In The

Supreme Court of Virginia

RECORD NO. 150456

STEVEN F. TVARDECK, JR., and MARTA P. TVARDECK,

Appellants,

v.

POWHATAN VILLAGE HOMEOWNERS ASSOCIATION, INC.,

Appellee.

BRIEF OF APPELLEE

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SCV: Submitted on 07-28-2015 08:59:09 EDT for filing on 07-28-2015

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

ARGUMENT 1

I. THE CIRCUIT COURT DID NOT ERR IN HOLDING THAT THE STATUTE OF LIMITATIONS FOR ANY CHALLENGE TO AN AMENDMENT BEGAN TO RUN UPON THE DATE THAT INSTRUMENT WAS RECORDED WITH A CERTIFICATION 1

Summary of Arguments 1

A. Standard of Review 1

B. The Trial Court Correctly Found that the Statute of Limitations Began to Run From the Date the Instrument was Recorded with a Certification 1

1. Subsection E uses the word effective and does not expressly refer to Subsection F 3

2. The Certification complies with the requirements of Subsection F 4

3. Even if the Certification did not strictly comply with Subsection F, the Plaintiffs' interpretation of Subsection E leads to absurd results 5

C. The Zinone Court's Comparative Analysis Does Not Apply to this Case 11

D. Legislative History Provides No Real Guidance 12

E. Common Law Traditions Do Not Compel a Different Result 12

F. Case Law From Other Jurisdictions Do Not Address when the Statute of Limitations Begins to Run..... 13

G. The Plaintiffs' Interpretation of this Section is Not Similar to Other Provisions Concerning Limitations on Special Rights..... 13

H. Amicus Curiae Briefs Miss the Focus of this Appeal..... 15

II. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DETERMINING THE AMOUNT OF THE ATTORNEYS FEES AWARD AND ITS AWARD WAS NOT EXCESSIVE..... 18

A. Standard of Review 18

B. The Association did not waive its Claim for Attorney's Fees 18

C. The Court did not Abuse its Discretion in Determining the Amount of Attorney's Fees Awarded 19

CONCLUSION..... 23

CERTIFICATE 24

TABLE OF AUTHORITIES

Page(s)

CASES

Burns v. Stafford County,
227 Va. 354, 315 S.E.2d 856 (1984).....6, 7

Conyers v. Martial Arts World of Richmond, Inc.,
273 Va. 96, 639 S.E.2d 174 (2007).....1

Jeneary v. Commonwealth,
262 Va. 418, 551 S.E.2d 321 (2001).....6

Manchester Oaks Homeowners Association v. Batt,
284 Va. 409, 732 S.E.2d 690 (2012).....21

Robinson-Huntley v. George Wash.
Carver Mutual Homes Association,
287 Va. 425, 756 S.E.2d 415 (2014).....18

Westminster Investing Corp. v. Lamps Unlimited,
237 Va. 543, 379 S.E.2d 316 (1989).....7

Zinone v. Lee's Crossing Homeowners Association,
282 Va. 330, 714 S.E.2d 922 (2011).....11

STATUTES

Va. Code § 8.01-229.....14

Va. Code § 8.01-243(B).....8

Va. Code § 8.01-253.....8

Va. Code §§ 55-515, et seq. 1

Va. Code § 55-515.1.....11

Va. Code §§ 55-515.1(D-F) 12

Va. Code § 55-515.1(E) ..... passim

Va. Code § 55-515.1(F) ..... passim

RULES

Va. Sup. Ct. R. 3:8 19

Va. Sup. Ct. R. 3:25(B) 18, 19

Va. Sup. Ct. R. 3:25(C) 19

ARGUMENT

I. THE CIRCUIT COURT DID NOT ERR IN HOLDING THAT THE STATUTE OF LIMITATIONS FOR ANY CHALLENGE TO AN AMENDMENT BEGAN TO RUN UPON THE DATE THAT INSTRUMENT WAS RECORDED WITH A CERTIFICATION.

Summary of Arguments

This case does not involve what steps must be taken to amend a declaration containing restrictions on use of property within a property owners association. Nor does it involve any balancing between the rights of an association and the lot owners. Instead, the sole issue presented in this argument is what is the deadline for a homeowner to challenge a recorded amendment to the declaration?

A. Standard of Review.

Since the sole issue is interpretation of a statute, the standard of review under this section is de novo. Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007).

B. The Trial Court Correctly Found that the Statute of Limitations Began to Run From the Date the Instrument was Recorded with a Certification.

In 2006, Plaintiffs acquired a home governed by a Declaration of Restrictions permitted by the Virginia Property Owners Association Act Virginia Code §§ 55-515, et seq. (App. 25). In December of 2008, an amendment was recorded that placed a cap on the number of units that

could be rented at any one time (App. 105). Plaintiffs did nothing at that time. In November of 2013, nearly five years later, Plaintiffs brought this suit seeking to have the amendment declared invalid. The Complaint discloses no reason why they waited nearly five years after the recordation of the amendment to bring the challenge. The trial court correctly ruled that Plaintiffs' challenge was barred by Virginia Code § 55-515.1(E). Virginia Code § 55-515.1(E) states: "An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective."

Since it was uncontested that the Plaintiffs brought this action more than one year after the amendment was recorded, the Trial Court correctly granted the Special Plea and held that the claim challenging the validity of the amendment was time barred. The Trial Court found that the amendment contained a certification that referenced Virginia Code § 55-515.1(F) in its title (App. 245). The Trial Court observed that the certificate was signed by the principal officer (App. 245). Furthermore, the Trial Court recognized that the certification stated that the amendment was approved by a two-thirds vote (App. 247). The certification also stated that evidence was on file with the Association (App. 109). The Trial Court held that the reasonable interpretation of the statute of limitations was that any

claim to challenge the validity must be brought within one year after the amendment was recorded with a certification. Since the one year time frame had passed, the claim was barred. Virginia Code Section 55-515.1(E).

1. Subsection E uses the word effective and does not expressly refer to Subsection F.

The Plaintiffs seek to avoid this result by contending that the one year period does not begin to run until an amendment was recorded with a certification that matches word for word the language set forth in Virginia Code § 55-515.1(F). Nothing in Subsection E specifically refers to the definition of "effective" in Subsection F. The purpose of Subsection F is to make clear that if an Association adopts an amendment on a particular day, the amendment does not go into effect until it is recorded which gives constructive notice to the world. The plain meaning of the word "effective" in Subsection E is once it takes effect and it takes "effect" upon recordation. The amendment in question was recorded on December 23, 2008. From that date forward, the amendment was clearly effective since all purchasers of lots were on notice of the amendment and treated it as if it was in effect. The Plaintiffs had every right to file an action prior to January of 2009 asserting that the amendment should be declared invalid. In such a suit, the Plaintiffs could rely on any grounds they thought advisable, including

the claim that the certification did not comply with Subsection F and as a result, the amendment was not valid. However, they failed to do so. Thus, under the plain meaning of the word “effective”, the statute began to run once the amendment was recorded and the trial court was correct in granting the Special Plea of the statute of limitations, because suit was not filed until nearly five years later. Accordingly, even if the amendment did not contain a certification that complied with Subsection F, since it became “effective” upon recordation, the suit was not timely filed.

2. The Certification complies with the requirements of Subsection F.

Even if the word “effective” in Subsection E expressly referenced the definition of “effective” in Exhibit F, the Special Plea still was properly granted. Subsection F states that an amendment shall be effective when a copy is recorded together with a certification as described in that subsection. Virginia Code § 55-515.1(F). Subsection F contains two requirements. First, the document must be recorded. Second, it must have a certification of the principal officer that the requisite majority signed the amendment or ratifications of the amendment. At the time it was recorded, it contained a legend “Certification required by Virginia Code § 55-515.1(F)” in its title (App. 109). It was signed by a person who purported to be an officer. Plaintiff complains that the certification does not expressly state that

the owners had signed ratifications thereof. However, the certification states that it had been approved by a vote of two-thirds of the Class A votes and such evidence was on file with the Association. Subsection F does not specifically require that the owners sign the amendment itself, but allows for signatures on ratifications. The word ratification is not defined. Any documents signed by owners confirming that they voted in favor of the amendment would constitute a ratification. Thus, the certification that evidence was maintained on file with the Association complies with the requirement of Subsection F since the evidence is a ratification. Accordingly, the statute began to run at the date of recordation since it was recorded with a certification.

3. Even if the Certification did not strictly comply with Subsection F, the Plaintiffs' interpretation of Subsection E leads to absurd results.

Even if the Plaintiffs were correct that the certification does not strictly comply with Subsection F, the Plaintiffs' interpretation that the statute of limitations does not begin to run until an amendment is recorded with a certificate which strictly complies with the language of Subsection F leads to absurd results. Under the Plaintiffs' interpretation, they have an unlimited time to bring this claim. For example, under the Plaintiffs' theory, they could bring this suit 50 years from now and it would still be timely.

It is a well recognized principle that the court should reject a literal construction of the words of a statute that leads to absurd results. Jeneary v. Commonwealth, 262 Va. 418, 431, 551 S.E.2d 321, ___ (2001). The interpretation suggested by the Plaintiffs is manifestly absurd for several reasons. First, it sets in place a statute of limitations that never begins to run so long as a plaintiff contends the amendment was not recorded with a certificate that strictly complies with Subsection F. The entire purpose of a statute of limitations is to put a deadline on the commencement of a claim so that parties will know their rights. This is especially important in connection with a Homeowners Association because purchasers of lots are bound by amendments of record. That is, a purchaser may have purchased a lot in 2010 on the assumption that it was subject to certain amendments that were recorded in 2008. Under the Plaintiffs' theory, no one would know which amendments were properly adopted and in effect until a court determined at some later date whether or not a certification was proper.

As this Court has stated, statutes of limitations "serve an important and salutory purpose." Burns v. Stafford County, 227 Va. 354, 359, 315 S.E.2d 856, 859 (1984). Without limitations "defendants could find themselves at the mercy of unscrupulous plaintiffs who hoard evidence that supports their position while waiting for their prospective opponents to

discard evidence that would help make a defense." Id. Accordingly, "courts are obligated to enforce statutes of limitations strictly and to construe any exceptions thereto narrowly." Westminster Investing Corp. v. Lamps Unlimited, 237 Va. 543, 547, 379 S.E.2d 316 (1989).

Under the Plaintiffs' interpretation, the Association would have the burden of maintaining records forever. That is, to properly defend a claim that it was not signed by the appropriate officer, the Association would be required to maintain records concerning the identity of the principal officer from its inception, whether that was 10, 20, 30 or even 50 years in the past. In addition, if a challenge is made to a certification, the plaintiff could in that suit also demand proof that the appropriate number of ratifications were signed. As the officers of a homeowners association, such as the secretary, are not paid for their services, it is unlikely the General Assembly intended to require the Association to maintain copies of ratifications and documentation concerning its principal officers forever. In contrast, the interpretation advanced by the Association is consistent with the unpaid nature of association officers and the general purpose of a statute of limitations.

Further, while some of the potential challenges would be apparent from the face of the recorded document, such as the form of the

certification, others would not. What if a plaintiff contended that the person who signed the certification was not the appropriate officer? In such a case, no matter when it was recorded, a purchaser would have no way to determine whether an amendment was subject to challenge, since the identity of the officers of an unincorporated homeowners association are not contained in any public record. It would be impossible for a prospective purchaser to confirm whether the person who signed amendments in prior years had the appropriate authority. Under the Plaintiffs' interpretation, those prospective purchasers run the risk that amendments that were recorded 10 or 20 years ago are subject to being invalidated, because the limitations period never commenced.

Most other limitation periods regarding property are five years. Virginia Code § 8.01-243(B), Virginia Code § 8.01-253. (A suit to set aside fraudulent conveyance must be filed within five years of the recordation.) The General Assembly likely understood that persons buy and sell homes located in a homeowners association on a regular basis. Accordingly, the persons who live in properties subject to declarations, as well as persons buying and selling, have a right to know which amendments are binding and which amendments are subject to challenge. The short statute of

limitations limits the timeframe during which amendments are subject to being invalidated, thus protecting buyers and sellers.

Another absurdity arising from the Plaintiffs' interpretation is the court would be unable to resolve the statute of limitations without first determining the merits. If a plaintiff filed an action claiming the certification was not properly completed, the court could not, under the Plaintiffs' position, determine whether a statute had commenced to run until it determined whether the certification was proper. That turns a statute of limitations on its head. The whole purpose of the statute of limitations defense is to bring a quick resolution to an action without litigating the merits. You should not have to reach the merits of the claim to determine whether or not the statute has begun to run.

Finally, under the interpretation suggested by the Plaintiffs, there really is no statute of limitations. If a plaintiff wishes to challenge whether the certification is done properly, such a suit is always timely, because if the certification is not exactly correct, then the statutory period has not yet started to run. If instead the court determines that the certification fully complies with the statute, it will never reach the statute of limitations issue because it has already found it fully complies with the statute.

The logical interpretation of Subsection E is that the statute of limitations begins to run when it is expected that the members comply with the rule. That occurs when an amendment is recorded which purports to comply with the statute. Even if the certification does not comply word for word with the requirements of Subsection F, or even if there is a potential dispute that it was not signed by the appropriate officer, the statute begins to run upon recordation. Under such an interpretation, an association would be required to maintain its records relating to a vote for one year after the amendment was effective. Thereafter, it would not be required to maintain those records. Under the Plaintiffs' interpretation, if the certification does not match word for word the language contained in Subsection F, the Association is required to maintain amendments, the records of votes, and ratifications by each lot owner in perpetuity. Forcing the Association to maintain ratifications signed by each of the lot owners for 20 or even 50 years is the type of burden that the statute of limitations is designed to prevent.

For each of the foregoing reasons, the trial court was correct in ruling that the statute of limitations began to run once the 2008 amendment was recorded and since this claim was brought in 2013, five years later, it was barred by the statute of limitations.

C. The Zinone Court's Comparative Analysis Does Not Apply to this Case.

The Plaintiffs contend that the trial court should have used a comparative analysis of the provisions of the Condominium Act with the Property Owners Act in determining the meaning of Virginia Code § 55-515.1. Zinone v. Lee's Crossing Homeowners Association, 282 Va. 330, 714 S.E.2d 922 (2011). While that case did involve a comparison of the language contained in the Condominium Act and the Property Owners Act, the Plaintiffs fail to explain how the Zinone analysis would apply in this case. In Zinone, this court observed "however, it is self-evident that the differences between a subdivision consisting of individual family dwellings and a condominium consisting of individual ownership of living units in a multi-unit structure, required the legislature to treat the two entities differently, putting greater restrictions on the governance of the latter, and giving more flexibility to the governance of the former." Zinone at 337. Based on those differences, the court found that the use of different language in the two sections at issue suggested they should be interpreted differently. However, the Plaintiffs fail to explain why the difference between ownership of individual family dwellings and multi-unit structures would suggest that one statute of limitations would never begin to run while the other statute of limitations would be one year from the date of recordation.

It is certainly not "self-evident" in this case that the difference in subdivisions versus condominiums would suggest that parties who lived in multi-unit structures were entitled to rely upon the validity of an amendment that had been recorded more than a year, whereas the parties living in individual family dwellings would have no way to be certain whether amendments recorded in the past were valid, no matter how long ago they were recorded.

D. Legislative History Provides No Real Guidance.

While the Plaintiffs also argue that legislative history shows that the legislature intended that the statute of limitations would not begin to run until the certification had been properly made, legislative history does not support that proposition. The highlighted language cited by the Plaintiffs merely shows that the legislative summary concluded that subparagraphs D-F of Virginia Code § 55-515.1 put a limit on any action to challenge the validity of an amendment and also dealt with when amendments are effective. Nowhere does it state that the General Assembly intended to use the exact same definition for both subparagraphs E and F.

E. Common Law Traditions Do Not Compel a Different Result.

While the Plaintiffs seek to rely upon common law traditions, the statute specifically states that any challenge must be brought within one

year. The only common law traditions that the Plaintiffs refer to are what must be done by the unit owners to manifest their intent to be bound by an amendment. However, this case only involves the deadline for when such a challenge must be filed. There is no strong common law tradition that suggests a statute of limitations must begin on any particular date or that a particular certification must be required before a statute of limitation would begin to run.[1]

F. Case Law From Other Jurisdictions Do Not Address when the Statute of Limitations Begins to Run.

While the Plaintiffs contend that decisions from other jurisdictions support their position, each of the cases cited are unrelated to the commencement of a statute of limitations. Thus, they are of no assistance in resolving the issues in this case.

G. The Plaintiffs' Interpretation of this Section is Not Similar to Other Provisions Concerning Limitations on Special Rights.

The Plaintiffs' suggestion that their interpretation is similar to other provisions concerning tolling of statute of limitations is misplaced. Each of the items listed in the Plaintiffs' brief have a triggering event which has

[1] There is, of course, a common law tradition that persons are not bound until recordation of documents in their chain of title. Further, there are numerous instances in which a statute of limitations begins to run from the recordation of the document, not from the signing of a document.

some rational relationship to the claim. For example, while the statute of limitations for fraud does not begin until the discovery of the fraud, that makes sense in that a plaintiff cannot bring an action for fraud if he is unaware that he has been defrauded. On the other hand, once he is aware that he has been defrauded, he has a duty to act quickly. Likewise, Virginia Code § 8.01-229 tolls the limitation period where a party is prevented from bringing a claim due to some condition, such as infancy or incapacity, however, the tolling ends once that condition expires. In each instance cited in the Plaintiffs' Brief, there is a definite date upon which the statute of limitations would begin to run and in most cases it occurs when the plaintiff realizes they have suffered an injury. In contrast, under the Plaintiffs' interpretation, they could have been present the day the amendment was submitted to record, could have read the amendment and determined that the certification did not fully comply, and could still be entitled to wait 50 years to bring their claim.

Under their interpretation, the commencement of the statute of limitations would not begin to run until the claim itself is no longer valid. For example, if an amendment was recorded in 2000 with an improper certification and then in 2005 the association realized the error in the certification and recorded the amendment again with proper certification,

under the Plaintiffs' interpretation, the statute of limitations would begin to run once the proper certification was filed in 2005. However, no plaintiff could successfully challenge the 2005 recording because the recordation had the proper certification. It makes no sense to have a statute of limitations commence at a time when the claim itself no longer exists. They have not been able to find any other law or statute that would accrue in such a fashion.

While they claim that their interpretation protects property owners from small cliques of homeowners pushing through restrictions at randomly called meetings, it does no such thing. If they were concerned that the appropriate number of persons had not voted for the amendment in 2008, they could have brought an action challenging it at that time. They alleged in their Complaint that they owned their home since 2006, well before this amendment was recorded. They failed to explain why they waited nearly five years.

H. Amicus Curiae Briefs Miss the Focus of this Appeal.

Two parties have filed Amicus Curiae briefs contending that this case requires strict construction of the restrictive covenants to prevent homeowners associations from infringing on property rights and that statutory requirements for amendments of declarations must be strictly

construed. The briefs completely miss the point. There is no dispute that the General Assembly has allowed a homeowners association to amend its declaration by following a particular procedure. There is no dispute that if they fail to follow that procedure and that deficiency is timely raised before a court, the amendment should be declared invalid. The only question is what is the deadline for making such a challenge. As pointed out above, the General Assembly has set a deadline within which to challenge whether that amendment was properly adopted. In this case the Plaintiffs waited too long to bring their claim and the Trial Court correctly rejected the claim as untimely.

Further, the amicus curiae ignores that the persons that voted in favor of the amendment have the right to live in the community subject to those rules. That is, two-thirds of the property owners could have voted in favor of an amendment, could have lived under the amendment for several years, and then lose their rights to the benefits of that change because they no longer had proof of what happened many years ago. Likewise, persons could have purchased a home based on the amendments of record and yet each of those amendments could be subject to be overturned and the homeowners would then be faced with a property which did not have the series of restrictions they bargained for when they purchased their home.

This is especially true in this case since the amendment in question has a critical impact on the value of a home. There was an economic collapse in the real estate market in late 2007. In response, by 2008, many lenders had refused to grant loans to purchasers of homes within condominiums and homeowners associations unless there was a restriction on the number of homes that were rented. Thus, it is no surprise that the amendment which placed a limit on the number of homes which could be rented was recorded in December 2008 during the recession. Persons who bought homes in this community after December of 2008 did so based on the assumption that when they went to sell their property, their purchaser will have no difficulty obtaining a loan. Should this amendment be rescinded, current owners will be faced with a greater difficulty in selling their home and perhaps yield a lower price because prospective buyers who wish to obtain financing will be unable to do so. The General Assembly has already balanced the rights of persons with respect to amendments by setting forth a series of steps that need to be accomplished to validly amend restrictions. At the same time, the General Assembly put a one year limit on a challenge to validity.

In summary, the statutory language prohibits any action to challenge an amendment within more than one year after it was effective. Since it

went into effect as of the date of recordation, the challenge is untimely. Even if the court rules that the certification must comply with Subsection F before the statute of limitations begins to run, the certificate that is recorded complies with that subsection.

II. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DETERMINING THE AMOUNT OF THE ATTORNEYS FEES AWARD AND ITS AWARD WAS NOT EXCESSIVE.

A. Standard of Review.

The decision of the Circuit Court to award attorneys fees is reviewed under an abuse of discretion standard. Robinson-Huntley v. George Wash. Carver Mutual Homes Association, 287 Va. 425, 432, 756 S.E.2d 415, ___ (2014).

B. The Association did not waive its Claim for Attorney's Fees.

The Plaintiffs argue that the trial court erred in awarding attorney's fees because the Association allegedly waived its claim for attorney's fees by failing to identify a basis for its request as required by Rule 3:25(B). The Plaintiffs argue that while the Association did request attorney's fees and identify the specific basis for the same in its Special Plea (App. 122-123), upon which it prevailed, it did not specifically include that request in its Demurrer and Answer and thus should not be allowed to recover any attorney's fees in reference to those pleadings. The primary problem with

the Plaintiffs' argument is that Rule 3:25(B) only requires a demand for attorney's fees "in a responsive pleading" filed pursuant to Rule 3:8, not in "each responsive pleading." Rule 3:25(B). Since the Association fully complied with that Rule by filing a request for attorney's fees in a responsive pleading and stating its basis, the Plaintiffs argument is totally misplaced.

While the Plaintiffs also claim that the Defendants violated the spirit of Rule 3:25(C), by not identifying the basis of their claim for attorney's fees at the outset of litigation, they fail to explain how that in any prejudices them. The Special Plea was filed on the same day as the Answer and specifically identified the grounds for the recovery of attorney's fees (App. 122-123, 124-129). Furthermore, the Plaintiffs amended its own Complaint to add a request for attorney's fees in June of 2014, nearly 7 months after the filing of the Complaint (App. 143-144). Since the Association fully complied with the requirements of Rule 3:25(C), the Association is clearly entitled to recover attorney's fees.

C. The Court did not Abuse its Discretion in Determining the Amount of Attorney's Fees Awarded.

Next, the Plaintiffs suggest that the Association should not be awarded for recovery of fees in connection with a Demurrer, responding to discovery, and filing a motion to defer briefing because the Association did

not prevail on each of those issues. As to the Demurrer, the Association did file a Demurrer and thus incurred attorney's fees in that regard. While the Trial Court did not sustain the Demurrer, that does not mean that the Trial Court believed the Demurrer was unwarranted. If the Trial Court felt it was unwarranted, of course it would not have to award attorney's fees for that work. Since the Trial Court exercised its discretion in awarding attorney's fees, this Court should not disturb that ruling without a showing of abuse of discretion. As to attorney's fees incurred in connection with discovery, the Special Plea had been filed at the outset putting the Plaintiffs on notice that the entire claim could be dismissed. Thereafter, the Plaintiffs propounded discovery knowing full well that the Trial Court could dismiss their claim as untimely, yet they now complain that the Association was reimbursed for the attorney's fees involved in responding to discovery. Of course, the Association was required to either file responses or objections or be faced with a motion to compel. Next, while the Plaintiffs complain that the Association's motion to defer briefing was not granted, it was clearly filed with the intent to reduce attorney's fees. The Plaintiffs had filed a Motion for Partial Summary Judgment and requested that it be heard on the same date as the hearing on the Special Plea. The Association filed the motion requesting that the court defer briefing in response to the Plaintiffs' Motion

for Partial Summary Judgment until the court ruled on the Special Plea (App. 132-133). If the motion was granted, both parties would have incurred less attorney's fees. While it is true that the Defendants were unsuccessful and the Court denied the motion, that does not mean the Association is not entitled to be reimbursed for those fees. Further, Plaintiffs have not cited to a single Virginia case which would support their assertion that the Trial Court must go through each and every motion and hearing to determine who prevailed in determining the amount of attorney's fees that should be awarded. The Circuit Court was in the best position to determine what fees were reasonably related to the Association's defense and which ones were not. In Manchester Oaks Homeowners Association v. Batt, 284 Va. 409, 732 S.E.2d 690 (2012), this court allowed recovery of attorneys fees that were incurred in connection with both declaratory and injunctive relief claims that were inseparable from a breach of contract claim, even though the declaratory and injunctive relief claims were abandoned during the progress of the case. In this case, the Association was not a plaintiff who brought three or four unrelated legal claims and only prevailed on one. The Association prevailed in full and the entire Complaint was dismissed. While the Demurrer was not sustained and the Motion to Defer Briefing was not granted, the Association had a right to file the same

and both were well founded. Under the Plaintiffs' theory, if a defendant filed a motion to compel as to five discovery requests and a court granted the motion to compel as to three of the questions and denied it as to two of the questions, a trial court would have to determine how much was spent on each of the different questions and adjust the recovery accordingly. That is simply not the law in Virginia. The trial court is given the discretion to consider all the facts and determine which fees are reasonable and recoverable and which fees are not.

The Plaintiffs also complain that the court awarded travel time. Again, this is within the discretion of the court and under the standard of review, the award must be affirmed.

In summary, the Plaintiffs brought an action nearly four years after the statute of limitations had run. The Association filed a Demurrer, Answer and Special Plea. There is no suggestion that any of those pleadings was without a sufficient justification. Since the Association undoubtedly incurred attorney's fees in connection with each of those filings, and the Association was ultimately successful in that the trial court dismissed the case as being untimely, the Association was entitled to recover for its attorney's fees.

For each of the above reasons, the trial court did not abuse its discretion in its award of attorney's fees, and it should not be disturbed.

CONCLUSION

In summary, the statutory language prohibits any action to challenge an amendment more than one year after it was effective. Since it went into effect as of the date of recordation, the challenge is untimely. Even if the court rules that the certification must comply with Subsection F before the statute of limitations begins to run, the certificate that is recorded complies with that subsection. As to attorney's fees, the Plaintiffs have failed to demonstrate that the Trial Court abused its discretion and thus their challenge should be denied. Accordingly, Powhatan Village Homeowners Association, Inc. prays that this court affirm the trial court's ruling in full.

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CERTIFICATE

Pursuant to Rule 5:26(h) of the Rules of the Virginia Supreme Court, counsel for the Appellees, Powhatan Village Homeowners Association, Inc. certifies that on July 28, 2015, the undersigned counsel:

1. Complied with the requirement of Rule 26 of the Rules of the Supreme Court of Virginia with regard to the filing and service of the Brief of the Appellee; and
2. Caused an electronic version, in Portable Document Format (PDF), of the Brief of Appellee signed by counsel of record for Appellee to be filed with the Clerk of this Court by electronic transmission in accordance with the VACES Guidelines and User's Manual using the Virginia Appellate Courts eBriefs System; and
3. Caused to be hand-filed in the Office of the Clerk of this Court 10 printed copies of the Brief of Appellee; and
4. Caused to be served, via email, on opposing counsel and counsel amicus curiae an electronic copy of the Brief of Appellee to said counsels' email addresses stated below; and

5. Caused such service on counsel as follows:

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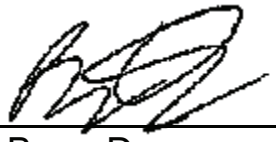

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