

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

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

v.

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

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Case No. CLI7-000145-000

ORDER

On September 1, 2017, this Court heard argument on Defendants' Demurrer to Plaintiffs' Complaint. Lisa Robertson and S. Craig Brown appeared for all Defendants, Ashleigh M. Pivonka and Richard H. Milnor appeared for Defendants City of Charlottesville and Charlottesville City Council, and Ralph E. Main, Jr., S. Braxton Puryear, and Elliot Harding appeared for Plaintiffs; and

On October 4, 2017, this Court entered an Order partially disposing of Defendants' Demurrer in accordance with the findings made by the Court from the bench on September 1, 2017, at which time several matters were taken under advisement; and

By letter opinion dated October 3, 2017, this Court issued its rulings on the matters previously taken under advisement,

NOW, THEREFORE, upon argument of counsel, and for the reasons expressed in the Court's letter opinion dated October 3, 2017, which is incorporated herein by reference, the Court doth hereby ORDER as follows:

1. Paragraph 1 of Defendants' Demurrer is SUSTAINED in part, in that this Court finds that all of the individual Plaintiffs, except for Plaintiffs Phillips, Fry, Amiss, Griffin and Earnest, and including Plaintiff Sons of Confederate Veterans, Virginia Division, have individual standing to bring this action under general principles of standing, while Plaintiff The Monument Fund has representative standing to bring this action.

2. Paragraphs 1 and 2 of Defendants' Demurrer are OVERRULED in part, in that this Court finds that all named Plaintiffs would have standing to bring an action for damages under Va. Code §15.2-1812.1, and also in that Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith have taxpayer standing for pursuing Count II as to unauthorized expenditures of money to move the Lee statue, based on the Court's finding in Paragraph 3, following below; otherwise, Paragraph 2 of the Demurrer is SUSTAINED as to taxpayer standing.

3. Paragraph 3 of Defendants' Demurrer is OVERRULED, and this Court finds that Va. Code § 15.2-1812 is applicable to monuments or memorials covered by that statute and in existence within a city prior to 1997.

4. Paragraph 4 of Plaintiffs' Demurrer is SUSTAINED, and this Court finds that the Complaint fails to allege facts sufficient to support a conclusion that the Lee Statue is a monument or memorial to any of the wars or conflicts enumerated in Va. Code § 15.2-1812.

5. The Court hereby grants, *sua sponte*, leave to Plaintiffs to amend their Complaint. Plaintiffs shall have until October 25, 2017 to file an Amended Complaint.

This Court notes the Parties' objections to all rulings adverse as to them.

The CLERK is hereby ORDERED to forward certified copies of this Order to all counsel of record.

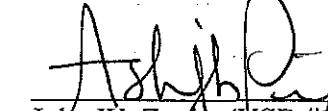
ENTERED: 12/6/17

JUDGE: Michael O'Boyle

We ask for this, as to the Court's ruling sustaining the Demurrer as to Paragraph 1 (as to the part SUSTAINED), Paragraph 2 (as to the part SUSTAINED) and as to Paragraph 4 of the Demurrer; however, Defendants object to the Court's ruling on Paragraph 1 (as to the part OVERRULED), Paragraph 2 (as to the part OVERRULED) and Paragraph 3 of the Demurrer (as to the Court's overruling of the Defendants' assertion that Va. Code § 15.2-1812 does not apply to the Statutes and should not be applied retroactively, and in making their objections, the Defendants rely on arguments in their memoranda and those stated at the hearing of the Demurrer.

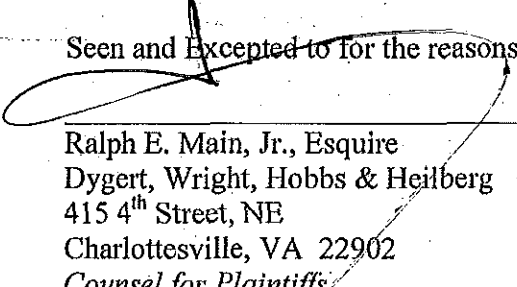


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Seen and Excepted to for the reasons appearing on the following page:


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Exceptions of Plaintiffs:

1. Plaintiffs except to ruling that Plaintiffs Phillips, Fry, Amiss, Griffin and Earnest do not have individual standing to bring this action under general principles of standing, and that Plaintiff Virginia Division, Sons of Confederate Veterans, does not have representative standing to bring this action.
2. Plaintiffs except to ruling that Paragraph 2 of demurrer is sustained except as set forth in foregoing paragraph 2 of order.
3. Plaintiffs except to sustaining of Paragraph 4 of demurrer. The complaint alleges sufficient facts to support conclusion that Lee Statue is a monument or memorial to a veteran of The War Between the States and to the War Between the States, a war or conflict enumerated in Virginia Code § 15.2-1812.