to be no Virginia cases which deal specifically with typewritten signatures, there are cases dealing with other marks. For example, in Pilcher v. Pilcher, 117 Va. 356, 84 S.E. 667

(1915) the Court considered whether a testator's initials were a sufficient signature to a will. It was held that they were:

> . . . .
>
> No dictionary, so far as we are advised, restricts the meaning of "signature" to a written name; therefore, according to these definitions, what constitutes a signature must largely depend upon the circumstances of each particular case, though in all cases the intent is a vital factor. Whatever symbol is employed, it must appear that it "is intended as a signature."

[117 Va.] at 365.

Id. at 171-73, 1992 WL 884679, at *3-4; see also Northstream Invs., Inc. v. 1804 Country Store Co., 739 N.W.2d 44, 48-49 (S.D. 2007) (the traditional form of signature on a contract or document satisfying the Statute of Frauds is, of course, the handwritten name of the signer, but initials or any symbol may also be used and the signature may be written in pencil, typed, printed, made with a rubber stamp, or impressed into the paper).

In Gatling v. Commonwealth, 2006 WL 2726070 (Va. Ct. App. 2006), the court relied on a juvenile court order of conviction that had a rubber-stamped signature of the judge. See also Va. Sup. Ct. R. 1:17(d)(3) (in an electronically filed case, the approved electronic identification of an attorney "shall constitute that person's signature on the document"); Va. Code Ann. § 11-9.7 (an attorney-in-fact or other agent holding a power of attorney

possesses the powers and authority granted by such instrument). Restatement (Second) of Contracts § 134 is particularly instructive as to the broad scope and meaning of the term "signature":

> A has a number of forms of letters printed ending with the words, "Yours very truly, A." With A's authority a clerk fills in one of the forms with the terms of an offer to B and sends it to B. B accepts orally. A's printed name is his signature.

Restatement § 134 illus. 4.

In the present case, a member of the Virginia Bar acted as local counsel and authorized a member of the D.C. Bar to sign local counsel's name on a complaint that contained signature lines for both the D.C. co-counsel (Jay Weiss) and the local Virginia co-counsel (Leo R. Andrews). (J.A. 3) Mr. Andrews intended to adopt the writing by his agent as Mr. Andrews's own signature. It is undisputed that when Mr. Weiss wrote Mr. Andrews's name on the signature line above Mr. Andrews's typewritten name, Mr. Weiss was acting on behalf of and at the direction of Mr. Andrews. Cf. United States v. Tran, 105 F. Supp. 2d 608 (S.D. Tex. 2000) (habeas corpus petition was valid, despite petitioner's alleged postpetition discovery that fellow inmate who signed civil cover sheet and application on petitioner's behalf was not an attorney; fellow inmate was petitioner's agent, with actual authority to sign pleadings). This handwritten signature qualifies as the signature of local Virginia counsel, who was and is a member in good standing of the Virginia

Bar. Moreover, the typewritten name "Leo R. Andrews,Jr." by itself, qualifies as a signature under the broad meaning of that term because Mr. Andrews intended it to be his "signature" for purposes of filing the Complaint.

The case of Bernhard v. Washington, 69 Va. Cir. 195, 2005 WL 3604210 (Fauquier County 2005), is directly on point. In that case, a Maryland attorney (Kohler) filed a motion for judgment in a Virginia circuit court, and he signed both his name and the name of his co-counsel (Hurd), who was a member of the Virginia Bar. Hurd had authorized Kohler to sign Hurd's name on his behalf. The court ruled that Hurd's verbal authorization was sufficient to conform with the signature requirement of Rule 1A:4, rejecting the defendant's argument that the term "signed" requires a physical act of the named individual. The court reasoned as follows:

> [T]he Court would observe that Black's Law Dictionary reads to "sign" is to "identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it." Therefore, "signed" means placing a signature with permission upon the document. A "Signature" is more than the mere physical act of signing the document by that specific individual, but represents an endorsement or approval of the document.
>
> As is often observed, stamped signatures are used by parties, including this Judge's predecessor, on many official documents. Such stamps, when used with proper authority, have the same efficacy as a physical signature upon the document.
>
> It should be further noted that none of the cases cited by the Defendant included a situation in which a signature was

> determined to be invalid when authorized by the principal at the inception of the signature.
>
> Therefore, although this Court does not approve as a wise practice the method employed by Plaintiff's counsel in this instance, particularly in light of the nondisclosure of the method of signature, the Court holds that in this case, the permissive act of Mr. Kohler signing Mr. Hurd's name to the pleading had the same legal effect as a physical signature of Mr. Hurd himself and, therefore, constituted a signing of the document by Mr. Hurd.

2005 WL 3604210, at *2-3.

The Bernhard court distinguished the case of Wellmore Coal Corp. v. Harman Mining Corp., 264 Va. 279, 568 S.E.2d 671 (2002), in which this Court ruled that a notice of appeal signed solely by a foreign attorney was not effective to validate a notice of appeal. The Bernhard court noted that in Wellmore the only name on the notice of appeal was that of the foreign attorney. Clearly, then, the notice of appeal in Wellmore was deficient because it contained no signature of a Virginia attorney.

Wellmore has no bearing on the present case because in Wellmore neither the name nor any signature on behalf of a Virginia attorney was on the document at issue. The case of Nerri v. Adu-Gyamfe, 270 Va. 28, 613 S.E.2d 429 (2005), is also distinguishable because the pleading filed in that case was signed by a Virginia attorney whose license was suspended. The Virginia attorney in Nerri had no authority to submit a pleading under his own name,

whereas in the present case Mr. Andrews was and is a Virginia attorney in good standing, who can legally authorize a pleading to be filed.[1]

There is no doubt that the Plaintiff in the present case had standing to sue, nor is there any doubt that if Andrews, as a Virginia attorney in good standing, had personally signed the Complaint, it would have been valid. The only issue is whether the fact that a foreign co-counsel signed Andrews's name at Andrews's request and on his behalf renders the Complaint a nullity. As the Bernhard court recognized, such a signature is valid because it is a proper substitute for a signature by Andrews's own hand.

In Save Our Creeks v. City of Brooklyn Park, 699 N.W.2d 307 (Minn. 2005), a nonattorney signed a complaint on behalf of a nonprofit corporation. The issue on appeal was whether the pleading was a nullity. Deciding that the failure to affix an attorney's signature to the complaint was a curable defect, the court reviewed a number of precedents and concluded:

> The rationale most of these decisions articulate is that the rules of civil procedure are intended to favor resolution of cases on the

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[1]Cases that involve a lack of standing also have no relevance to the present case. E.g., Harmon v. Sadjadi, 273 Va. 184, 639 S.E.2d 294 (2007); Kone v. Wilson, 272 Va. 59, 630 S.E.2d 744 (2006); Johnston Mem. Hosp. v. Bazemore, 277 Va. 308, 672 S.E.2d 858 (2009). A plaintiff who lacks standing has no right of action to assert, and so it follows that his complaint is a nullity. In the present case, there is no question that the Plaintiff has standing to pursue a cause of action for personal injury. The issue in the present case is simply whether Virginia counsel may authorize his co-counsel, a foreign attorney, to sign a complaint in his name and on his behalf.

> merits, and that dismissing a case on a technicality such as the lack of a signature does not advance this policy. We join the majority view and hold that a complaint signed and filed by a nonattorney on behalf of a corporate entity is not a legal nullity.

Id. at 310.

Even if Weiss's signature on behalf of Andrews was an ineffective substitute for a signature by Andrews's own hand, it was only a technical defect. If Weiss had filed the same Complaint but had neglected to sign on behalf of Andrews, thereby leaving a blank signature line, the Complaint would not have been a nullity because such a defect could have been cured by having Andrews sign it "promptly." Va. Code Ann. § 8.01-271.1. If such a pleading were a nullity, it could not be salvaged in that way, yet § 8.01-271.1 expressly allows the defect to be cured. Cf. Bd. of Trs. of Leland Stanford Jr. Univ. v. Super. Ct., 57 Cal. Rptr. 3d 755, 762 (Ct. App. 2007) ("[A]n unsigned complaint is an irregularity, rather than a 'nullity.'").

An ineffective signature by an agent is analogous to a missing signature, which is a curable defect rather than a nullity. It would be particularly inappropriate to declare an authorized signature by a foreign co-counsel, on behalf of his Virginia co-counsel, to be a nullity because Va. Sup. Ct. R. 1A:4(10)(b) permits a foreign attorney who reasonably believes he is eligible for admission pro hac vice to "render legal services in Virginia in preparation for a potential case to be filed in Virginia." Weiss had authority

to render such legal services in this case, without being admitted pro hac vice, and his clerical act of signing Andrews's name at Andrews's request did not exceed that authority.[2] Cf. Covington v. Cole, 528 F.2d 1365, 1369-70 (5th Cir. 1976) (plaintiff's wife, who was not an attorney, signed a pro se complaint on her husband's behalf; court reversed dismissal of case, finding that there was "at most a technical defect").

Rule 1A:4(2) was adhered to in the present case because Weiss was authorized to sign Andrews's name just as if Andrews had signed the Complaint in his own hand. Even if the Weiss signature were not an effective substitute for Andrews's signature, the defect would have been a technical one that could have been cured, just as if the signature line had been left blank. If there was a defect in the manner in which the Complaint was signed, it did not render the Complaint a nullity. The trial court erred in declaring the Complaint a nullity and in granting summary judgment.

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[2]Conversely, a layman would not have been authorized to render legal services under Va. Sup. Ct. R. 1A:4(10)(b). It is not necessary for this Court to decide whether a layman could have signed the Complaint on Andrews's behalf.

II. THE CIRCUIT COURT ERRED IN FAILING TO GIVE ANDREWS AN OPPORTUNITY TO CURE ANY SIGNATURE DEFECT AND IN IMPOSING THE ULTIMATE SANCTION OF DISMISSING THE COMPLAINT. (Assignment of Error 2)

The trial court in this case ruled that the Complaint was a nullity "as it was not signed by plaintiff or by an attorney licensed to practice law in the Commonwealth of Virginia." (J.A. 62.) The trial court's dismissal of the case was contrary to the clear intent behind § 8.01-271.1, which provides that "[i]f a pleading . . . is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader."

If this Court concludes that Weiss's signature on behalf of Andrews was an insufficient substitute for a signature by Andrews personally, then Andrews's failure to sign personally was an "omission"—a failure to act. Section 8.01-271.1 applies to omissions to sign pleadings regardless of whether the omission is inadvertent. The statute does not specify that it applies only to inadvertent omissions.

The omission, i.e., the allegation that the Complaint was not properly signed in accordance with Rule 1A:4(2), was brought to Andrews's attention just a few days before a hearing was held on May 8, 2009 to address the issue. (J.A. 53, 55.) At that hearing, Andrews expressly asked for an opportunity to cure the defect. (Id. 55.) Instead of allowing the defect to be

cured, which would have been consistent with the letter and spirit of § 8.01-271.1, the trial court imposed a harsh, drastic sanction that was, in effect, the death penalty as to the Plaintiff's cause of action. To whatever extent the trial court's decision was discretionary, there was a clear abuse of discretion. Section 8.01-271.1 specifies that a court shall impose "an appropriate sanction." The trial court's sanction was wholly inappropriate, for several reasons.

First, defense counsel was initially aware that Andrews was involved in the case, but for matters of expediency and to avoid duplicative delivery of pleadings and documents, defense counsel agreed to deal primarily with Weiss. Second, it was not until seven months after the case was filed that defense counsel raised the issue of signatures on the pleadings. Third, there was no attempt to deceive the court or defense counsel into believing that Andrews personally signed the amended Complaint. Fourth, Andrews was at all times a member in good standing in the Virginia Bar. Neither his license nor that of Weiss was suspended or revoked when the case was filed or thereafter. Andrews was authorized to file pleadings in Virginia. Fifth, the Motion for Summary Judgment was predicated upon a narrow, procedural ground, not upon any substantive basis. Sixth, the trial court's ruling imposes the ultimate penalty on a blameless litigant for an omission of his counsel.

The harshness of "visiting the sins" of the attorney upon the client is graphically demonstrated by summarily dismissing the client's case on the basis of the procedural, technical defect of having an authorized signature on the Complaint instead of the actual signature of the Virginia licensed attorney. Finally, the court failed to provide the statutory opportunity to cure the purported defect.

A far more appropriate sanction would have been to order payment of certain costs and attorney's fees, if any, that may have been caused by the defect. If a stronger sanction were appropriate, the trial court could have denied pro hac vice admission to Weiss. See Williams & Connolly LLP v. People ex rel. Ethical Treatment of Animals, Inc., 273 Va. 498, 521-22, 643 S.E.2d 136, 147-48 (2007). The trial court's grant of summary judgment for the Defendant was an extreme, Draconian, unwarranted sanction. See Janiczek v. Dover Mgmt. Co., 481 N.E.2d 25 (Ill. App. Ct. 1985) (dismissal of action initiated by disbarred attorney who signed another attorney's name without his consent was improper where client had originally hired attorney before disbarment and did not become aware of subsequent discipline, notwithstanding client's potential remedy through cause of action for unauthorized and negligent practice of law); Practice Mgmt. Assocs. v. Walding, 138 F.R.D. 148 (M.D. Fla. 1991) (although violation of local rule

requiring party's attorney to be admitted to practice within district did not warrant striking of pleadings, as sanction violation required, at the least, attorney to reimburse opponent for expenses incurred in bringing matter to court's attention); Dinet v. Gavagnie, 948 So. 2d 1281 (Miss. 2007) (fact that motorist's pleadings in negligence action were signed by foreign attorney who was not licensed to practice in Mississippi, and who did not apply for admission pro hac vice, did not warrant dismissal of action, after statute of limitations had run, where motorist also employed a Mississippi attorney, and the Mississippi attorney had been substituted as counsel of record and had signed all pleadings after being substituted as counsel of record).

In Vaccaro v. Kaiman, 73 Cal. Rptr. 2d 829 (Ct. App. 1998), the trial court dismissed an amended complaint with prejudice on the ground that the plaintiff's attorney did not promptly sign and verify the amended complaint. A California statute required pleadings to be "signed by at least one attorney of record in the attorney's individual name" and provided that an "unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Id. at 831. The appellate court reversed, reasoning as follows:

> Here the omission of counsel's signature was capable of cure. Plaintiff's counsel not only was willing to sign the first amended complaint, he had in fact already done so and filed the copy with the court. We conclude the trial court abused its

> discretion when it refused to consider the belatedly filed signature or to grant leave to amend. The court granted no leave to amend and terminated plaintiff's entire action with prejudice, all basically because plaintiff's counsel did not sign the first amended complaint soon enough. The court acted hastily and unreasonably. . . .
>
> . . . .
>
> The fact that the Legislature requires the pleading to be stricken if the omission is not corrected promptly does not mean the Legislature intended a plaintiff's action must be dismissed. The trial court's determination that striking the pleading compels dismissal is too severe when counsel is willing (although belatedly) to sign and thereby attest to the arguable legal and evidentiary merit of the allegations. . . .
>
> . . . There are alternatives short of complete dismissal of the plaintiff's action which are sufficient to enforce the legislative policy of section 128.7. We do not believe the Legislature intended that an action must be dismissed merely because counsel did not "promptly" sign the complaint, where counsel is willing to do so belatedly.

Id. at 833-34 (court's emphasis).

In Torrey v. Leesburg Reg'l Med. Ctr., 769 So. 2d 1040 (Fla. 2001), a Michigan attorney signed a complaint that was filed in Florida, rather than asking one of his partners, who was licensed in Florida, to sign it. Ruling that the complaint was an amendable defect rather than a nullity, the court explained:

> The respondents further argue that allowing a complaint signed by an attorney not licensed to practice in the state to be amended would render the prohibition against the unauthorized practice of law meaningless. As noted by the Szteinbaum court,

however, the nullity rule is ill-suited to promote the policy served by the rule against the unauthorized practice of law:

> To be sure, the "protection of the public from incompetent, unethical, or irresponsible representation," through the prevention of the unauthorized practice of law is a compelling public policy. We suggest, however, that this latter policy is not served by a rule of law that declares that a complaint filed by a non-attorney on behalf of a corporation cannot be cured by the later appearance of counsel to represent the corporation and, moreover, that such a rule disserves the policy that cases should be decided on their merits.

. . . .

As emphasized by the Third District in Szteinbaum, the nullity rule truly places the burden on the unwary litigant, not the offending attorney: "Indeed, prohibiting amendment and dismissing as a nullity the complaint would yield the ironic result of prejudicing the constituents of the corporation, the very people sought to be protected by the rule against the unauthorized practice of law." Szteinbaum, 476 So.2d at 250. . . .

We conclude that there are better suited mechanisms available to discourage the unlicensed practice of law. An attorney engaging in the unlicensed practice of law is subject to injunctive relief and indirect criminal contempt under Chapter 10 of the Rules Regulating the Florida Bar, which governs the investigation and prosecution of the unlicensed practice of law. Additionally, an offending attorney would presumably be subject to disciplinary action in his or her home jurisdiction. These mechanisms, unlike the nullity rule, appropriately focus on the misconduct of the offending attorney rather than unduly penalizing litigants with dismissal of their complaints.

Id. at 1044-45.

In the present case, the trial court's sanction of dismissal was grossly out of proportion to the purported technical defect in the Complaint. The trial court's imposition of such an extreme sanction was an abuse of discretion.

CONCLUSION

For the reasons stated above, the Plaintiff/Appellant respectfully requests this Court to reverse the judgment of the Circuit Court granting Defendant's Motion for Summary Judgment and remand this matter to the Circuit Court with instructions to reinstate the Complaint and, if deemed appropriate, to enter an Order with appropriate sanctions, which may include payment to the Defendant/Appellee for reasonable expenses incurred in the filing of the Motion, including reasonable attorney's fees, and to grant such other relief as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 5:26(d)

I hereby certify that on this 12th day of February, 2010, the requisite number of copies of the foregoing Brief of Appellant have been filed in the office of the Clerk by hand delivery; that three copies have been mailed or delivered to counsel of record for the Defendant/Appellee at the address reflected below; and that an electronic copy of the Brief has been filed contemporaneously with this Brief on disc, CD, or by e-mail to scvbriefs@courts.state.va.us, pursuant to and in compliance with Rule 5:26(d).

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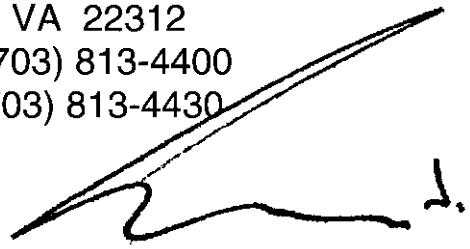

Leo R. Andrews Jr.