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Re: Alan W. Rogers v. County of Louisa, *et al*
Louisa County Circuit Court Case CL10-385

Dear Counsel:

As you know, the purpose of this letter is to address the one remaining issue with respect to the multiple demurrers and pleas in bar filed by the defendants with respect to the above-referenced case. The sole issue remaining is whether the statement in numbered paragraph nine of the First Amended Complaint is defamatory. The statement, allegedly made by Caleb Sulzen is "I personally did not inspect the retaining wall but I relied on Allen Roger's description of the wall's construction when I prepared the letter (referring to the April 6, 2009, letter)". Caleb Sulzen contends that the statement is not defamatory as a matter of law, and accordingly demurred to it.

There is no disagreement about the legal standard which must be applied in ruling on a demurrer. "In any suit in equity or action at law, the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer." Virginia Code §8.01-273. A demurrer admits the allegations of fact in the complaint and all attached exhibits, but does not admit conclusions of law. Wards Equipment, Inc. v. New Holland, 254 Va. 379 (1997). In ruling on a demurrer, the Court may not evaluate and decide the merits of a claim. The Court is limited to determining whether the facts as alleged state a cause of

action. Fun v. Virginia Military Institute, 245 Va. 249 (1993). On a demurrer, a Court may examine not only the substance of the allegations of the pleadings attacked but also any accompanying exhibit mentioned in the pleading. Flippo v. F & L Land Company, 241 Va. 15 (1991).

The Court would tend to agree with the defendant that the statement, taken by itself, does not appear to be defamatory. The Court is required, however, to consider the statement along with all the other allegations made in the First Amended Complaint, and to the give the plaintiff the benefit of all reasonable inferences. In doing so, the Court finds that the First Amended Complaint can be understood as alleging that Sulzen is contending that the plaintiff who constructed the wall and who would be familiar with its construction, knowingly misrepresented the nature of the faulty construction, inferentially for purposes of passing any inspection conducted by Sulzen. Sulzen is alleged to have made the statement to Snyder, his supervisor, and to yet unnamed others.

"It is a general rule that allegedly defamatory words are to be taken in their plain and natural meaning and to be understood by courts and juries as other people would understand them, and according to the sense in which they appear to have been used. In order to render words defamatory and actionable it is not necessary that the defamatory charge be in direct terms but it may be made indirectly, and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory. Accordingly, a defamatory charge may be made by inference, implication or insinuation." Carwile v. Richmond Newspapers, Inc., 196 Va. 1 (1954) citing James v. Powell, 154 Va. 96 (1930) and Moss v. Harwood, 102 Va. 386 (1904). See also Schnupp v. Smith, 249 Va. 353 (1995). Consequently, while the words do not directly defame the plaintiff, the Court finds that they may be found to do so by inference, implication or insinuation. Consequently, Sulzen's demurrer is overruled.

The Court directs that Mr. Scheil prepare an order consistent with this ruling and circulate to Mr. Nanavati for his endorsement. Consistent with the order entered December 22, 2011, the plaintiff shall file a Bill of Particulars within 21 days of the date of this ruling particularizing the identity of "the others" referenced in paragraph nine of the First Amended Complaint.

Thank you for your attention to these matters.

Very truly yours,

Timothy K. Sanner, Judge
Sixteenth Judicial Circuit
TKS/vc