

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, et al,

Plaintiffs,

v.

Case No. CL17000145-00

CITY OF CHARLOTTESVILLE,
VIRGINIA, et al,

Defendants.

**DEFENDANTS' RESPONSE TO MOTION TO DETERMINE SUFFICIENCY OF
ANSWERS AND OBJECTIONS**

COME NOW Defendants City of Charlottesville, Charlottesville City Council, and Defendant Robert Fenwick ("Defendants") by counsel, and submit their reply to the Plaintiffs' Motion to Determine Sufficiency of [Defendants'] Answers and Objections [to Plaintiffs' Request for Admissions]. Defendants oppose Plaintiffs' motion regarding the sufficiency of Defendants' answers in response to Plaintiffs' request for admissions. Defendants' responses represent a good faith effort to answer each request with the specificity required by Rule 4:11 and need not be supplemented.

The Plaintiffs maintain that the Defendants' objections and responses to the Requests for Admission are inconsistent with our prior pleadings. In their motion, Plaintiffs highlight in bold text certain information that they believe Defendants previously admitted in the Answer to the Amended Complaint, but now refuse to admit in discovery. Below is a summary of the pertinent allegations from the Amended complaint; our Answer to the Amended Complaint, the Requests for Admission, and our objections and responses to the Requests for Admission. This overview of the record makes clear that Defendants have provided consistent responses throughout this litigation in accord with the rules of procedure.

10-22-18 @ 1:32 pm

1

Jennifer Turner

(iv) *Defendants' Objections and Responses to the Requests for Admission:*

5. In addition to their General Objections, Defendants object to this request to the extent that the terms "marked" and "Confederal General" are not defined and, as used in the context of this request, particularly when read in conjunction with RFA Nos. 1, 2, and 3, above, render this Request vague and ambiguous. Defendants further object to this request to the extent that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving their objections, Defendants admit that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as Lee Park; and that the base on which such statue sits contains the words Robert Edward Lee. See also responses to RFA Nos. 1, 2, and 3, above. Defendants deny the balance of the request.

15. In addition to their general objections, Defendants object to this request to the extent that the term "marked" is not defined and, as used in the context of this request, renders this request vague and ambiguous. Defendants further object to this request to the extent it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as Jackson Park; and that said statue is affixed to a base that contains the words Thomas Jonathon Jackson. Defendants deny the balance of this request.

(v) *Reply to Plaintiffs' Motion to Determine Sufficiency of Objections and Responses*

Defendants responded to the specific allegations of the complaint, as required by VA Sup. Ct. Rule 3:8. Moreover, Defendants responded to each Request for Admission with detailed objections and then in good faith admitted as much of the asserted matter as required, in accord with VA Sup. Ct. Rule 4:11. It is clear from the record presented that the Requests for Admission failed to define the terms utilized and thereby expanded the scope of the request well beyond the initial allegations of the Amended Complaint. Defendants' responses are consistent with the Answer to the Amended Complaint and need not be supplemented.

around 1870; and was an officer in the Confederate army. Defendants deny the balance of this request.

2. In addition to their General Objections, Defendants object to this Request to the extent that the terms Commander, Army of Northern Virginia, and War Between the States are not defined and as used in the context of this request, render this request vague and ambiguous. Further the request is overly broad and provides no dates by which a response could be referenced.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this request.

3. In addition to their General Objections, Defendants object to this Request to the extent that the terms General in Chief, Army of the Confederate States of America are not defined and as used in the context of this request, render this request vague and ambiguous.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this request.

(v) ***Defendants' Reply to Plaintiffs' Motion to Determine Sufficiency of Objections and Responses***

Plaintiffs submitted brief and ambiguous requests, which were also entirely unnecessary given Defendants' Answer to the Amended Complaint. Nevertheless, Defendants answered in good faith and admitted only as much of the asserted matter as necessary. The admission that Lee was an officer in the Confederate army is entirely consistent with the allegations admitted in the Answer to the Amended Complaint. There is no discrepancy and no reason for Defendants to supplement their responses.

Topic: Lee's Military Biography

(i) ***Plaintiff's Allegations in the Amended Complaint***

21B. Born the son of a Revolutionary War hero and a general officer in the Continental Army, Lee was appointed to the US Military Academy at West Point in 1825. He graduated in 1829, second in his class, with one of the most distinguished academic records in the history of the academy, and was commissioned an officer in the US Army, Corps of Engineers. As an engineer, he supervised many innovative public works projects, rising to

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this request.

6. In addition to their General Objections, Defendants object to this Request to the extent that the terms General in Chief, Army of the Confederate States of America are not defined and as used in the context of this request, render this request vague and ambiguous.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this request.

(v) *Reply to Plaintiffs' Motion to Determine Sufficiency of Objections and Responses*

Again, Defendants answered Plaintiffs' vague and ambiguous requests in good faith, despite having already admitted the same material within their Answer to the Amended Complaint. In response to this RFA Defendants admitted as much of the asserted matter as necessary, in accord with Rule 4:11. These admissions are entirely consistent with the detailed allegations regarding Lee's military biography that Defendants admitted in the Answer to the Amended Complaint. There is no discrepancy and no reason for Defendants to supplement their responses.

Topic: Lee's Uniform and Horse

(i) *Plaintiff's Allegations in the Amended Complaint*

21C. The original sculptor Paul Goodloe McIntire commissioned for the Lee monument was Henry Shrady, who died before he could complete the project. After Shrady's death sculptor Leo Lentelli took over the project. Lentelli inspected Lee's Confederate uniform and measured its military insignia down to the brevets on the sleeve, and also took measurements of the taxidermied remains of Traveller, to get the proportions exactly right. The monumental bronze sculpture displaying General Robert E. Lee in dress military uniform with his hat in hand, ceremonial sword at his side, and depicting Traveller at a stolid walk, represents Lee returning to his troops after his surrender at Appomatox, at which point the war had ended for Lee and his troops, and thus the monument is a memorial to a veteran of the War Between the States.

(ii) *Defendants' Answer to the Amended Complaint*

21C. Characterizations of the Lee Statue as a "monument" or "memorial" are statements of legal conclusions and are denied. Defendants deny that "war veteran" is a term used in

are entirely consistent with the detailed allegations regarding Lee's uniform and horse that Defendants admitted in the Answer to the Amended Complaint. There is no discrepancy and no reason for Defendants to supplement their responses.

Topic: Whether the Statues are "Monuments or Memorials"

(i) Plaintiff's Allegations in the Amended Complaint

21D The monument is also a memorial to the War Between the States itself, specifically to the end of that war, because the City of Charlottesville on February 19 1918, while World War I was raging, in [its] acceptance of the gift of the monument depicting Lee after the surrender at Appomatox stated that they lauded the vision of the donor Paul Goodloe McIntire to look beyond the dark chasm of War and with steady eye and clear vision behold the triumphant day when, freed from the curses and blighting influence of war the nations and people of the earth shall return to their peaceful pursuits.

(ii) Defendants' Answer to the Amended Complaint

21D. Characterizations of the Lee Statue as a "monument" or "memorial" are statements of legal conclusions and are denied. Defendants deny that the Lee Statue is a monument or memorial to the War Between the States. **Otherwise, allegations in 21D are admitted.**

(iii) Plaintiffs' Requests for Admission

9. Admit that the bronze statue of Robert E. Lee, located in what was previously known as Lee Park, is a monument.
10. Admit that the bronze statue of Robert E. Lee, located in what was previously known as Lee Park, is a monument to the War Between the States.
11. Admit that the bronze statue of Robert E. Lee, located in what was previously known as Lee Park, is a memorial.
12. Admit that the bronze statue of Robert E. Lee, located in what was previously known as Lee Park, is a memorial to a veteran.
13. Admit that the bronze statue of Robert E. Lee, located in what was previously known as Lee Park, is a memorial to a veteran of the War Between the States.
- ...
19. Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as Jackson Park, is a monument.
20. Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as Jackson Park, is a monument to the War Between the States.
21. Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as Jackson Park, is a memorial.
22. Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as Jackson Park, is a memorial to a veteran.

13. In addition to their General Objections, Defendants object to this request to the extent that the terms "memorial" and "veteran" and "War Between the States" are not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent that it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial, and also to the extent that it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Lee Park;" and that the base on which such statue sits contains the words "Robert Edward Lee." Defendants deny the balance of this Request.

...

19. In addition to their General Objections, Defendants object to this request to the extent that the term "monument" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent that it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park;" and that the base on which such statue sits contains the words "Thomas Jonathan Jackson." Defendants deny the balance of this Request.

20. In addition to their General Objections, Defendants object to this request to the extent that the terms "monument" and "War Between the States" are not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent that it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park;" and that the base on which such statue sits contains the words "Thomas Jonathan Jackson." Defendants deny the balance of this Request.

21. In addition to their General Objections, Defendants object to this request to the extent that the term "memorial" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent that it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park;" and that the base on which such statue sits contains the words "Thomas Jonathan Jackson." Defendants deny the balance of this Request.

(iii) *Plaintiffs' Requests for Admission*

[See RFA Nos. 9-13 and 19-22, cited above.]

(iv) *Defendants' Objections and Responses to the Requests for Admission:*

[See Nos. 9-13 and 19-22, cited above.]

(v) *Defendants' Reply to Plaintiffs' Motion to Determine Sufficiency of Objections and Responses*

Defendants have consistently objected to characterizations of the statues at issue as “monument[s],” “memorial[s],” “war memorial[s] and monument[s],” “Confederate monument[s],” “memorial[s] to the War Between the States,” and “memorial[s] to war veterans of the War Between the States.” See, e.g., Answer Am. Compl. ¶¶ 4, 10, 21A, 21C, 21D, 22. The Defendants are not required by Rule 4:11 to agree or admit that the City Council’s May 2016 resolution has the legal significance that Plaintiffs attribute to it.

Topic: “Tarps”

(i) *Plaintiffs' Allegations in the Amended Complaint*

None.

(ii) *Defendants' Answer to the Amended Complaint*

There are no allegations within the Amended Complaint

(iii) *Plaintiffs' Requests for Admission*

Admit that Parks and Recreation Department employee Doug Ehman estimate the costs of recovering the Lee and Jackson Statues as follows (not counting his own overtime)....[A document was provided by Defendants, containing the numbers referenced in the RFA].

(iv) *Defendants' Objections and Responses to the Requests for Admission*

In addition to their General Objections, Defendants object to this Request to the extent that the terms “costs”, “recovering,” “Tarps,” “Tape,” “On Call Pay,” and

CERTIFICATE OF SERVICE

Pursuant to the provisions of Rule 1:12 of the Rules of the Supreme Court of Virginia, I certify that on the 22nd day of October, 2018, I served a true copy of the foregoing document, by electronic mail (where an e-mail address is indicated below) and also by U.S. Mail, first-class, postage pre-paid, to counsel of record, as follows:

Ralph E. Main, Jr., Esq.
rmain@charlottesvillelegal.com
Dygert, Wright, Hobbs & Heilberg
415 4th St., N.E.
Charlottesville, VA 22902

S. Braxton Puryear, Esq.
sbpuryear@verizon.net
P.O. Box 291, 121 S. Main St.
Madison, VA 22727

William V. O'Reilly
woreilly@jonesday.com
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001

Signature: 
Lisa A. Robertson