In The

Supreme Court of Virginia

RECORD NOS. 131974; 140605

DRHI, INC.,

Appellant,

v.

WILLIAM W. HANBACK, JR.,

Appellee.

BRIEF OF APPELLEE

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NATURE OF THE CASE & MATERIAL PROCEEDINGS BELOW

This matter comes before the Court on an appeal filed by DRHI, Inc. ("DRHI") from a Rule to Show Cause issued by the Fairfax County Circuit Court on August 9th, 2013 and subsequent order by the Court on September 20, 2013, which awarded a monetary judgment against DRHI in the sum of $350,000.00 for its refusal to comply with a court order.

The Circuit Court's actions were based on the continuing failure of DRHI to pay amounts due and owing under the 2004 Court decree ("2004 Decree") entered in consolidated Chancery Nos. 181833 and 178718 ("the Original Action") in Fairfax County. That 2004 Decree specifically required DRHI to pay appellee WILLIAM HANBACK ("Mr. Hanback") additional compensation if his real property, conveyed by that same order, was later subdivided by DRHI.

The matter came back before the Circuit Court as follows: after a successful rezoning in 2007, DRHI subdivided the lot in 2010 and then built upon houses upon it -- without notifying Mr. Hanback or paying him any extra funds. In 2012, Mr. Hanback

filed a petition for a Rule to Show Cause arising from DRHI's violation of the 2004 Decree. The Circuit Court held an evidentiary hearing on May 9, 2013 regarding whether additional funds were owed. The Circuit Court then issued a written opinion on **July 17th, 2013**, which found that DRHI owed Mr. Hanback $350,000.00 as additional compensation under the 2004 Decree. DRHI took no action to pay this amount.

The Court then actually issued the Rule to Show Cause against DRHI on **August 9th, 2013** for its continuing refusal to comply with the 2004 Decree. On September 20, 2013, after additional hearings, the Court entered the judgment for Mr. Hanback for $350,000.00 based upon DRHI's continuing failure to comply with the Rule to Show Cause. The Court denied Hanback's request for prejudgment interest, dating back to 2010, as well as his attorney fees incurred in obtaining the Rule.

DRHI noted twelve objections to the September 20th judgment, including *inter alia* its position that any action violating the 2004 Decree "was justified."

Appeals and Post-Judgment Proceedings

Post-Judgment Collections

On October 2, 2013, DRHI filed its Notice of Appeal to both the Court of Appeals and Supreme Court. It failed to move for a stay of execution or request that the trial court (or either appeals court) set a *supersedeas* bond for the unpaid $350,000.

On October 30, 2013, at the request of Mr. Hanback, the Clerk of Fairfax County issued a garnishment ("the Garnishment Action") against DRHI's bank account with Bank of America, N.A. On November 13th, the Bank filed a return in the Garnishment Action, identifying sufficient funds to satisfy the judgment.

On December 2nd, 2013, DRHI filed a motion to quash in the Garnishment Action. The trial court (J. Tran presiding) denied that motion because the bond itself was defective under Section 8.01-676.1. It then entered an Order of Payment.

In light of Judge Tran's ruling, DRHI filed a "Petition for Relief," in both the Court of Appeals and the Virginia Supreme Court on December 6, 2013. Mr. Hanback filed an opposition in both courts. Both appeals were eventually dismissed.

DRHI subsequently filed a new motion in the trial court to approve a new Letter of Credit. On December 13th, 2013, the Circuit Court allowed DRHI to file a bond in the amount of $400,000.00, which it did on December 18th. Subsequently, the parties agreed to vacate the Order of Payment obtained by Mr. Hanback, in light of the $400,000 bond being posted.

DRHI's Appeal to Supreme Court (on Merits)

Also on December 18, 2013, DRHI filed its "Petition for Appeal" concerning the September 20, 2013 order with this Court. In that Petition, DRHI sought a writ of appeal based on four assignments of error - namely that, i) the lower court had not authority to enter a money judgment, ii) the lower court "re-wrote" the 2004 Decree, iii) that Mr. Hanback did not know what the 2004 Decree required, and iv) DRHI's actions were justified. Mr. Hanback filed his opposition to the appeal on January 8, 2014, contesting the jurisdiction of the Supreme Court to hear an appeal arising from a finding of contempt. On April 22, 2014, this Court awarded DRHI a writ of appeal – **Record No. 131974.**

DRHI's Appeal to Court of Appeals (on Merits)

On January 28, 2014, DRHI filed its "Brief of Appellant" with the Court of Appeals stating seven separate, but not distinct, assignments of error concerning the September 20, 2013 order of judgment. DRHI claims that the lower court erred: when it issued the Rule to Show Cause against DRHI, Inc. and thereafter found it in contempt; when it "redrafted" the 2004 Decree; when it "redrafted" the original 2001 contract between Hanback and DRHI; because Mr. Hanback's evidence did not show a violation of the terms of the decree; DRHI's failure to pay was justified; because the trial court relied upon irrelevant evidence; and, because it awarded relief not requested in the previous litigation.

On April 22, 2014, this court certified that matter from the Court of Appeals under Rule 5:23 and assigned it **Record No. 140605.** The Court instructed that the certified case and the previous case pending before this Court (No. 131974) were to be paired for the purpose of oral argument.

On May 29, 2014, DRHI filed a different "Brief of Appellant" for both case numbers.

Therefore, to date, DRHI has filed four appeals arising from the Rule to Show Cause and failure to pay the $350,000:

1. Appeal to Supreme Court from Rule to Show Cause Record Number 131974 (pending before this Court);
2. Appeal to Court of Appeals from Rule to Show Cause Record No. 1940-13-4 (certified by this court and currently pending as Record No. 140605);
3. Appeal to Supreme Court from entry of Order of Payment (dismissed as moot);
4. Appeal to Court of Appeals from entry of Order of Payment (dismissed);

Each of the above appeals has required a substantive response from Mr. Hanback. This brief deals with (i) DRHI's appeal to the Court of Appeals from the Rule to Show Cause determination (Record No. 140605), (ii) DRHI's appeal to the Supreme Court of Virginia (Record No. 131974) and (iii) the issues raised by Mr. Hanback by cross-appeal.

CROSS-ASSIGNMENTS OF ERROR

1. The trial court erred in not awarding Mr. Hanback interest dating back to the approval of DRHI's subdivision plans on January 8, 2010, which is the date when his additional compensation vested under the 2004 Decree. (A105, A401, A457, A469)

2. The trial court erred in not permitting Mr. Hanback to seek reimbursement for his costs and attorney fees arising from the continuing refusal of DRHI to obey the 2004 Decree. (A457, A469)

STATEMENT OF FACTS

Hanback and DRHI were parties to a contract in 2000 to sell an undeveloped parcel of real estate in the heart of Fairfax City. DRHI originally sued Mr. Hanback in 2002 to force the sale of his property. In the consolidated chancery cases – Chancery No. 181833 and 178718 – DRHI sought an order of specific performance enforcing its contractual option to purchase Mr. Hanback's land for a below-market price of $400,000.

On June 9, 2004, at DRHI's request, the Fairfax County Circuit Court (Honorable Stanley Klein presiding) entered a "decree" ordering specific performance of the contract and the sale of Mr. Hanback's property. The 2004 Decree commanded Mr. Hanback to appear at settlement "on or before June 9, 2004" and further ordered DRHI to pay Mr. Hanback at closing the agreed sum of $400,000 minus a previous ten thousand dollar ($10,000) deposit. (A29).

Importantly, and consistent with the language in the parties' contract, the 2004 Decree further commanded that DRHI would pay Hanback <u>additional</u> funds if his land later became subdivided:

> **at the time <u>any</u> subdivision plans for the development of the property sold by Mr. Hanback are <u>approved</u> by the City of Fairfax, in the event that the plans submitted by DRHI, Inc. <u>permit</u> the construction of six or more individual residences, DRHI, Inc. shall pay to Mr. Hanback $70,000.00 for the sixth lot and $70,000.00 for each additional approved lot thereafter.**

(A29) (emphasis added)

In other words, the 2004 Decree on its face contemplated two separate compensation events: (i) the $400,000 initial payment upon the conveyance of the property, and (ii) the $70,000 "per lot" payment, if and when the property was used "to permit the construction of six or more individual residences."

This bifurcated payment schedule was contemplated by the parties' contract. (A5-18). It was accepted by DRHI, who <u>endorsed</u> the 2004 Decree as "Agreed" and proceeded to closing under its authority.

Following the Court's ruling, DRHI paid the $400,000 to Mr. Hanback and took title to his 2.1 acres of land. (A77 at ln. 14-20). It had no further communication with Mr. Hanback for the next eight years. It never made any communication or took any

act to acknowledge his ongoing right to the additional "per lot" compensation.

Sometime thereafter, DRHI purchased the neighboring property to Hanback and assigned its rights in the two undeveloped properties to D.R. Horton, Inc., its wholly owned subsidiary which actually constructs the homes.[1] (A82-83, 117, 128-29, 396).

In 2007, three years after closing, DRHI by D.R. Horton, Inc. filed a residential rezoning request with the City of Fairfax seeking to develop a four acre assemblage containing Mr. Hanback's 2.1 acres. As part of its proffers to the City to obtain the rezoning, DRHI dedicated half of Mr. Hanback's land to become a wooded buffer with an existing residential community

[1] In its Brief, DRHI fails to admit that "D.R. Horton" was its subsidiary and falsely presents the transaction as an arms-length purchase. In fact, the DRHI representative admitted that DRHI solely owned D.R.Horton. He did not identify any consideration for the assignment. (A129-130).

in exchange for receiving "bonus density" in its remaining land.[2] (A143-146, 155-156)

The rezoning had immediate benefits in that it allowed DRHI to develop an extra five (5) upscale houses on the property, which were priced at $800,000 each. (A109). Essentially it added $4.0 million to the value of the project. The alternative was for DRHI to simply develop the property "by right," which would have permitted a maximum of ten (10) homes, and perhaps fewer.[3] (A397).

On May 22nd, 2007, the City approved DRHI's rezoning request with the proposed division of Mr. Hanback's property and

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[2] In its Brief, DRHI implies that the City "forced" them to dedicate the Hanback land. In fact, DRHI had every reason to dedicate the land so as to allow five more houses retailing at nearly $1 million each. That is why they took that more lucrative option, rather than just developing the property "by right" – which was always available <u>without</u> City approval.

[3] In its Brief, DRHI makes a great deal of the potential "clear cutting" from a "by right development" of Hanback's property and that such a scenario caused "a huge outcry from neighboring communities." There is no record of this "outcry" in the trial court. Regardless, it is irrelevant. A "by right" development – by definition – requires no rezoning or special permit and the community position has no legal relevance. From 2004 going forward, DRHI was <u>always</u> free to develop its property by right. It chose to rezone so it could make more money.

proffering of the wooded buffer. In doing so, it expressly authorized the future creation of five (5) new lots on the site. No notice was given to Mr. Hanback. (A90).

In 2009, after a delay caused by the recessionary market, DRHI filed its actual subdivision plan for the development, which was then approved by the City on January 8, 2010. (A91, 305-307) As a direct result of proffering Mr. Hanback's land, DRHI was able to create five additional lots on the assemblage so as to construct five (5) additional luxury homes – or fifteen (15) total on land initially zoned for ten homes "by right." Again, no notice was given to Mr. Hanback, either of the 2010 subdivision or DRHI's intention to build additional homes.

The final site plan[4] before construction was approved by the City in 2011, and home construction began shortly thereafter. (A105, 108, 308) Upon discovery of the construction on his former property, Mr. Hanback contacted DRHI in May 2012 and

[4] This plan was mistakenly chosen by the trial court as the date of City Approval of the Subdivision plan. (A397). In actuality, the Subdivision plans were approved by the City on January 8, 2010. (A91, 305-307). The plans approved in May 2011, were not Subdivision plans but rather the final site plan prior to construction.

requested that his rights under the 2004 Decree be honored. DRHI ignored his request. (A110-112, 310-313).

On November 21, 2012, Mr. Hanback filed a "show cause" petition with the Circuit Court to hold DRHI in contempt for violating the 2004 Order. (A33-50).

There was a hearing held on May 9th, 2013 on Mr. Hanback's petition.[5] Prior to the hearing, DRHI filed a brief in which it denied violating the 2004 Decree. Notably, DRHI's opposition failed to challenge the Court's ability to consider the Petition. It did not raise "jurisdiction" as a defense in its Proposed Findings of Fact and Conclusions of Law or at the hearing on May 9th 2013.

At the May 9th hearing, DRHI admitted that it had used the proffer of Mr. Hanback's property to obtain the five (5) additional lots through the rezoning process. (A90-91). At the same hearing, Mr. Jack Blevins of Fairfax City's Planning and Zoning Department testified that DRHI had raised the idea of trading Mr. Hanback's land as a buffer for the "bonus density" and that the

[5] The matter was initially set to be heard on March 6, 2013 but court was canceled that day due to a snow storm.

dedication of this property was "critical" to making that happen.[6] (A144-146) In closing, Hanback's counsel asked that the 2004 Decree be enforced and that his client be awarded the additional compensation. (A171-178).

The Court took the matter under advisement.

On July 16th, 2013, the Court issued a written opinion letter finding DRHI owed Mr. Hanback $350,000.00 under the 2004 Decree and directing that it pay the funds forthwith. It did not award attorney fees or interest, despite the fact that the violation had been pending since at least the 2010 subdivision – and DRHI had taken no action to comply.

DRHI still refused to acknowledge any debt to Mr. Hanback, even after the July 16th written opinion. In fact, in the aftermath of the opinion, it took no action to comply with that ruling or the 2004 Decree. On August 9, 2013, once again at the request of

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[6] In its Brief, DRHI continually states that the City "pressed" it to submit the high-density plan with the dedication of Hanback's parcel as a buffer. In fact, the concept was proffered by DRHI, which had no legal obligation to do so. (A155) (Cross-Exam of DRHI Representative regarding the proffer of Hanback's land: "Did you have a gun to your head?" "No."). DRHI had every right to develop the assembled parcels with ten (10) homes or less – or simply leave it undeveloped.

Mr. Hanback, Judge Smith issued a Rule to Show Cause against DRHI, returnable on September 16, 2013, for its continued refusal to pay the funds. (A418).

DRHI appeared on September 16th and challenged – for the first time -- the Court's ability to enforce a "monetary judgment" through contempt proceedings. (A434-35) In effect, it raised legal challenges to the Court's authority under the 2004 Decree which it had failed to raise at the May 9th hearing, when the contempt issue was being decided on the merits.

Notably, as of September 2013, DRHI had neither paid – nor offered to pay – a dollar to Mr. Hanback. Faced with this willful non-compliance, the Court found DRHI in contempt on September 20, 2013 and awarded Mr. Hanback judgment in the amount of $350,000.[7] (A468). It did not award any attorney fees or prejudgment interest to Hanback, although the contumacious posture of DRHI had existed for years.

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[7] Mr. Hanback's counsel had asked for some coercive measures such as a *per diem* fine to force DRHI to pay the amount owed. The Court declined to do so and entered the judgment without interest or fees.

To date, DRHI has still not paid a single dollar to Mr. Hanback for his land since the initial 2004 payment of $400,000, which was never anticipated as a final payment. Meanwhile, it has developed and sold ten (10) up-scale homes, either on Mr. Hanback's property or as a direct result of swapping his land.

DRHI has acted in bad faith at every stage of this proceeding. It never informed Mr. Hanback of the 2007 rezoning or the 2010 subdivision.[8] When Mr. Hanback contacted it in 2012 and inquired about the extra houses, DRHI denied any knowledge of the transaction which it caused. (A311). At every stage of the contempt proceeding, it denied any obligation to Hanback, a private landowner simply asking a Fortune 500 builder to respect a judicial decree that it presented in 2004.

Now, having lost on the merits in its contempt hearing, DRHI challenges the Court's authority to give relief – an authority

[8] The sole information for Hanback regarding the 2007 rezoning and 2010 subdivision came from Fairfax City which responded to Hanback's Freedom of Information Act request by turning over its zoning file. This provided the exhibits used in the May 9th trial.

which it specifically invoked when it sought specific performance to take Mr. Hanback's land in 2004.

DRHI needs to pay the money it owes ($350,000) and suffer consequences from its obstructive actions towards Mr. Hanback and the tribunal.

AUTHORITIES & ARGUMENT

STANDARD OF REVIEW

This appeal arises from a contempt proceeding based upon DRHI's refusal to comply with the 2004 order and entry of a judgment against DRHI for that contempt.

A trial court has discretion in the exercise of its contempt power arising from civil case orders. *Sapp v. Commonwealth*, 263 Va. 415, 425, 559 S.E.2d 645, 650 (2002); *Leisge v. Leisge*, 224 Va. 303, 309-10, 296 S.E.2d 538, 541 (1982). It "is within the discretion of the trial court" to conduct civil contempt proceedings. *Arvin, Inc. v. Sony Corp. of America*, 215 Va. 704, 706, 213 S.E.2d 753, 755 (1975).

Thus, this Court reviews the exercise of a trial court's contempt power under an abuse of discretion standard. *Tonti v. Akbari*, 262 Va. 681, 687, 553 S.E.2d 769, 772 (2001); *Petrosinelli v. People for Ethical Treatment of Animals*, 273 Va. 700, 706, 643 S.E.2d 151, 154 (2007).

With respect to the trial court's factual findings that underlie its judgment of contempt, the judgment of the trial court sitting

without a jury is entitled to the same weight as a jury verdict and "its finding is entitled to great weight and will not be disturbed on appeal unless plainly wrong or without evidence to support it." *Fisher v. Salute*, 51 Va. App. 293, 303-304 (Va. Ct. App. 2008); *Street v. Street*, 25 Va. App. 380, 387, 488 S.E.2d 665, 668 (1997) (quoting *Martin v. Pittsylvania Department of Social Services*, 3 Va. App. 15, 20, 348 S.E.2d 13, 16, 3 Va. Law Rep. 359 (1986)); *see also* Code of Va. § 8.01-680.

This court will review issues of law regarding jurisdiction, *de novo*, assuming these issues have been timely and properly raised. *Tharpe v. Saunders*, 285 Va. 476, 482 (2013); Rule 5A:18, Rules of the Supreme Court of Virginia. Mr. Hanback's cross assignments of error regarding interest and attorney's fees are reviewed under the abuse of discretion standard. *Piney Meeting House Invs., Inc. v. Hart*, 284 Va. 187, 196 (2012).

SUMMARY OF ARGUMENT

The trial court did not err in finding DRHI in contempt under a Rule to Show Cause against DRHI. The Circuit Court (i) had jurisdiction and authority to enforce its 2004 order; (ii) enforced

the explicit terms of the 2004 degree without "rewriting the 2004 decree" or 2001 Contract; and, (iii) followed the law and evidence in finding that DRHI was in contempt of that order by entering judgment against DRHI for $350,000. These actions were logical and, in fact, conservative measures to address DRHI's obstinacy and dishonesty.

However, the trial court did err in not granting Mr. Hanback's request for prejudgment interest and attorney's fees. In regard to the former, Mr. Hanback is specifically entitled to interest from the time his rights vest under a judicial order. *See* Section 8.01-382 of the VA Code. In regard to the latter, the facts and circumstances of the contempt – including DRHI's refusal to comply after the Rule was issued – justify having this court remand the matter for an award of fees so that Mr. Hanback can be made whole.

DISCUSSION OF THE ISSUES

I. The Trial Court Had the Jurisdiction to Hold DRHI in Contempt of the 2004 order and Authority Enter Judgment based on that Contempt.

The trial court had the authority and jurisdiction to exercise contempt powers in the enforcement of the 2004 Order. DRHI's argument on appeal that the Court lacked the jurisdiction and authority to punish contempt – or that Mr. Hanback was required to file another lawsuit to collect his money – is simply absurd. There was an enforceable order in place.

A. The Trial Court had jurisdiction.[9]

DRHI did not initially dispute the trial court's ability to hold it accountable to the terms of the 2004 Order. Indeed, it did not challenge the trial court's jurisdiction at the May 9, 2013 hearing, or in any subsequent appearances before the trial court. The first time, DRHI even mentioned lack of jurisdiction as an "Objection" was on the Order entered on September 20th. (A468-471) Therefore, it waived its assignment of error concerning

[9] In his consolidated brief, Mr. Hanback will refer to the relevant Assignments of Error made in each of the two briefs filed by DRHI. Notably, those two briefs contain different arguments, which are not always consistent.

jurisdiction (Assignment of Error No. 1 in Case # 131974) under the Rule 5A:18, Rules of the Supreme Court of Virginia.

Notwithstanding DRHI's waiver, it is axiomatic that a court may find a party in contempt for "disobedience or resistance … to any lawful process, judgment, decree or order of the court." Code of Va. § 18.2-456(5); *Higginbotham v. Commonwealth*, 206 Va. 291, 294, 142 S.E.2d 746, 749 (1965) ("It has long been recognized and established that a court is invested with power to punish for contempt, both by the inherent nature and constitution of the court and by [statute].") In fact, "[t]he power to punish for contempt is inherent in, and as ancient as, courts themselves. It is essential to the proper administration of the law, to enable courts to enforce their orders, judgments and decrees," to preserve the "confidence and respect of the people without which the rights of the people cannot be maintained and enforced." *Carter v. Commonwealth*, 2 Va. App. 392, 395, 345 S.E.2d 5, 7 (1986); *Estate of Hackler*, 44 Va. App. at 64, 602 S.E.2d at 432.

"Contempt is defined as an act in disrespect of the court or its processes, or which obstructs the administration of justice, or

tends to bring the court into disrepute." *Carter v. Commonwealth*, 2 Va. App. 392, 396, 345 S.E.2d 5, 7 (1986). It includes any act "which is calculated to embarrass, hinder, or **obstruct** the court" in the discharge of its responsibilities. *Id.* at 396, 345 S.E.2d at 7-8; *Potts v. Commonwealth*, 184 Va. 855, 859, 36 S.E.2d 529, 530 (1946) (emphasis added).

Civil contempt proceedings are utilized to enforce the rights of private parties and to motivate an accused contemnor into doing what he is required to do by court order. Such proceedings are inherently remedial in nature. *See e.g.*, *U.S. v. United Mine Workers*, 330 U.S. 258 (1947), cited in *United Mine Workers v. Covenant Coal Corp.*, 12 Va. App. 135 (1991); *Leisge v. Leisge*, 224 Va. 303 (1982).

Both the common law and Virginia's statutes recognize two kinds of contempt, direct and indirect. *Carter*, 96 Va. 791, 807; *See also* Va. Code § 18.2-456. Traditionally, direct contempts are those committed within the view of the court and require immediate vindication of the court's authority. *In re Savin*, 131 U.S. 267, 274-77, 9 S. Ct. 699, 700-02, 33 L. Ed. 150, 152-53

(1889); *Burdett v. Commonwealth*, 103 Va. 838, 845-46, 48 S.E. 878, 880-81 (1904).

Indirect contempt is contempt which takes place outside of the hearing and presence of the trial judge. *Greene v. Tucker*, 375 F. Supp. 892 (E.D. Va. 1974); *Burdett v. Commonwealth*, 103 Va. 838 (1904); *Davis v. Commonwealth*, 219 Va. 395 (1978). Such indirect contempt may be punished by bringing evidence of the contempt to the trial court in a civil contempt hearing. Unlike direct contempt, an indirect contempt hearing requires notice to the defendant – such as the notice provided to DRHI when Mr. Hanback filed his petition in November 2012.

Here, the Court's jurisdiction over any contempt of its 2004 Decree arose once Mr. Hanback provided DRHI notice of the hearing. Notably, in its initial pleadings and court appearances, including the May 9th evidentiary hearing, DRHI never challenged the court's jurisdiction to rule upon the contempt of its 2004 Decree.[10] That evidentiary hearing correctly found that DRHI was in contempt of the 2004 Decree which contemplated a second

[10] DRHI's assignments of error concerning the jurisdiction and authority of the trial court are thus waived under Rule 5A:18.

payment after the subdivision plans were approved by the City of Fairfax. ("At the time any subdivision plans are approved … DRHI, Inc. shall pay to Mr. Hanback the sum of $70,000 for the sixth lot and $70,000 for every lot thereafter"). Armed with that evidence, the Circuit Court had more than sufficient jurisdiction to punish that contempt and take all actions necessary to address the underlying equities.

As this Court recently stated, "[w]here some phase of the case presents a good ground for equitable relief, and the court has acquired actual jurisdiction of all the parties … a court of chancery may go on to a complete adjudication of the cause, even to the extent of establishing legal rights and administering legal remedies, which would otherwise be beyond the scope of its authority." *Henderson v. Ayres & Hartnett, P.C.*, 285 Va. 556 (2013), citing *Iron City Savings Bank*, 158 Va. 609, 625, 164 S.E. 520, 525 (1932).

Further, "in [an equity] case [the court] will not send the parties back to a court of law, <u>but will retain jurisdiction for all purposes</u>, and do complete justice between the parties. This is

true even where the proof may show that the complainant is not entitled to the equitable relief prayed." *Shield v. Brown*, 166 Va. 596, 601, 186 S.E. 33, 35 (1936).

It is undisputed that the Circuit Court had equity jurisdiction over the Original Action in 2004. In fact, it was DRHI which urged the court to exercise that jurisdiction when it sought specific performance of its land sales contract.

Thereafter the Circuit Court retained jurisdiction over the matter because "the potential jurisdiction of a court of chancery, when properly invoked, is sufficient to sustain the exercise of the power of the court to do all things necessary or proper." *Id.* The fact that the 2004 Decree was final prior to the Rule to Show Cause petition being filed, did not render the court powerless to enforce the earlier decree – otherwise, the whole contempt power would be meaningless. *Rinehart & Dennis Co. v. McArthur*, 123 Va. 556, 563 (1918).

B. The Court had the authority to hold DRHI in contempt and enter a monetary judgment. [Responds to Assignment of Error No. 2 in Case # 131974 and Assignment of Error No. 1 in Case #140605]

A trial court "has the authority to hold [an] offending party in contempt for acting in bad faith or for willful disobedience of its order." *Alexander v. Alexander*, 12 Va. App. 691, 696, 406 S.E.2d 666, 669 (1991) (citation omitted). In a show cause hearing, the moving party need only prove that the offending party failed to comply with an order of the trial court. The offending party then has the burden of proving justification for the failure to comply. *Id*.

A court has great discretion in the exercise of its civil contempt power. *Sapp v. Commonwealth*, 263 Va. 415, 425, 559 S.E.2d 645, 650 (2002); *Leisge v. Leisge*, 224 Va. 303, 309-10, 296 S.E.2d 538, 541 (1982). It "is within the discretion of the trial court" to conduct civil contempt proceedings, where its orders are violated. *Arvin, Inc. v. Sony Corp. of America*, 215 Va. 704, 706, 213 S.E.2d 753, 755 (1975).

On appeal, DRHI claims that the trial court cannot use its contempt powers to enforce a contractual duty and enter a monetary judgment.[11] Even assuming that DRHI's argument on the court's jurisdictional authority is not waived, this argument misses an obvious point: the monetary obligation owed by DRHI arises from the 2004 Decree, not the land sales contract. The monies owed to Mr. Hanback are not "mere debts or money judgments," arising from the real estate sales contract. Instead, they arise directly from the 2004 Decree. DRHI's false analogy that Mr. Hanback could simply sue under his contract for the complained amount misses the essential fact – that DRHI was already obligated to pay under the 2004 Decree.[12]

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[11] For example, Case No. 140605 Brief of Appellant at Pg. 15 – DRHI suggests that Mr. Hanback was "short-changed under a contract" and deems it inappropriate to seek issuance of a rule instead of filing a complaint.

[12] The law of merger is well settled and applies to acceleration of contractual remedies. *Bazzle v. Bazzle*, 37 Va. App. 737, 746, 561 S.E.2d 50, 55 (2002) When the judgment was rendered on the contract in this case, the contract and all rights under it ceased to exist and the 2004 Decree became the only evidence of the parties responsibilities and liabilities. *Sands v. Roller*, 118 Va. 191, 193, 86 S.E. 857, 858 (1915)

In convoluting the land sales contract and 2004 decree, DRHI spends significant pagination arguing that the trial court had no authority to exercise its contempt power to provide a contractual remedy. However, as discussed *infra*, Mr. Hanback never sought a contractual remedy. He enforced a judicial order.

DRHI also argues that the Court lacks the authority to order a monetary judgment in a civil contempt proceeding.[13] However, the law is clear that orders of a court can be enforced through contempt proceedings and sanctions designed to "coerce the contemnor into compliance" the Court's order. *Bradley v. American Household*, *Inc.*, 378 F.3d 373, 378 (4th Cir. 2004).

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *International Union*, *United Mine Workers v. Covenant Coal Corp.*,

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[13] For example, Case No. 140605 Brief of Appellant at Pg. 11-14 DRHI maintains that the only time a trial court can enter a monetary judgment against a contemptor is in the realm of domestic cases regarding spousal or child support.

12 Va. App. 135, 142 (Va. Ct. App. 1991) citing *United States v. United Mine Workers*, 330 U.S. 258, 303-04 (1947).

When "compensation is extended, a fine is imposed, payable to the complainant," such "fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy." *United Mine Workers*, 330 U.S. at 304.

Having issued a valid decree in 2004 against Mr. Hanback (to which DRHI did not object), the trial court had the inherent authority to fashion reasonable remedial sanctions as punishment after finding DRHI in contempt. *Epperly v. County of Montgomery*, 46 Va. App. 546, 554-557 (2005).

"Upon a finding of contempt, a trial judge has discretionary power to enforce decrees of the court." *Estate of Hackler*, 44 Va. App. at 64, 602 S.E.2d at 432 (citing Code § 18.2-456). This includes the power, in the court's "sound discretion," to determine the "degree of punishment." *Id.* at 64, 602 S.E. 2d at 432-33, quoting *Local 333B, United Marine Div. v. Commonwealth*, 193 Va. 773, 786, 71 S.E.2d 159, 167 (1952).

"The punishment for civil contempt," as in the instant case, "is remedial and for the benefit of the injured party." The scope of civil contempt sanctions is not limited to a fine or imprisonment, **but can be a monetary judgment**. *Rainey v. City of Norfolk*, 14 Va. App. 968, 974, 421 S.E.2d 210, 214, 9 Va. Law Rep. 86 (1992).

In *Rainey*, the trial court ordered a homeowner to bring his residence into compliance with state and local ordinances. When the homeowner failed to comply, the court held him in civil contempt. The court indicated that, as part of the sanctions, it would enter a personal judgment against the homeowner for the cost of repairs after the work was completed. *Id.* at 970, 421 S.E. 2d at 211-12. On appeal, the *Rainey* landowner argued, as DRHI does, that entering a money judgment exceeded the permissible scope for civil sanctions. Affirming the trial court, the Court of Appeals found that the sanctions did "no more than what was necessary to compel [the homeowner] to comply…" and that the sanctions imposed, including the entry of a monetary judgment

were a reasonable exercise of the trial court's discretion. *Id.* at 975, 421 S.E.2d at 214.

Indeed, "the punishment in a civil contempt proceeding 'is adapted to what is necessary to afford the injured party remedial relief for the injury or damage done by the violation." *Deeds v. Gilmer*, 162 Va. 157, 262, 174 S.E. 37, 78-79 (1934). In this case, the purpose of the civil contempt proceeding was effecting the earlier order. The entry of a monetary judgment was discretionary and proper as a remedy designed to coerce DRHI into compliance.

In summary, the trial court always had the authority and jurisdiction to hold DRHI in contempt of the 2004 Decree, either by monetary award or another sanction. No argument by DRHI seriously challenges that authority.[14]

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[14] Notably, as in with its assignments of error concerning jurisdiction of the trial court, DRHI did not initially dispute the trial court's authority to hold it accountable to the terms of the 2004 Decree. At May 9, 2013 hearing, it provided its evidence on the merits. The first time, DRHI even mentioned lack of authority as an "Objection" was on the Order entered on September 20th from which it appeals. Therefore, DRHI has waived this assignment under the Rules of this Court. See, Rules of Supreme Court of Virginia, Rule 5A:18.

II. The Trial Court Had More Than Sufficient Evidentiary Basis to Hold DRHI in Contempt of the 2004 Order and Enter Judgment for $350,000.

A. **The evidence established that Mr. Hanback was owed $350,000 under the 2004 decree.** [Responds to Assignment of Error No. 4 in Case # 131974 and to Assignment of Error No. 4 in Case #140605]

For a contempt action to succeed, the moving party must show that that offending party violated a clearly defined and expressed term of the judicial decree. *Taliaferro v. Horde's Adm'r.*, 22 Va. (1Rand.) 242, 247 (1822). Further, there must be an expressed command or prohibition that is violated. *French v. Pobst*, 203 Va. 704, 710, 127 S.E.2d 137, 141 (1962).

As stated *infra*, the Court's holding is judged by the abuse of discretion standard. "When dealing with discretionary decisions, only 'when reasonable jurists **could not** differ can we say an abuse of discretion has occurred." *Robbins v. Robbins*, 48 Va. App. 466, 482, 632 S.E.2d 615, 623 (2006). "The abuse of discretion standard, 'if nothing else, means that the trial judge's "ruling will not be reversed simply because an appellate court disagrees." *Hernandez-Guerrero*, 46 Va. App. at 370, 617 S.E.2d

at 412 (quoting *Thomas v. Commonwealth*, 44 Va. App. 741, 753, 607 S.E.2d 738, 743, *aff'd*, 45 Va. App. 811, 613 S.E.2d 870 (2005) (en banc)).

"When the sufficiency of the evidence is challenged on appeal, this Court is required to view the evidence in the light most favorable to the prevailing party at trial and to accord to that party the benefit of all reasonable inferences fairly deducible from the evidence." *Nusbaum v. Berlin*, 273 Va. 385, 407 (Va. 2007) (citing *Viney v. Commonwealth*, 269 Va. 296, 299, 609 S.E.2d 26, 28 (2005)). Of course, it is solely within the province of the trial court, as the fact-finder, to determine the credibility of the witnesses, testimony, and evidence. *Mercer v. Commonwealth*, 259 Va. 235, 242, 523 S.E.2d 213, 217 (2000).

On appeal, DRHI bears the burden of proving that the Court abused its discretion in finding that DRHI owed $350,000 to Mr. Hanback under the 2004 Decree. *Carter v. Thornhill*, 19 Va. App. 501, 509, 453 S.E.2d 295, 300 (1995). This burden requires DRHI present a record that demonstrates that the decision of the trial court was clearly erroneous or unsupported by the record.

Justis v. Young, 202 Va. 631, 632, 119 S.E.2d 255, 256-57 (1961); *Steinberg v. Steinberg*, 11 Va. App. 323, 326, 398 S.E.2d 507, 508 (1990). If DRHI, "fails to do this, the judgment will be affirmed." *Justis*, 202 Va. at 632, 119 S.E.2d at 257.

Here, Judge Smith weighed the evidence and testimony from the May 9, 2013 hearing and made the factual determinations as to their validity in his Letter Opinion of July 16, 2013. (A394). His factual determinations, "like those of a jury, are binding," on this Court. *Richardson v. Richardson*, 242 Va. 242, 246, 409 S.E.2d 148, 151, 8 Va. Law Rep. 1008 (1991)); Code § 8.01-680. This Court is not permitted to now reweigh the evidence, but can only reverse the finding of the lower court if it was plainly wrong or without evidence to support. *School Board of Campbell County v. Beasley*, 238 Va. 44, 51, 380 S.E.2d 884, 888 (1989).

The trial court's finding was primarily based on the evidence adduced on May 9, 2013. At that hearing, the DRHI representative admitted that DRHI – through its homebuilding unit D.R. Horton -- had used Mr. Hanback's property as a means to obtain five additional building lots. (A85-91). At the same

hearing, the City representative stated that DRHI proffered Mr. Hanback's land for the "bonus density" and that the dedication was "critical" in making that happen. (A144-146). Based on the testimony and other evidence offered, Judge Smith found that "as a party of the Subdivision Plans, DRHI proffered 1.14 acres of the Hanback Parcel…in exchange for which DRHI received a five-lot density bonus in its development of the Assemblage." (A400). That finding is not challenged on appeal.

As a result of this factual finding, the trial court held that there was an obligation under the 2004 Decree for DRHI to compensate Mr. Hanback for the "bonus density" which his land permitted. Judge Smith found that "Mr. Hanback is entitled to additional compensation for the five additional lots provided to DRHI…in the amount of $350,000.00." (A401). On appeal, DRHI provides zero evidence to disturb this factual finding.

Here, DRHI was faced with a simple obligation: pay Mr. Hanback an amount equal to $70,000 per lot for each additional lot "permitted" by the subdivision of his property – or attempt to circumvent the 2004 Decree by splitting off his land.

When the smoke cleared from the May 9th hearing, it was undisputed that half of Mr. Hanback's land was exchanged as a *quid pro quo* for the "bonus density" enjoyed by DRHI.[15] It was also clear – contrary to DRHI's false denials – that the 2007 proffer of Mr. Hanback's land was suggested by DRHI to increase the value of the project. Finally, it was obvious that the 2010 subdivision plan submitted by DRHI minimized the houses on Mr. Hanback's property (and any amounts owed to him), while using the "bonus" density to crowd all the houses on the neighboring property. There is no abuse of discretion by the trial court in making these findings.

In summary, the trial court had sufficient, if not overwhelming, evidence to find that Mr. Hanback's property upon subdivision "permitted" additional homes, namely the five (5) lots which could not otherwise be built in the assemblage.

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[15] In its appeal, DRHI frequently attempts to delineate between itself and D.R. Horton, its wholly-owned subsidiary. The trial court correctly noted the nominal difference between the parties. (A396)

B. The trial court did not "re-write" the 2004 Decree. [Responds to Assignment of Error No. 2 Case #140605]

Trial courts "have the authority to interpret their own orders," and appellate courts "give deference to the interpretation adopted by the lower court." *Fredericksburg Constr. Co., Inc. v. J.W. Wyne Excavating, Inc.*, 260 Va. 137, 144, 530 S.E.2d 148, 152 (2000). The trial court reviewed the plain language of the 2004 Decree, i.e. "permit the construction of six or more residences." The word "permit" is defined as "to suffer, allow, let; to give leave or license." BLACK'S LAW DICTIONARY, 1968. The factual narrative discussed *supra* identifies that the Hanback property had (i) "more than five" lots built upon it, and (ii) was responsible for the provision of the five additional lots for the larger assemblage. The Hanback property "permitted" or "gave license to" the creation of additional lots for DRHI in its planned development. (A399-401) Therefore, Hanback should recover under the plain meaning of the 2004 Decree.

C. **The trial court did not award "relief" not requested in the original litigation – rather it found DRHI in contempt of a specific provision of the 2004 Decree.** [Responds to Assignment of Error No. 7 in Case #140605]

The original 2004 Decree arose in equity in which a court may order "the recovery of specific property or monies, ejectment from land, or injunction either directing or restraining the defendant officer's actions," or *for specific performance of a real estate contact*. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688 (1949).

The fact that an equitable remedy may require one party to pay money to another does not make it "money damages." *Bowen v. Massachusetts*, 487 U.S. 879, 894 (U.S. 1988). Moreover, it's irrelevant. The trial court always has authority to enforce the parties' obligations in equity, whether or not they sought a specific remedy a dozen years previous.

Here, the 2004 Decree enforced the parties' obligations under the earlier contract, which became subsumed into it. The portion of the Decree protecting Hanback's interest in future

compensation is as enforceable as any other provision – such as the one DRHI used to close on the Hanback land.

It is immaterial whether Mr. Hanback sued for this relief or not before 2004, the decree speaks for itself and the trial court had the authority to hold DRHI in contempt for acting in bad faith or for willful disobedience of its order. *Carswell v. Masterson*, 224 Va. 329, 332, 295 S.E.2d 899, 901 (1982).

D. The trial court did not "redraft" the 2001 land sales contract. [Responds to Assignment of Error No. 3 Case #140605]

"[W]hen a party invokes a court's contempt authority and seeks to bring a party into compliance with the court's order, '[i]t is not the contract but rather the decree that is being enforced." *Doherty v. Doherty*, 9 Va. App. 97, 99, 383 S.E.2d 759, 760, 6 Va. Law Rep. 284 (1989). When the 2004 Decree was entered and Mr. Hanback forced to go to closing, the contract and all rights under it ceased to exist and the Decree became the only evidence of the party's responsibilities and liabilities. *Sands v. Roller*, 118 Va. 191, 193, 86 S.E. 857, 858 (1915)

Thus, where the trial court later conducted a civil contempt proceeding to enforce Mr. Hanback's rights under the 2004 Decree, it did not "rewrite" any land sales contract – nor did it need to do so. The original contract, as of 2013, was no longer relevant. Only the Decree survived.

E. The trial court did not consider irrelevant evidence. [Responds to Assignment of Error No. 3 in Case # 131974 and to Assignment of Error No. 6 in Case #140605]

DRHI argues that the trial court erred by considering evidence of the "bonus density" which was not present in the parties' original contract, the 2002 pleadings, or the proceeding which led to the 2004 Decree. In making this argument, DRHI again ignores the actual language of 2004 Decree – which contemplated additional payment based on extra lots "permitted" by the Hanback land.

In considering the evidence regarding "bonus density," the trial court was both addressing the language of the 2004 Decree <u>and</u> ensuring that the relief awarded to Mr. Hanback was commensurate with the benefits gained by DRHI (and the vested interest of Mr. Hanback which had been ignored). *See*, *United*

Mine Workers, 330 U.S. at 304. Since the 2004 Decree called for that analysis, it would have been illogical to ignore the evidence.

F. DRHI's failure to pay was not justified. [Responds to Assignment of Error No. 5 in Case #140605]

DRHI argues that the record is devoid of any bad faith or willful disobedience on their part. In fact, there is no evidence that it has acted honestly. Here, DRHI spun off more than half of Hanback's land in order to maximize its profits. It gave him no notice to Hanback of the rezoning, or the subdivision, and then denied these same facts when initially approached in 2012. After the Court held a full hearing on the issue and found that DRHI owed $350,000, it still refused to pay any amount. Eventually, after months of obfuscation, it noticed an appeal in the late fall of 2013 – almost four years after this debt came due.

Even after appealing, DRHI refused to post a legitimate *supersedeas* bond until Mr. Hanback finally served a garnishment and obtained an Order of Payment from the trial court. At all times, DRHI has acted in bad faith and required Mr. Hanback and his counsel to exercise months (if not years) of unnecessary effort to chase down a simple debt.

III. <u>The Trial Court Erred in not granting Mr. Hanback interest and attorney's fees.</u>

A. Interest

The Circuit Court's failure to award Mr. Hanback interest dating back to January 8, 2010, when the subdivision plan was initially approved, constitutes reversible error. Here the error is two-fold. First the trial court did not reference the correct date in its letter opinion for vesting Mr. Hanback's rights, choosing the final site plan date instead of the subdivision plan approval date. Second, the trial court erred in not awarding Mr. Hanback the interest required when enforcing payment under a final order.

In regard to the first issue, the trial court uses May 8, 2011, the day which the site plan was approved by the City of Fairfax, as the date of the subdivision approval – and thus the vesting of Mr. Hanback's rights to additional funds. (A397). However, the Subdivision plans were actually submitted in 2009, and approved by the city on **January 8, 2010**. (A91, 305-307). The plans approved on May 8, 2011 were the final site plans before construction, not the Subdivision plan. (A105, 108, 308).

Significantly, the 2004 Decree commanded that Hanback would receive additional funds at the time <u>any</u> subdivision plans for the development of the property sold by Mr. Hanback are <u>approved</u> by the City of Fairfax. (A29). This approval was obtained on January 8, 2010.

Secondly, and more pertinently, the trial court erred in not awarding Mr. Hanback interest dating back to the 2010 vesting. Section 8.01-382 of the Virginia Code states that the decree of Court "shall bear interest from the date of its entry." The award of such post-judgment interest is not discretionary.[16]

Here, the final order was entered in 2004. Mr. Hanback's rights became vested on January 8, 2010, when that subdivision plan was approved by the City of Fairfax – and DRHI received five additional building lots. Therefore, he is automatically entitled to interest from that date forward. *See* § 8.01-382 of the Va. Code.

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[16] Even if the Court didn't consider the award mandatory, it should still award interest as prejudgment interest to compensate Hanback for the loss of his funds. (The award of prejudgment interest is to compensate…for the loss sustained by not receiving the amount to which he was entitled at the time he was entitled to receive it." *Employer-Teamsters Joint Council No. 84 v. Weatherall Concrete, Inc.*, 468 F. Supp. 1167, 1171 (1979)).

Awarding statutory interest to Mr. Hanback is also fully consistent with the role of a Court in assessing contempt. "In [civil] contempt proceedings . . . the punishment which may be imposed is not limited to a fine and/or imprisonment… It is adapted to **what is necessary to afford the injured party remedial relief for the injury**…" *Deeds v. Gilmer*, 162 Va. 157, 262, 174 S.E. 37, 78-79 (1934). An award of interest is designed to provide a party, who has been without relief for an extended period of time, the remedial relief for the contemnor's injury. *Gill v. Rollins Protective Servs. Co.*, 836 F.2d 194 (4th Cir. 1987).

Failure to award Mr. Hanback any interest prior to September 2013 is contrary to the goal of adopting a remedy which affords the injured party remedial relief. Notably, DRHI refused to pay the $350,000, both in 2010 and going forward through today. It has dragged Mr. Hanback through years of litigation. In effect, it has enriched itself, at a significant cost to Mr. Hanback, with its obstructive tactics – unless the Court assigns interest back to the date when the obligation vested.

B. Attorney's Fees

The Circuit Court also failed when it did not give Mr. Hanback an opportunity to seek reimbursement of his attorney fees. (A457) As discussed *infra*, the Rule to Show Cause was brought to enforce a specific decree of the trial court, not a contract.[17] He should not have to pay legal fees simply to have a court order respected. Here, the error is especially harmful, where Mr. Hanback, an elderly individual, has been forced to chase DRHI, a national company, through multiple courts simply to obtain compliance with an existing Court order.

While an award of attorney's fees is generally a matter submitted to the trial court's sound discretion, *Graves v. Graves*, 4 Va. App. 326, 333, 357 S.E.2d 554, 558, 3 Va. Law Rep. 2865 (1987), the trial court did abuse its discretion by finding appellant in contempt and yet failing award attorney's fees, either retroactively or prospectively, for the ongoing contempt.

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[17] Ironically, the parties' contract did contain an attorneys' fees provision, as well as its own provision relating to additional compensation upon the subdivision of the land. (A213)

"It is within the discretion of the trial court to include, as an element of damages assessed against the defendant found guilty of civil contempt, the attorneys' fees incurred in the investigation and prosecution of the contempt proceedings, both under the common law . . . and under express statutory provisions." *Arvin, Inc. v. Sony Corp. of America*, 215 Va. 704, 705 (Va. 1975).

In the *Arvin* case, the contemnor intentionally, willfully, and flagrantly violated a court order, even after it had received the show cause order issued by the trial court. The Supreme Court confirmed the ability to award counsel fees to indemnify the opposing party for the expenses incurred in investigating and prosecuting the contempt proceeding and to restore the *status quo* as far as possible. *Id*.

This case is analogous to *Arvin*, in that Mr. Hanback did not sue for breach of a contract, but rather brought forward contempt proceedings under the 2004 Decree. The trial court did not find DRHI liable for breach of contract, but rather held it in contempt for wilful disobedience of the 2004 decree. As such, the trial

court's failure to award attorney's fees in the July 17th opinion or subsequent orders invited more disobedience.

Indeed, it has taken Mr. Hanback nearly two years and over $100,000 in legal fees to have DRHI – one of the nation's largest homebuilders – **simply comply with the 2004 Decree**. The bulk of the time and effort has actually occurred after the Court's July 17th opinion, when the trial court made it plain that DRHI to must pay the $350,000 to purge its contempt. Instead of simply paying the debt it owed, DRHI (i) refused to pay the money or take any cooperative action, (ii) opposed the issuance of a Rule, (iii) failed to post a *supersedeas* bond until challenged by Mr. Hanback, (iv) filed two appeals stemming from its own negligence in not obtaining a proper bond for the *supersedeas* and (v) filed two additional appeals which raised a new legal issue (jurisdiction) that had not been previously raised.

The intention and net effect of these actions has been to overwhelm Mr. Hanback, a solitary citizen and landowner, with ongoing legal fees that he cannot pay with the hope he will give up his cause. Therefore, Mr. Hanback seeks a **remand** to the

Circuit Court to seek legal fees arising from the contempt proceedings – so that the Rule to Show Cause litigation does not itself absorb all the funds which are lawfully owed to him.

CONCLUSION

The Circuit Court had the authority and jurisdiction to enforce its 2004 decree – which it did explicitly. It followed the law and evidence and correctly ordered a monetary judgment of $350,000.00. For the reasons stated above, Mr. Hanback respectfully requests the appeal by DRHI be denied.

Mr. Hanback further requests that this Court reverse the error by the Circuit Court and (i) grant him statutory interest dating back to January 8, 2010 and (ii) provide him an opportunity to seek relief on his attorney fees. In that latter respect, Mr. Hanback seeks a remand to the Circuit Court on that discrete issue so as to present evidence regarding his legal fees.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have complied with Rule 5:26(h) of the Rules of the Supreme Court of Virginia.

I hereby certify that on this 23rd day of June 2014, that fifteen copies of this Brief of Appellee, with one electronic copy on CD, was hand-filed with the Clerk of this Court and three copies, with one electronic copy on CD, of the same was served upon the following persons UPS Ground Transportation:

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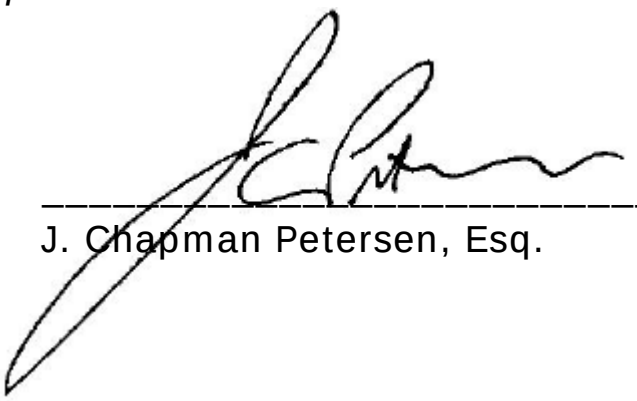

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