

VIRGINIA:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

TOWN OF STEPHENS CITY)	
VIRGINIA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL15000591-00
)	
FREDERICK COUNTY)	
SANITATION AUTHORITY,)	
)	
)	
Defendant.)	

ORDER REGARDING JURY TRIAL ON PLEA IN BAR

On December 6, 2017, Plaintiff Town of Stephens City (the “Town”) and Defendant Frederick County Sanitation Authority (“FCSA”), by counsel and pursuant to this Court’s Supplemental Scheduling Order of September 14, 2017, came on to be heard regarding whether a jury is necessary to resolve the Plea in Bar because specific factual disputes exist subject to the Town’s August 25, 2017 jury demand. As called for by the Supplemental Scheduling Order, the Town and FCSA each filed and served a designation regarding these issues on October 25, 2017, and the Town and FCSA each also filed and served a reply to the other’s designation on November 8, 2017 (collectively, the “Designations”).

Upon review of the filed papers, cited authorities, and oral argument of counsel, the Court hereby FINDS and HOLDS that the Designations filed by the Town and FCSA, as well as the representations made by counsel, are INSUFFICIENT for this Court to determine whether there is a bona fide dispute of fact, supported by conflicting evidence, regarding any such issue.

FURTHERMORE, the parties stipulate that, for purposes of the Plea in Bar filed by FCSA raising the statute of limitations to the Town’s claims:

- 1) The Town's breach of contract claims are subject to a five-year statute of limitations;
- 2) The Town's trespass claims are subject to a five-year statute of limitations; and
- 3) The Town's quantum meruit claims are subject to a three-year statute of limitations.

This stipulation is without prejudice to either parties' position as to the accrual of the statute of limitations as to any particular claim or part thereof. This stipulation is also without prejudice to any and all other defenses, besides the statute of limitations, that FCSA has raised or may raise to any and all claims that the Town has brought, or may bring, in this action.

It is further ORDERED that the parties shall meet and confer after the Town serves its supplemental answers to the Discovery Requests upon FCSA and before the hearing on January 17, 2018. These supplemental answers are due on or before January 5, 2018, per this Court's Order Denying the Motion for Discovery Sanctions and Granting the Motion to Compel a Proper Response to Discovery.

At such conference, the parties shall:

- 1) Address the adequacy of the Town's supplemental answers to the Discovery Requests;
- 2) Decide what facts pertinent to FCSA's Plea in Bar may be stipulated;
- 3) Discuss, if not all pertinent facts are stipulated, what conflicting evidence will be presented by the parties and so determine what disputed issues of fact exist for submission to a jury for decision; and

- 4) Exchange and discuss special interrogatories, or questions, if necessary, that may be presented to the jury so that it may determine those disputed issues of fact by rendering a special verdict.

It is further ORDERED that the parties shall appear and be heard on January 17, 2018, from 10:30 a.m. until 12:30 p.m., regarding: the Town's Motion to Overrule Objections, filed on November 29, 2017; the Town's Motion for Leave to File Second Amended Complaint to Allege Actual Fraud and Constructive Fraud, filed December 6, 2017; the facts pertinent to FCSA's Plea in Bar that are stipulated, the conflicting evidence that will be presented by the parties, if any, creating a disputed issues of fact for submission to a jury and, in the event of a disputed issue of fact, the special interrogatories that each of the parties propose should be presented to the jury so that it may determine those disputed issues of fact and render a special verdict thereon; and any other matter properly noticed and moved in accordance with Rule 4:15.

The Clerk shall serve a copy of this Order Regarding Jury Trial on Plea in Bar upon all counsel of record.

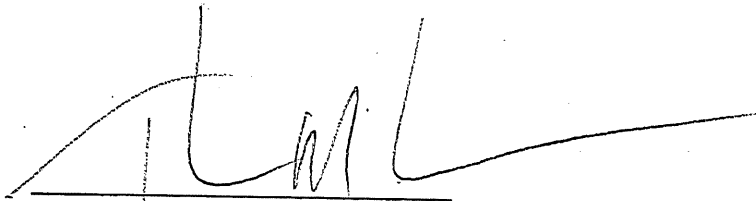
SO ORDERED.



Judge Burke F. McCahill

Dated: 1/2/18

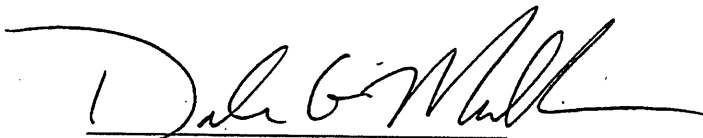
SEEN AND OBJECTED TO FOR ALL REASONS STATED IN THE RECORD:



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SEEN AND AGREED:



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