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IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO.
740711

THE BOARD OF SUPERVISORS OF LEE COUNTY, VIRGINIA

Appellant,

vs.

EDGAR BACON, COMMISSIONER OF ACCOUNTS
OF LEE COUNTY, VIRGINIA

Appellee.

APPENDIX

GARY SCOTT BRADSHAW
Bradshaw and Bradshaw, P.C.
P. O. Drawer 730
314 Wood Avenue, East
Big Stone Gap, Virginia 24219

Counsel for Appellant

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COMPLAINT

Your Plaintiff, the Board of Supervisors of Lee County, Virginia, hereinafter referred to as the Board, respectfully represents unto your Honor as follows:

I.

The Board is the governing body of Lee County, Virginia, pursuant to Title 15.1 of the Code of Virginia.

II.

The Defendant is the duly appointed Commissioner of Accounts of Lee County, Virginia.

III.

The Board at a meeting, at which all members were present, held at the Lee County Courthouse in Jonesville, Virginia, on Monday, May 29, 1972, unanimously adopted a plan to effect a number of changes in the occupancy of office space in the said Courthouse. An extract of said meeting is attached hereto as a part hereof and marked "Exhibit A".

IV.

The Defendant was duly notified to vacate the office which he then occupied and to remove to other office space in the said Courthouse made available to him pursuant to the order of the Board. A copy of the memorandum of notice is attached hereto as a part hereof and marked "Exhibit B."

V.

The defendant by letter dated June 8, 1972, refused to comply with the order of the Board. A copy of said letter is attached hereto as a part hereof and marked "Exhibit C."

The defendant is in possession and unlawfully detains and withholds from the plaintiff the possession of the office space consisting of two rooms and a vault, located on the first floor of the Courthouse of Lee County, Virginia.

WHEREFORE, the Board prays that possession of the office space, consisting of two rooms and a vault located on the first floor of the Courthouse of Lee County, Virginia, presently occupied by the defendant, be restored to the Board, and its costs in this behalf expended.

EXHIBIT "A"

VIRGINIA:

At a meeting of the Lee County Board of Supervisors held at the Courthouse thereof, Monday, May 29, 1972.

PRESENT: C. B. Waddell, Chairman, Clyde Poe, Vice-Chairman, Hugh T. Wilder, Carl H. Evans, Bill W. Jessee, Roy Lucas and Ralph Robinette.

All members being present.

ALSO PRESENT: Terry M. Estep, Executive Secretary, Miss Susan Huff.

Minutes of the meeting of May 17, 1972, were presented, examined and duly signed.

Upon a motion by Mr. Carl H. Evans, duly seconded by Mr. Hugh T. Wilder, the Board unanimously decided to make the following changes in office space for county officials, effective July 1, 1972:

(1) Treasurer's office to occupy space presently occupied by the Commissioner of Accounts.

(2) Commissioner of Accounts to occupy space presently occupied by the Registrar or space in the basement of the jail building, currently used for storage - choice of the two to be made by the Commissioner of Accounts.

(3) Commissioner of the Revenue to occupy space presently occupied by the Treasurer.

(4) The Judge of the Circuit Court to occupy space presently occupied by the Commissioner of the Revenue.

(5) The V P I Cooperative Extension Service to occupy, in addition to the space it currently occupies in the Courthouse, that space presently occupied by the Food Stamp Office.

(6) The Electoral Board and Registrar's office to occupy that space presently occupied by the Executive Secretary.

(7) The Executive Secretary's office to occupy that space presently occupied by the eligibility staff of the Department of Public Welfare.

(8) The Probation Officer to occupy that space in the jail building currently occupied as an appartment by the cook of the jail.

EXHIBIT "B"

MEMORANDUM

TO: ALL COUNTY OFFICIALS

FROM: EXECUTIVE SECRETARY

Attached is extract of minutes of the May 29 meeting of the Lee County Board of Supervisors.

At this meeting, the Board decided to effect a number of changes in office space occupancy.

This office will attempt to work out the details of this moving so as to avoid as much confusion as possible.

It is the opinion of the Board that these changes will make for better utilization of the space available and at the same time eliminate the rental of privately owned office space for the Probation Office and the Judge of the Circuit Court.

VIRGINIA:

At a meeting of the Lee County Board of Supervisors held at the Courthouse thereof, Monday, May 29, 1972.

PRESENT: C. B. Waddell, Chairman, Clyde Poe, Vice-Chairman, Hugh T. Wilder, Carl H. Evans, Bill W. Jessee, Roy Lucas and Ralph Robinette.

All members being present.

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(7) The Executive Secretary's office to occupy that space presently occupied by the eligibility staff of the Department of Public Welfare.

(8) The Probation Officer to occupy that space in the jail building currently occupied as an appartment by the cook of the jail.

EXHIBIT "C"

June 8, 1972

Mr. Terry M. Estep
Executive Secretary, Lee County
Jonesville, Virginia

Dear Mr. Estep:

I received your memorandum with respect to the resolution of the Board of Supervisors of Lee County passed at their meeting of May 29, 1972 relative to offices in the Courthouse.

This is to advise that I, as Commissioner of Accounts, am an officer of the Court by appointment of the Court. The conduct of my office is under the direct supervision of the Circuit Court of Lee County. The present space which I occupy in the Courthouse as Commissioner of Accounts was designated and assigned to me by Order of the Circuit Court of Lee County, which Order is in full force and effect at this time. I have no authority to move from my present office space or to choose other space except by order and direction of the Circuit Court of Lee County.

I must, therefore, continue to occupy the office space designated and assigned to me by the Circuit Court of Lee County until I have other order or direction from the Court.

Yours very truly,

/s/ Edgar Bacon

ANSWER

The defendant, Edgar Bacon, Commissioner of Accounts of Lee County, for answer to what purports to be a Motion for Judgment in the above styled matter, says as follows:

(1)

Respondent admits that the Board of Supervisors is the governing body of Lee County, Virginia.

(2)

Defendant says that he is the duly appointed Commissioner of Accounts of Lee County, having been appointed in December, 1951, and has served in this office continuously from December, 1951, on up until the present time, and is now serving as Commissioner of Accounts of Lee County, Virginia.

(3)

Defendant has been advised that, at a meeting held on May 29, 1972, the Board of Supervisors undertook to make certain changes in the occupancy of office space in the Court House as appears from Exhibit A to said Motion, and being a purported copy of the minutes of meeting of the said Board of Supervisors.

(4)

That it is true that defendant was notified to vacate the office space which he has been occupying, and

is now occupying in the Court House; and defendant refers to the contents of his letter, under date of June 8, 1972, to Mr. Terry M. Estep, Executive Secretary of Lee County, in which he advised the Board that he would continue to occupy the office space designated and assigned to him by the Circuit Court of Lee County until further order and direction came from the Court to the contrary.

(5)

Defendant denies all the allegations contained in Paragraph 6 of said Motion for Judgment, and denies that he is unlawfully in possession of and unlawfully detains the office space, consisting of two rooms and vault, located on the first floor of the Court House in Lee County. In this connection, defendant states to the Court that his possession and occupancy of said office space is lawful and legal, and is based upon the following facts:

(a) Defendant is now acting as the duly appointed Commissioner of Accounts of Lee County, Virginia, and has been so acting since December, 1951.

(b) By proper order of the Court entered on March 3, 1958, office space was assigned by the Court, which is the space presently being occupied by defendant, and which space is now in the possession of the defendant; a copy of this Order is filed herewith, marked as Exhibit 1 to this Answer.

(c) This assignment was made by the Honorable Court to comply with the law in such cases made and provided and particularly Section 15.1-258 and Section 15.1-262 of the Code of Virginia, which is incorporated herein by reference.

(d) This order of the Honorable Court is in conformity with and pursuant to the law in such cases made and provided, giving to the Judge of the Circuit Court of Lee County the right to the use and control of the Court House in Lee County.

(e) The office of the Commissioner of Accounts in the Commonwealth of Virginia is an office whose duties are quasi judicial in nature, and are part and parcel of the Circuit Court system of Lee County, Virginia.

(f) The Commissioner of Accounts of any county or city in the Commonwealth of Virginia is an officer of the Court, and holds such office by order of the Court, and is under the control and supervision of the Court at all times.

(g) The Judge of the Circuit Court of Lee County has control over the Court House building insofar as all Court and judicial functions are concerned.

(6)

The action of the Board of Supervisors, in attempting to assign space to the Commissioner of Accounts

in the basement of the jail building, is in direct contravention of Section 15.1-258, which provides that the governing body shall provide office space for the Commissioner of Accounts in the Court House. The basement of the jail is not a part of the Court House.

(7)

The effort of the Board of Supervisors to assign alternate space in the Court House as space being presently occupied by the Registrar of Lee County is an attempt to assign space in the Court House that had been originally designated for use as a witness room for witnesses summoned to appear in County Court and Circuit Court; and the use of the same by the Registrar was by direction and permission of the Court, and such space would in no event be available for the use of the Commissioner of Accounts as provided by law.

(8)

The action taken by the Board of Supervisors is an abortive and illegal action to endeavor to thwart the order and the judicial powers of the Circuit Court of Lee County, Virginia, whose previous order was duly entered and is still in full force and effect.

(9)

The motion for judgment fails to state any ground for the relief prayed for, and said proceedings herein

should be held for naught and dismissed.

WHEREFORE, the defendant says that said Motion for Judgment should be dismissed, and that plaintiff not be granted the relief prayed for in said Motion for Judgment.

And now, having fully answered, respondent prays to be hence dismissed, with his costs in this behalf expended.

EXHIBIT 1

It appearing to the Court that there is, or will be in the near future, vacant offices, in the Courthouse of Lee County, Virginia, available for assignment to the officers specified in Section 15-689 of the Code of Virginia who do not presently have offices provided for them in the said Courthouse. It is hereby ordered that Edgar Bacon, Commissioner of Accounts for Lee County, be, and he is hereby assigned the offices now occupied by the Division Superintendent of Lee County Schools upon the said offices being vacated by said Superintendent of Schools; but if the present Commonwealth's Attorney desires to and does transfer his office to the said offices upon the vacation thereof by the said Superintendent of Schools, then the said Edgar Bacon, Commissioner of Accounts, is hereby assigned the office now occupied by the Commonwealth's Attorney of Lee County in the Courthouse of Lee County, Virginia.

AMENDED COMPLAINT

Your Plaintiff, the Board of Supervisors of Lee County, Virginia, hereinafter referred to as the Board, respectfully represents unto your Honor as follows:

I.

The Board is the governing body of Lee County, Virginia pursuant to Title 15.1 of the Code of Virginia.

II.

The Defendant is the duly appointed Commissioner of Accounts of Lee County, Virginia.

III.

The Board at a meeting, at which all members were present, held at the Lee County Courthouse in Jonesville, Virginia, on Monday, May 29, 1972, unanimously adopted a plan to effect a number of changes in the occupancy of office space in the said Courthouse. An extract of said meeting is attached hereto as a part hereof and marked "Exhibit A".

IV.

The Defendant was duly notified to vacate the office which he then occupied and to remove to other office space in the said Courthouse made available to him pursuant to the order of the Board. A copy of the memorandum of notice is attached hereto as a part hereof and marked "Exhibit B".

V.

The Defendant by letter dated June 8, 1972, refused to comply with the order of the Board. A copy of said letter is attached hereto as a part hereof and marked "Exhibit C".

VI.

The Defendant unlawfully refuses to comply with the order of the Plaintiff, thereby disrupting the efficient disposition of the administration of the business of said County.

WHEREFORE, your Plaintiff prays the Court declare the order of the Board to be valid and binding upon the Defendant, and order Defendant to comply with said order of the Board forthwith, and its costs in this behalf expended.

EXHIBIT "A"

VIRGINIA:

At a meeting of the Lee County Board of Supervisors held at the Courthouse thereof, Monday, May 29, 1972.

PRESENT: C. B. Waddell, Chairman, Clyde Poe, Vice-Chairman, Hugh T. Wilder, Carl H. Evans, Bill W. Jessee, Roy Lucas and Ralph Robinette.

All members being present.

ALSO PRESENT: Terry M. Estep, Executive Secretary, Miss Susan Huff.

Minutes of the meeting of May 17, 1972, were presented, examined and duly signed.

Upon a motion by Mr. Carl H. Evans, duly seconded by Mr. Hugh T. Wilder, the Board unanimously decided to make the following changes in office space for county officials, effective July 1, 1972:

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(6) The Electoral Board and Registrar's office to occupy that space presently occupied by the Executive Secretary.

(7) The Executive Secretary's office to occupy that space presently occupied by the eligibility staff of the Department of Public Welfare.

(8) The Probation Officer to occupy that space in the jail building currently occupied as an appartment by the cook of the jail.

EXHIBIT "B"

MEMORANDUM

TO: ALL COUNTY OFFICIALS

FROM: EXECUTIVE SECRETARY

Attached is extract of minutes of the May 29 meeting of the Lee County Board of Supervisors.

At this meeting, the Board decided to effect a number of changes in office space occupancy.

This office will attempt to work out the details of this moving so as to avoid as much confusion as possible.

It is the opinion of the Board that these changes will make for better utilization of the space available and at the same time eliminate the rental of privately owned office space for the Probation Office and the Judge of the Circuit Court.

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PRESENT: C. B. Waddell, Chairman, Clyde Poe, Vice-Chairman, Hugh T. Wilder, Carl H. Evans, Bill W. Jessee, Roy Lucas and Ralph Robinette.

All members being present.

ALSO PRESENT: Terry M. Estep, Executive Secretary, Miss Susan Huff.

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(7) The Executive Secretary's office to occupy that space presently occupied by the eligibility staff of the Department of Public Welfare.

(8) The Probation Officer to occupy that space in the jail building currently occupied as an appartment by the cook of the jail.

EXHIBIT "C"

June 8, 1972

Mr. Terry M. Estep
Executive Secretary, Lee County
Jonesville, Virginia

Dear Mr. Estep:

I received your memorandum with respect to the resolution of the Board of Supervisors of Lee County passed at their meeting of May 29, 1972 relative to offices in the Courthouse.

This is to advise that I, as Commissioner of Accounts, am an officer of the Court by appointment of the Court. The conduct of my office is under the direct supervision of the Circuit Court of Lee County. The present space which I occupy in the Courthouse as Commissioner of Accounts was designated and assigned to me by Order of the Circuit Court of Lee County, which Order is in full force and effect at this time. I have no authority to move from my present office space or to choose other space except by order and direction of the Circuit Court of Lee County.

I must, therefore, continue to occupy the office space designated and assigned to me by the Circuit Court of Lee County until I have other order or direction from the Court.

Yours very truly,

/s/ Edgar Bacon

ANSWER

Comes now the defendant, Edgar Bacon, Commissioner of Accounts of Lee County, Virginia, and without waiving the Demurrer heretofore filed in this matter, for answer to said amended complaint, says as follows:

(1) Defendant relies upon all matters set out and contained in the original answer filed with the original pleading in this matter and asks that all the matters in said answer set out herein be read and considered as an Answer to both the original pleading and the amended complaint.

(2) Defendant denies that there is a justiciable issue presented in this matter. Defendant denies that the plaintiff is entitled to any of the relief prayed for in said amended complaint or in said original pleading.

(3) Defendant says that any action taken by the Board of Supervisors in the premises is wholly illegal, void and without authority and completely ultra vires in every respect.

WHEREFORE, defendant says that said original pleading and amended complaint be dismissed with prejudice to the plaintiff.

MOTION FOR SUMMARY JUDGMENT

Plaintiff moves the Court that it enter, pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, a summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to a judgment as a matter of law.

ORDER

This cause came on this day to be heard upon the motion filed by the plaintiff in this cause; upon the answer to said motion; upon the amended complaint filed in said cause; upon the demurrer and answer filed by the defendant to said amended complaint and original motion; upon the motion for summary judgment by the plaintiff filed in writing by the plaintiff; upon the motion for summary judgment made orally by counsel for the defendant in open court, and upon a hearing has on said cause, and was argued by counsel.

Upon consideration whereof, and it appearing unto the Court that the pleadings, together with all the exhibits filed with all the pleadings, and by agreement of counsel, constitute a full and complete record of the pleadings, exhibits and evidence needed by the Court in the determination of the issues involved herein; and it further appearing unto the Court that all exhibits and pleadings are made evidence insofar as said pleadings state admitted facts which are material to the issues in this cause, to be considered by the Court in the final determination of the issues involved in this cause; and it further appearing unto the Court that it is not necessary for the Court to pass upon the demurrer filed by the defendant in this cause; and it appearing unto the Court, after hearing

argument of counsel for the defendant and the plaintiff, and upon the motions made by the plaintiff for summary judgment and upon the motion for summary judgment made by the defendant, that the Court may proceed to determine the issues involved in this cause, the Court, therefore, upon consideration of the record as set out hereinbefore, does hereby find, adjudge, order and decree that the order entered by the Honorable George Morton, Judge of the Circuit Court of Lee County, Virginia on March 3, 1958, in which he assigned the space now occupied by Edgar Bacon, Commissioner of Accounts for Lee County, Virginia, in the Court House of Lee County at Jonesville, Virginia, is a valid and subsisting order, and still in full force and effect; that upon the motion for summary judgment by the defendant, the Court doth ADJUDGE, ORDER AND DECREE that judgment be entered herein in favor of the defendant; and the Court doth deny the motion for summary judgment filed by plaintiff; and doth hereby deny the relief prayed for by the plaintiff in its motion and amended complaint.

The Counsel for the plaintiff, the Board of Supervisors of Lee County, Virginia, except to the ruling and finding of the Court so made.

ENTER THIS ORDER this the 3rd day of April, 1974.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Notice is hereby given that the Board of Supervisors of Lee County, Virginia, the above-named plaintiff, appeals to the Supreme Court of the Commonwealth of Virginia from the final judgment of the Circuit Court for Lee County, Virginia, entered by the Honorable Glyn R. Phillips, Substitute Judge, on the 3rd day of April, 1974, and assigns as error the following:

I.

The Court erred as a matter of law in finding that the order entered by the Honorable George Morton, Judge of the Circuit Court for Lee County, Virginia, on March 3, 1958, in which he assigned the space now occupied by Edgar Bacon, Commissioner of Accounts for Lee County, Virginia, in the Court House of Lee County at Jonesville, Virginia, is a valid and subsisting order, and still in full force and effect.

II.

The Court erred as a matter of law in entering judgment in favor of the defendant upon the motion for summary judgment made by the defendant.

III.

The Court erred as a matter of law in denying the plaintiff's motion for summary judgment and in denying

the relief prayed for by the plaintiff. No transcript, statement of facts, testimony, or other incidents of the case is to be hereafter filed.

CERTIFICATE

I hereby certify that the Appellant is the Board of Supervisors for Lee County, Virginia, whose counsel is G. S. Bradshaw, Bradshaw and Bradshaw, P.C., 314 Wood Avenue, East, Big Stone Gap, Virginia, that the Appellee is Edgar Bacon, Commissioner of Accounts for Lee County, Virginia, whose counsel is Cecil D. Quillen, Quillen and Carter, Attorneys at Law, Gate City, Virginia, that I have filed twenty-five (25) copies of this Appendix in the Office of the Clerk of the Supreme Court of the Commonwealth of Virginia, and that I have served the counsel for the Appellee, by mail, three (3) copies of this Appendix to Cecil D. Quillen, Esquire, Attorney at Law, Gate City, Virginia, postage prepaid, this 25th day of November, 1974.

G. S. Bradshaw

G. S. Bradshaw