

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE *et al.*,  
Plaintiffs,

v.

Case No. CL 17 - 145

CITY OF CHARLOTTESVILLE, VIRGINIA *et al.*,  
Defendants.

**Motion For Bill Of Particulars**

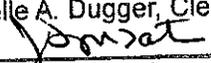
Come now Plaintiffs, by counsel, and move this Honorable Court for a bill of particulars to specify the nature of, and grounds for, the following affirmative defenses (appearing in 10 numbered paragraphs on pages 1 through 3 of Defendants' answer to the amended complaint):

1. Paragraph # 2 fails to give notice whether Defendants are raising "advice of counsel" as a defense and if so, what facts they rely on. An affirmative defense of advice of counsel must state its grounds explicitly and in doing so, waive attorney / client privilege.

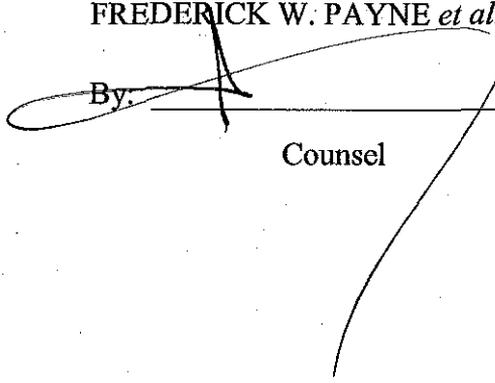
2. Paragraph # 8 fails to give notice of how "Virginia Code §15.2-1812, as applied to the city in this case, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I Section 11 of the Constitution of Virginia." Simply citing the two Constitutions gives Plaintiffs no indication what this defense actually is, or what facts might support it.

3. Rule 3:7 of the Rules of the Supreme Court of Virginia provides that "... a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case." In neither of the foregoing instances have Defendants given notice of a claim or defense adequate to permit Plaintiffs a fair opportunity to respond or to prepare their case.

Wherefore Plaintiffs respectfully request the Court to require the Defendants to file a bill of particulars stating in detail the nature of, and the grounds supporting, the affirmative defenses in set forth in paragraphs 2 and 8 of their answer to the amended complaint.

FILED  
2/21/18 10:40  
(Date & Time)  
City of Charlottesville  
Circuit Court Clerk's Office  
Llezzelle A. Dugger, Clerk  
By   
Deputy Clerk

FREDERICK W. PAYNE *et al.*

By. 

Counsel

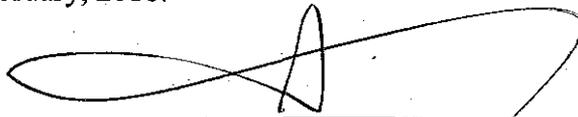
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Madison, Virginia 22727  
(540) 948-4444  
VSB #30734

Counsel for Plaintiffs

Certificate

I certify that I caused a true and exact copy of the foregoing motion for a bill of particulars to be hand delivered to Lisa Robertson, Esq., Charlottesville Deputy City Attorney, City Hall, 605 East Main Street, Charlottesville, Virginia 22902 and to Richard H. Milnor, Esq., Taylor, Zunka, Milnor & Carter, 414 Park Street, Charlottesville, Virginia 22902, counsel for Defendants, this 20<sup>th</sup> day of February, 2018.

  
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