

VIRGINIA:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

TOWN OF STEPHENS CITY, VIRGINIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. CL15-591
	:	
FREDERICK COUNTY SANITATION AUTHORITY,	:	
	:	
Defendant.	:	

PLAINTIFF TOWN OF STEPHENS CITY, VIRGINIA’S MOTION FOR LEAVE TO AMEND PRAYER FOR RELIEF IN AMENDED COMPLAINT

COMES NOW Plaintiff, the Town of Stephens City, Virginia (“Stephens City”), by counsel, and pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia moves for leave to amend the prayer for relief in its Amended Complaint to include a prayer for specific performance and injunctive relief against future breaches of the agreements that are the subject of the Amended Complaint as follows:

1. The Amended Complaint alleges that the Defendant has breached its obligations by extracting more than the 3 million gallons of water per day (based on a monthly average) extraction limits.

2. Stephens City respectfully requests leave to amend the prayer of relief to specifically add the following requested relief (although the relief is otherwise generally covered in the existing general prayer for relief # (9) which presently seeks “such other and further relief as this Honorable Court may deem proper”):

To the extent it is determined that the agreements have not terminated due to FCSA’s prior breaches, then in addition to damages for past breaches, Stephens City respectfully prays for an Order granting it specific performance ordering FCSA to

specifically perform its obligations and not exceed the 3 million gallon per day (based on a monthly average) water extraction limits and enjoining FCSEA from violating those obligations, to the extent the future damages are not quantifiable since the future volumes of water extracted in violation of those agreements cannot be ascertained and quantified at the time of trial.

3. Virginia Supreme Court Rule 1:8 provides that leave to amend should be liberally granted in furtherance of the ends of justice. The ends of justice would be met here by granting the requested leave and there would not be any prejudice to the Defendant.

4. The foregoing proposed amendment is proper as it merely amends the prayer for relief to expressly set forth these remedies and does not add any cause of action. See Blankenship v. Consolidation Coal Co., 850 F.3d 630, 640 (4th Cir. 2017) (“injunctive relief is a remedy, not a cause of action.”). Since future damages may not be readily ascertainable and quantifiable at the time of trial, (the future excessive water extractions being variable), specific performance/injunctive relief to limit extractions of water to the 3 million gallons limit would be appropriate remedies. Specific performance of contractual obligations may be enforced by an order directing their performance or by an injunction restraining a party from doing what it has agreed not to do. See Grubb Bros. v. Moore, Clemens & Co., 108 Va. 72, 83, 60 S.E. 757, 761 (1908) and, where contracts respect real estate (as this case does involving the Town’s quarries) “it is as much a matter of course for courts of equity to decrease specific performance of it as it is for a court of law to give damages for breach of it.” Bond v. Crawford, 193 Va. 437, 444, 69 S.E.2d 470, 475 (1952). Without specific performance and injunctive relief against future breaches, the parties would be relegated to future litigation for Defendant’s future breaches in extracting water beyond the allowed daily limits in the future.

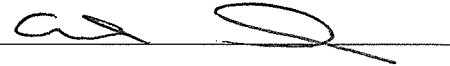
5. Since no new causes of action are being added, and the existing prayer generally requests other appropriate relief that would be specified in the amendment, there will not be any

prejudice to the Defendant. Amendment is proper when there is no prejudice to the Defendant. Kole v. City of Chesapeake, 247 Va. 51, 439 S. E. 2d 405 (1994); See Gaissert v. Gaissert, No. 0522-16-1, 2016 Va. App. LEXIS 224 (Ct. Appeals August 16, 2016)(No error in granting wife leave to amend complaint during trial to include claim for equitable distribution where husband was not prejudiced by amendment); RECP IV WG Land Investors, LLC v. Capital One Bank (USA), N. A., 93 Va. Cir. 282 (Fairfax Co. July 27, 2016) (Leave granted to defendant to amend answer to include basis for claim of attorney's fees, after ruling in defendant's favor on the underlying merits, but before hearing on the claim for attorney's fees).

6. In lieu of filing an entire Second Amended Complaint to accomplish the foregoing proposed amendment, Stephens City requests leave to file this motion for leave to amend and to accomplish the amendment by entry by the Court of the proposed order attached hereto as Exhibit A.

WHEREFORE, for the foregoing reasons, the Town of Stephens City, Virginia respectfully prays that the Court enter an Order amending the prayer for relief in the form attached hereto as Exhibit A and dispensing with the requirement that a second Amended Complaint be filed that would merely include this additional prayer for relief, and for such other and further relief as the Court deems just and proper.

TOWN OF STEPHENS CITY, VIRGINIA

By: 

Thomas Moore Lawson, Esq. (VSB #28332)
Adam J. Ward, Esq. (VSB #84588)
Lawson and Silek, P.L.C.
P.O. Box 2740
Winchester, Virginia 22604
Telephone: (540) 665-0050
Facsimile: (540) 722-4051
Email: tlawson@lsplc.com
award@lsplc.com

Robert A. Ziogas, Esq. (VSB #24964)
Glenn, Feldmann, Darby & Goodlatte
37 Campbell Avenue, SW
P.O. Box 2887 (24001)
Roanoke, Virginia 24011
Tel. (540) 224-8005/ Fax: (540) 224-8050
Email: rziogas@glennfeldmann.com

Counsel and co-counsel for the Town of Stephens City, Virginia

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2018, a true copy of the foregoing Plaintiff Town of Stephens City, Virginia's Motion for Leave to Amend Prayer for Relief in Amended Complaint was sent to: Dale G. Mullen, Esq. (dmullen@mcguirewoods.com), E. Duncan Getchell, Esq. (egetchell@mcguirewoods.com), and Michael H. Brady, Esq. (mbrady@mcguirewoods.com) via email by agreement of counsel.


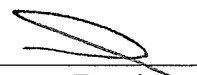
 
Thomas Moore Lawson, Esquire
Adam J. Ward, Esquire

Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

TOWN OF STEPHENS CITY, VIRGINIA,

Plaintiff,

v.

FREDERICK COUNTY SANITATION AUTHORITY,

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:
:
:
:
:

Case No. CL15-591

ORDER

CAME THIS DAY the parties to this action, by counsel, on Plaintiff the Town of Stephens City, Virginia's Motion for Leave to Amend the prayer for relief in its Amended Complaint.

Upon consideration of the Motion, and it appearing proper to do so, it is hereby **ORDERED** that the Motion is **GRANTED** and the prayer of relief is amended to further add the following prayer for relief:

To the extent it is determined that the agreements have not terminated due to FCSA's prior breaches, then in addition to damages for past breaches, Stephens City respectfully prays for an Order granting it specific performance ordering FCSA to specifically perform its obligations and not exceed the 3 million gallon per day (based on a monthly average) water extraction limits and enjoining FCSA from violating those obligations, to the extent the future damages are not quantifiable since the future volumes of water extracted in violation of those agreements cannot ascertained and quantified at the time of trial.

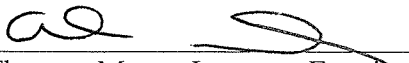
Defendant is deemed to deny this prayer for relief in all respects and is not required to file any further responsive pleadings to it, unless it so desires, in which case it shall do so within ____ days of entry of this Order.

The Clerk is directed to certify a copy of this Order to counsel of record.

Entered this _____ day of _____, 2018.

Judge

REQUESTED BY:


Thomas Moore Lawson, Esquire (VSB No. 28332)
Adam J. Ward, Esquire (VSB No. 84588)
Lawson and Silek, P.L.C.
P.O. Box 2740
Winchester, Virginia 22604
Telephone: (540) 665-0050
Facsimile: (540) 722-4051
tlawson@lsplc.com
award@lsplc.com

Robert A. Ziogas, Esquire (VSB No. 24964)
Glenn, Feldmann, Darby & Goodlatte
37 Campbell Avenue S.W.
P.O. Box 2887 (24001)
Roanoke, Virginia 24011
Telephone: (540) 224-8005
Facsimile: (540) 224-8050
rziogas@glennfeldmann.com

Counsel and co-counsel for the Town of Stephens City, Virginia

SEEN BY:

Dale G. Mullen (VSB No. 48596)
E. Duncan Getchell, Jr. (VSB No. 14156)
Michael H. Brady (VSB No. 78309)
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219-3916
Telephone: (804) 775-4710
Facsimile: (804) 698-2098
dmullen@mcguirewoods.com
dgetchell@mcguirewoods.com
mbrady@mcguirewoods.com

Counsel for Frederick County Sanitation Authority