IN THE

Supreme Court of Virginia

RECORD NO. 122069

THOMAS RALEY,

Appellant,

v.

NAIMEER HAIDER,
MINIMALLY INVASIVE PAIN INSTITUTE, PLLC
and
WISE, LLC.,

Appellees.

REPLY BRIEF OF APPELLANT

Bradley P. Marrs (VSB No. 25281)
Patrick C. Henry, II (VSB No. 80468)
THE MARRS LAW FIRM, PLLC
7202 Glen Forest Drive, Suite 307
Richmond, Virginia 23226
(804) 662-5716 Telephone
(804) 662-5712 Facsimile
bmarrs@marrslaw.com
phenry@marrslaw.com

Counsel for Appellant

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
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ARGUMENT

I. THE APPELLEES' CONTENTION THAT DR. RALEY'S APPEAL SHOULD BE DISMISSED FOR ALLEGED FAILURES TO COMPLY WITH RULES 5:17(C)(1) AND 5:27 (C) SHOULD BE REJECTED BY THE COURT

The Appellees argue that Dr. Raley's appeal should be denied in its entirety on grounds that Dr. Raley allegedly failed to comply with Rule 5:17 (c)(1) and Rule 5:27(c) of the Rules of the Supreme Court of Virginia.[1] The Court should reject these arguments because (a) Dr. Raley complied with both rules and, (b) any such defects, even if true, do not warrant dismissal of the appeal.

A. Dr. Raley's Petition For Appeal and Opening Brief Complied With Rule 5:17(c).

i. Petition for Appeal.

Rule 5:17(c) requires that an appellant "list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely." VA. SUP. CT. R. 5:17(c). Dr. Raley clearly identified the trial court's errors upon which Dr. Raley relies as the basis for his appeal in full compliance with the requirements of the Rule.[2] The Assignments of Error correctly cited to the Order granting the defendants' Demurrer and to Dr. Raley's arguments pertaining to each Assignment of

[1] *See* Appellees' Brief at pp. 7-8.
[2] JA at 199; Opening Brief of Appellant at p. 5.

Error as the basis of the appeal, including where each error was preserved.[3] The Order entered by the trial court clearly reflects and incorporates the "arguments and briefs of counsel admitted before this Court on August 24, 2012."[4] In *Yeatts v. Murray*, this Court clearly expressed the intention of the Rule 5:17(c):

> The purpose of assignments of error is to point out the errors with reasonable certainty in order to direct this court and opposing counsel to the points on which appellant intends to ask a reversal of the judgment, and to limit discussion to these points. Without such assignments, appellee would be unable to prepare an effective brief in opposition to the granting of an appeal, to determine the material portions of the record to designate for printing, to assure himself of the correctness of the record while it is in the clerk's office, or to file, in civil cases, assignments of cross-error.

Yeatts v. Murray, 249 Va. 285, 290 (1995) (citations omitted). Dr. Raley's Assignments of Error fully complied with Rule 5:17(c) as both the Court and Appellees were fully apprised of the exact bases and nature of the appeal.[5] The appellees cannot legitimately claim that the Assignments of Error have impeded their ability to prepare or defend against this appeal.[6] The

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[3] *See* Opening Brief of Appellant, pp. 5, 10-17, 18-20, 21-23, 21-23; *See also*, JA at pp. 148, 56-70, 107-119, 120-147; *See infra* Section II.
[4] JA at pp. 148, 56-70, 107-119, 120-147.
[5] Opening Brief of Appellant, pp. 5, 10-17, 18-20, 21-23, 21-23; *See also*, JA at pp. 148, 56-70, 107-119, 120-147.
[6] *See* JA at pp. 178-196 (Brief in Opposition); *See also,* Appellees' Brief.

Assignments of Error are properly before this Court and should be determined on the merits.

The appellees also waived any argument relating to alleged defects at the petition stage, by failing to raise these claims in its Rule 5:18 Brief In Opposition.[7] The appellees filed a detailed Brief in Opposition to the granting of the petition as to the merits of the appeal, but made no note or argument regarding this alleged procedural defect.[8]

ii. Dr. Raley's Opening Brief Does Not Violate Rule 5:27(c).

Rule 5:27 (c) requires the appellant to provide a reference to where in the record the alleged errors were preserved. VA. SUP. CT. R. 5:27(c). The Appellant satisfied this requirement by citing to the Order granting the defendants' Demurrer and to Dr. Raley's arguments pertaining to each Assignment of Error as the bases of the appeal.[9] The Order entered by the trial court clearly reflects and incorporates the "arguments and briefs of counsel admitted before this Court on August 24, 2012."[10] Rule 5:27 shares the same purpose as Rule 5:17(c), a purpose that has without question been satisfied in this case.

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[7] *See generally*, JA at pp. 178-196.
[8] *Id.*
[9] *See* Opening Brief of Appellant, pp. 5, 10-17, 18-20, 21-23, 21-23; *See also*, JA at pp. 148, 56-70, 107-119, 120-147; *See infra* Section II.
[10] JA at pp. 148, 56-70, 107-119, 120-147.

B. Even If The Opening Brief Of Appellant Had Minor Technical Defects, They Would Not Warrant The Extreme Sanction of Dismissal.

Appellees concede in the Appellees' Brief that violations of Rules 5:17 and 5:27 do not typically warrant dismissal[11] and that such a sanction would be improper.[12] Appellees were unable to cite to any authority where the form of violations alleged by the appellees would require or even contemplate dismissal.[13] Appellees cite only to *Jay v. Commonwealth*, a case where this Court explicitly noted the extreme nature of dismissal for technical defects. *Jay v. Commonwealth*, 275 Va. 510, 520, 659 S.E.2d 311, 319 (2008) (holding that the defects alleged did not require dismissal). The relief sought for these alleged defects is not supported by court precedent.

The severe sanction of dismissal for failure to fully comply with Rule 5:27 is only appropriate in cases where a party severely disregards the requirements and purposes of the Rule. *See e.g., Estate of Parfitt v. Parfitt*, 277 Va. 333, 344, 672 S.E.2d 827,831(2009) (holding that the appellant

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[11] Appellees' Brief at p. 7.
[12] Appellees' Brief at p. 8 (*citing Jay v. Commonwealth*, 275 Va. 510, 520, 659 S.E.2d 311, 317 (2008)
[13] Appellees' Brief at pp. 7-9.

waived its right to pursue claims because it violated Rule 5:27 "by failing to include ***any*** "principles of law," "argument," or "authorities" relating to this granted assignment of error".) The technical defects alleged by the appellees, when taken as true, do not remotely rise to the level where dismissal would be warranted. *See, e.g., John Crane, Inc. v. Hardick*, 283 Va. 358 (2012)(holding that the appellant waived arguments on appeal by failing to state ***any*** legal authority in support of the assignment of error asserted, in violation of Rule 5:27).

II. RALEY HAS PROPERLY PRESERVED HIS OBJECTIONS TO THE TRIAL COURT'S DISMISSAL OF COUNTS I THROUGH VIII.

Contrary to the appellees' arguments,[14] Dr. Raley properly preserved his objections through pleadings, memoranda and oral arguments. To the extent there might be any minor shortcoming, Virginia Code § 8.01-384 and Rule 5:25 provide that the Court should address the trial court's errors for good cause and to enable this Court to attain the ends of justice. VA .CODE § 8.01-384 (a); VA. SUP. CT. R. 5:25.

A. Dr. Raley Properly Preserved His Objections.

In determining whether or not an appellant properly preserved his or her objections, the Court first considers the basis of the adverse ruling that is being challenged. In this case, the trial court granted the Demurrer to all

[14] Appellees' Brief at pp. 9-10.

Counts of the Complaint[15] solely on the grounds of res judicata.[16] Dr. Raley articulated his arguments and objections against this ruling in his pleadings, his memoranda[17] and at oral argument before the trial court.[18] The trial court, as discussed in detail below, did not allow the appellant an opportunity to object to the entry of its Order.[19] *See infra*, Section II (B). However, the trial court noted the arguments preserved by the appellant against the ruling through incorporation of the "arguments and briefs of counsel admitted before this Court on August 24, 2012" into the Final Order.[20]

B. Pursuant to Virginia Code § 8.01-384 (a), Dr. Raley's Appeal Should Be Determined On The Merits.

Virginia Code § 8.01-384 (a) provides that:

> Formal exceptions to rulings or orders of the court shall be unnecessary; but for all purposes for which an exception has heretofore been necessary, **it shall be sufficient that a party, at the time the ruling or order of the court is** made or

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[15] JA at pp. 15-33; *see also*, JA at 1-9 (the garnishment action was consolidated into Count I of the Complaint).
[16] *See* JA at p. 148. ("[B]ased on the arguments and briefs of counsel admitted before this Court on August 24, 2012, that Counts I, II, III, IV, V, VII and VIII of the Plaintiffs Complaint are barred by res judicata…"). Noting that the Complaint does not contain a Count VI due to an error in numbering the counts of the Complaint.
[17] *See* JA at pp. 56-70, 107-119.
[18] *See Generally*, JA at pp. 120-147; *See e.g.*, JA at pp. 140-142, 132-136.
[19] *See infra,* Section II; *See also*, Exhibit A.
[20] JA at p. 148.

> **sought, makes known to the court the action which he desires the court to take or his objections to the action of the court and his grounds therefor**; and, if **a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection shall not thereafter prejudice him on motion for a new trial or on appeal.** No party, after having made an objection or motion known to the court, shall be required to make such objection or motion again in order to preserve his right to appeal, challenge, or move for reconsideration of, a ruling, order, or action of the court. **No party shall be deemed to have agreed to, or acquiesced in, any written order of a trial court so as to forfeit his right to contest such order on appeal except by express written agreement in his endorsement of the order. Arguments made** at trial via written pleading, **memorandum**, recital of objections in a final order, **oral argument** reduced to transcript, or agreed written statements of facts shall, unless expressly withdrawn or waived, be deemed preserved therein for assertion on appeal.

VA. CODE § 8.01-384 (a) (emphasis added). Dr. Raley made clear to the trial court through his written pleadings, memoranda[21] and oral argument,[22] at the time the ruling of the trial court was sought "the action which he desire[d] the Court to take." VA .CODE § 8.01-384 (a).[23] The trial court and the defendants/appellees were made well aware at the time they sought the granting of their Demurrer of the appellant's arguments and objections

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[21] *See* JA at pp. 56-70, 107-119.
[22] *See Generally,* JA at pp. 120-147; See e.g., JA at pp. 140-142, 132-136.
[23] *See* JA at pp. 56-70, 107-119, 120-147.

to any contrary ruling on res judicata grounds.[24] As such, to attain the ends of justice, the objections and arguments asserted by the appellant must be deemed preserved for purposes of the appeal. *Newtown v. City of Richmond*, 198 Va. 869, 96 S.E. 2d 775 (1957) (holding that the trial court and opposing counsel were aware of the basis of the objection, and therefore, even though it was not explicitly stated, it was entertained by the Court).

Furthermore, Va. Code § 8.01-384(a) explicitly provides that "if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection **shall not thereafter prejudice him** on motion for a new trial or on appeal." VA .CODE § 8.01-384 (a) (emphasis added). This case falls squarely into the scenario contemplated by the General Assembly, as Dr. Raley had no opportunity to object to the Order entered by the trial court. The trial court entered its Final Order on September 4, 2012. The trial court elected to waive endorsement of the order by the parties pursuant to Rule 1:13.[25] Having taken the Demurrer under advisement at the close of the hearing,[26] the trial court then did not notify

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[24] Opening Brief of Appellant, pp. 5, 10-17, 18-20, 21-23; *See also*, JA at pp. 148, 56-70, 107-119, 120-147.
[25] JA at p. 148; VA. SUP. CT. R. 1:13.
[26] *See* JA at p. 145.

Dr. Raley or his counsel that a ruling had been made.[27] Dr. Raley and his counsel first learned of the trial court's decision on October 2, 2012, when counsel for Dr. Raley inquired with the trial court via telephone.[28] The clerk for the trial court provided a copy of the Order via email and apologized for not having provided a copy when it was entered, a copy of the October 2, 2012 email is attached hereto as Exhibit A.[29] As Dr. Raley did not receive notice of the Order until the matter was beyond the jurisdiction of the trial court, Dr. Raley was not provided with an opportunity to object. VA. SUP. CT. R. 1:1. As such, the appellant should not be prejudiced for any perceived failure to state a formal objection when the Order was entered. VA .CODE § 8.01-384 (a).

C. Pursuant to Rule 5:25 of the Rules of the Supreme Court of Virginia, Dr. Raley's Appeal Should Proceed To Consideration On The Merits To Enable The Court To Attain The Ends Of Justice.

Rule 5:25 provides:

> No ruling of the trial court, disciplinary board, or commission before which the case initially heard will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. A mere statement that the judgment or award is

[27] JA at p. 14; *See also*, Exhibit A.
[28] *See* Exhibit A.; See also JA at p. 148.
[29] See Exhibit A.

> contrary to the law and evidence is not sufficient to preserve the issue for appellate review.

VA. SUP. CT. R. 5:25. The trial court granted the demurrer based solely on grounds of res judicata.[30] The appellees and trial court were both made well aware of the appellant's arguments and objections, in great detail, against the Demurrer on grounds of res judicata, in full compliance with the requirements of Rule 5:25.[31] In 2006, the Virginia Supreme Court explained:

> The purpose of Rule 5:25 is to afford the trial court the ability to address an issue. If that opportunity is not presented to the trial court, there is no ruling by the trial court on the issue, and thus no basis for review or action by this Court on appeal.

Riverside Hosp., Inc. v. Johnson, 272 Va. 518, 526 (2006). In this case, the trial court was afforded ample opportunity to address the issue of *res judicata*.[32] In addition, as discussed above,[33] the appellant was prevented from further stating an objection due to the trial court's decision to forgo counsel's endorsements on the final order and the subsequent failure of the trial court to notify the appellant of its order while the trial court still had

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[30] *See* JA at pp. 148, 114-119, 105; *See infra*, Section III.
[31] JA at pp. 148, 56-70, 107-119, 120-147.
[32] JA at pp. 107-119, 120-147, 148.
[33] *See* Section II (B)

jurisdiction over the matter. VA. SUP. CT. R. 1:1.[34] The trial court's failure to provide the appellant with any opportunity to explicitly object to the final Order cannot be the basis upon which the appellant's appeal would be dismissed. VA. SUP. CT. R. 5:25. The Appellant has demonstrated good cause for not filing an objection to the Order after it was entered, and the Court should, in efforts to attain the ends of justice, allow the appeal to proceed on its merits. *Id.*

III. THE DISMISSAL OF DR. HAIDER IN THE 2010 ACTION WAS BASED SOLELY ON STANDING; NO *QUANTUM MERUIT* CLAIM WAS ASSERTED AGAINST DR. HAIDER IN THAT SUIT.

The Amended Complaint[35] in the 2010 action consisted of three counts; Breach of Contract (Count I),[36] Tortious Violation of Va. Code § 13.1-105 (Count II)[37] and *Quantum Meruit*/Unjust Enrichment (Count III). [38] Only Count II, the Tortious Violation of Va. Code § 13.1-105, was asserted against and sought relief against Dr. Haider.[39] The *quantum meruit*/unjust enrichment claim (Count III) was asserted only against Minimally Invasive Spine Institute and not Dr. Haider, as it stated in its entirety:

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[34] *See* Section II (B); Exhibit A.
[35] JA at pp. 99-104.
[36] JA at pp. 101-102.
[37] JA at pp.102-103.
[38] JA at p. 103.
[39] *Id.*; See also, JA at pp.114-119 (Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint)

Count III: Quantum Meruit/Unjust Enrichment

25. Paragraphs 1-24 are incorporated herein by reference and realleged.

26. In the alternative, if no contract is found to exist between MISI and Raley, **MISI is still liable to Raley** under the doctrine of unjust enrichment.

27. Raley conferred benefits upon MISI, through his service and treatment of MISI's patients and the resulting patient payments.

28. MISI not only knew of the benefit conferred by Raley, but also agreed to compensate Raley for his efforts. As such, MISI was fully aware that it was not entitled to retain these benefits without providing compensation to Raley.

29. **MISI has retained the benefits of Raley's services** without providing just compensation.

30. **MISI will be unjustly enriched at Raley's expense unless this Court acts to require MISI to pay Raley the reasonable value of his labor and services in the amount of $1,000,000.00, plus interest.**

JA at pp. 45, 103 (emphasis added). Count III does not reference Dr. Haider or state any allegations against him. Most telling is ¶ 30, which alleges that "MISI will be unjustly enriched…", again without a single reference to Dr. Haider.[40] Dr. Raley did not assert that Dr. Haider would be unjustly enriched or seek relief against him under this Count.

[40] JA at p. 103.

Despite the clear wording of Count III, the appellees contend that Dr. Raley asserted a *quantum meruit* claim against Dr. Haider in that very count. This contention is entirely false and not supported by the record. In efforts to bolster a claim that is unsupported by the clear language of the Amended Complaint and written statements of Dr. Haider,[41] the appellees argue that this contention is supported by (a) the order dismissing Dr. Haider, and (b) the prayer for relief of the Amended Complaint.[42] Both of these arguments should be rejected by the Court.

A. The Order Dismissing Dr. Haider From The 2010 Suit Granted the Only Relief Sought By Dr. Haider

The Order entered on April 1, 2011 clearly dismisses Count II (Tortious Violation of Va. Code § 13.1-105) of the Amended Complaint, and as a result, Dr. Haider was excused from the case.[43] The Order was entirely consistent with the limited relief sought by Dr. Haider in the Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint.[44] Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint challenged only Count II of the Amended Complaint, and explicitly

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[41] JA at pp.114-119 (Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint)
[42] JA at p. 103.
[43] JA at p. 105.
[44] JA at pp.114-119 (Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint)

requested that Dr. Haider be dismissed from the case on that argument alone.[45] Dr. Haider made it quite clear that the only Count pending against him in that action was Count II, arguing, "Plaintiff [Dr. Raley] nevertheless seeks to maintain a claim against Dr. Haider Personally. *See* Amended Compl. Count II."[46] Despite the fact the Demurrer did not reference anything but Count II, the appellee misrepresented to the trial court in the 2012 action that "we asked for the demurrer on both issues."[47] That misrepresentation now is repeated before this Court.

There is no mention of the *quantum meruit* claim in the Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint, because that claim was not asserted against Dr. Haider in the Amended Complaint.[48] The Order dismissing Count II of the Amended Complaint, and as result, Dr. Haider, was consistent with the Amended Complaint and the Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint.[49]

The appellees ask that this Court ignore the plain language of the Amended Complaint,[50] its own Demurrer to Count II of the Plaintiff's

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[45] JA at p. 114.
[46] JA at p. 114.
[47] JA at p. 145 (5); Compare JA 114-119.
[48] JA at pp.114-119 (Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint)
[49] JA at pp.114-119,105, 99-104.
[50] JA at pp. 99-104.

Amended Complaint[51] and the consistent nature of the Order in regards to its own Demurrer, to find that Dr. Raley asserted a *quantum meruit* claim against Dr. Haider. This argument is disingenuous, lacks merit and must be rejected by this Court.

B. The Amended Complaint's Prayer For Relief Is Consistent With The Fact That Only Count II Of The Amended Complaint Sought Relief Against Dr. Haider.

Appellees contend that the prayer for relief supports the interpretation that Dr. Raley asserted a *quantum meruit* claim against Dr. Haider.[52] A cursory review of the Amended Complaint as a whole reveals that the appellees' assertion is simply untrue.

Count I (Breach of Contract) sought damages only from MISI as paragraph 19 of the Amended Complaint explained, "The breach of contract by MISI has damaged Raley by an estimated $1,000,000.00 plus interest from the dates these payments should have been remitted."[53] Count II (Tortious Violation of Va. Code § 13.1-105) sought relief against both Dr. Haider and MISI, stating, "The tortious actions of Haider, for which MISI is vicariously liable, have damaged Raley by an estimated $1,000,000.00, plus interest from the date the payments should have been

[51] JA at pp. 114-119.
[52] Appellee's Brief at p. 12.
[53] JA at p. 102.

remitted to Raley. Haider and MISI are jointly and severally liable for these acts."[54] Count III (*Quantum Meruit*/Unjust Enrichment), as discussed above, only sought relief against MISI, providing that "MISI will be unjustly enriched at Raley's expense unless this Court acts to require MISI to pay Raley the reasonable value of his labor and services in the amount of $1,000,000.00, plus interest."[55] A plain reading of the Amended Complaint demonstrates that Count II was the only count under which Dr. Raley sought to hold Dr. Haider liable.

The Amended Complaint had only one prayer for relief, which of course appears at the end of that pleading.[56] For that reason alone, it is juxtaposed to the end of Count III.[57] Dr. Raley elected to state a single prayer for relief, as opposed to separate prayers for each individual count. The appellees improperly argue that the singular prayer in some way transforms Count III into a claim against Dr. Haider, when Count III clearly states that it is only seeking relief from MISI.[58] The contention of the appellees is simply inaccurate and not true.

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[54] JA at p. 103.
[55] JA at p. 103.
[56] JA at p. 103.
[57] JA at p. 103.
[58] JA at P. 103.

The argument forwarded by the appellees lacks merit and is entirely unsupported by the record before this Court.

IV. THE STANDING ARGUMENT WAS PROPERLY PRESENTED TO THE TRIAL COURT

Standing is defined as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." BLACK'S LAW DICTIONARY 1413 (7th ed. 1999).The appellant raised the argument that Dr. Haider was dismissed from the 2010-filed civil action (Count II) solely on grounds that Dr. Raley did not have the right, in his individual capacity, to bring a claim against Dr. Haider under Va. Code § 13.1-105 before the trial court.[59]

While the appellant actually did use the word "standing" in his memoranda.[60] The standing argument was also presented to the Court in

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[59] JA at pp. 58 & 108 ("In other words, Haider contended that Raley as mere creditor of MISI could not bring any actions directly against him; only MISI could do that."); 59 ("While this court's prior ruling in the 2010-filed action makes clear that MISI is the only party with rights against Haider...); JA at 129-130 ("Judge Ney dismissed Count 2 as to Dr. Haider saying that Dr. Raley could not bring a direct action against Dr. Haider. In other words, Dr. Raley had no direct rights [standing] against Dr. Haider."); 134-135.
[60] *See* JA at pp. 59 and 109.

substance.[61] The appellees' submissions below also used the term "standing".[62]

Both the court and appellees were aware of the standing arguments and therefore, they were properly presented and preserved for appeal. *Newtown v. City of Richmond*, 198 Va. 869, 96 S.E. 2d 775 (1957) (holding that because the trial court and opposing counsel were aware of the basis of the objection, and therefore, even though it was not explicitly stated, it was entertained by the Court).

V. THE APPELLEES INACCURATELY CLAIM THAT THE "ONLY THEORY THE PLAINTIFF [APPELLANT] ASSERTS FOR MIPI AND WISE'S LIABILITY IS THAT OF VICARIOUS LIABILITY DERIVING FROM DEFENDANT HAIDER."

The Appellees' Brief argues that the claims that "only theory the plaintiff [Appellant] asserts for MIPI and Wise's liability is that of vicarious liability deriving from defendant Haider."[63] This is simply not true, as the plaintiff/appellant has also alleged that each separate legal entity is independently liable as the recipients of improper transfers.[64]

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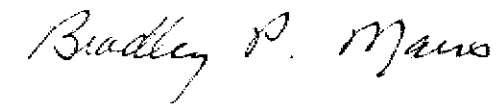
[61] *See supra* mote 59.
[62] *See generally* JA at pp.114-119 (Defendants' Demurrer to Count II of the Plaintiff's Amended Complaint); *See e.g.*, JA at 117 ("Even if Plaintiff [Raley] had standing to bring Count II...")
[63] Appellees' Brief at p. 23.
[64] JA at pp. 20-26.

VI. WHEN EVALUATING THE POTENTIAL APPLICATION OF RES JUDICATA TO SEPARATE PARTIES, THE APPROPRIATE ANALYSIS IS NOT WHETHER THE SECOND ACTION "COULD HAVE BEEN FILED."

Appellees argue that this court should apply a could-have-been-brought-should-have-brought test to the application of res judicata for separate parties, who are not in privity. The idea that claims which could have been brought, should have been brought, applies only to causes of action, and then only when the parties in the current case are the same as in the prior case. It has never been applied to suggest that a plaintiff must sue all conceivable defendants in one, initial action. Clearly, a plaintiff may sue separately, or even sequentially. The extension of this type of analysis to claims against separate parties is improper, not supported by Court precedent and would constitute an improper extension of the doctrine of res judicata.

For the foregoing reasons, appellant Thomas J. Raley, M.D., prays that this Court will reverse the decision of the circuit court below, as established by its Order of September 4, 2012, and that this Court will remand appellant's consolidated cases with instructions for trial on the merits.

THOMAS J. RALEY

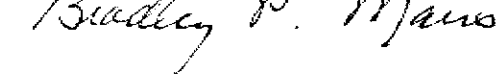


By:_____
Counsel

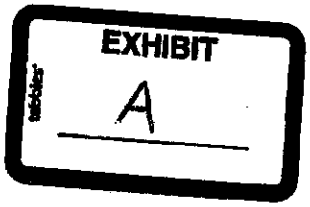
Bradley P. Marrs, VSB No. 25281
Patrick C. Henry, II, VSB No. 80468
The Marrs Law Firm, PLLC
7202 Glen Forest Drive, Suite 307
Richmond, VA 23226
Tel. (804) 662-5716
Fax (804) 662-5712
e-mail *bmarrs@marrslaw.com*
or *phenry@marrslaw.com*

CERTIFICATE

I hereby certify that this Reply Brief of Appellant has been filed, and that copies of it have been served upon all other counsel of record, all in compliance with Rules 5:28(g) and 5:26(d) on May 6, 2013.



_____
Counsel



From: Telis, Kathleen
To: Patrick Henry
Subject: FW: Scan Document
Date: Tuesday, October 02, 2012 4:20:43 PM
Attachments: Scan.pdf

Mr. Henry,

Attached please find the Order Judge Brodie entered on September 4th. Again, my apologies for now sending this to you then.

Kate Telis, J.D.
Law Clerk to the Honorable Jan L. Brodie
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
(703) 246-2221
Kathleen.Telis@fairfaxcounty.gov

-----Original Message-----
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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THOMAS RALEY, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CL 2012-0007905
	)	
NAMEER HAIDER, M.D., et al.	)	
	)	
Defendants.	)	

ORDER

THIS CAUSE came before the Court upon the Defendants' Demurrer, Plea in Bar, and Motion for Bill of Particulars. By agreement of both parties, only Defendants' Demurrer was heard; and

IT APPEARING that, based on the arguments and briefs of counsel admitted before this Court on August 24, 2012, that Counts I, II, III, IV, V, VII and VIII of the Plaintiff's Complaint are barred by *res judicata*; now therefore it is hereby

ADJUDGED AND ORDERED that the Defendants' Demurrer as to all parties is sustained and this case is dismissed with prejudice.

ENTERED on September 4, 2012.

Jan L. Brodie

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.