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.

ORDER

Upon Plaintiffs' Motion for Partial Summary Judgment on Permanent Injunction and Declaratory Judgment filed on April 30, 2019; and upon the Defendants City of Charlottesville and Charlottesville City Council's ["Defendants"] Notice and Cross-Motion for Summary Judgment on Count I ("Statutory Violations") of the Revised Second Amended Complaint filed on July 24, 2019, and Defendants' Notice and Cross-Motion for Summary Judgment on Count II ("Ultra Vires") and Count III ("violation of terms of gift") of the Revised Second Amended Complaint filed on July 24, 2019, counsel for Defendants and for Plaintiffs having appeared on July 31, 2019 and the Court having heard argument upon the motions, and the Court having stated in part its rulings on the bench during the July 31, 2019 hearing; and having heard further argument by Counsel as to framing the Order on August 31, 2019, and the Court at the Pretrial Hearing on September 3, 2019 having outlined its rulings for an Order for the parties to draft and submit, and having received that draft Order, now therefore:

It is **ADJUDGED, ORDERED, AND DECREED** that the transcripts filed with the Court of the July 31, 2019 hearing, the August 31, 2019 hearing, and the September 3, 2019 hearing are incorporated in this Order by reference; and further it is,

ADJUDGED, ORDERED, AND DECREED that the Court has previously decided and disposed of certain counts and claims on the merits, and as articulated in open court by counsel and the Court, some such claims have been included in the Revised Second Amended Complaint only to preserve the point for appeal, but not to be relitigated or reargued; and further it is,

ADJUDGED, ORDERED, AND DECREED that if previously disposed of or decided, there is no need to readdress such counts and claims in a motion for summary judgment, and any matter where the demurrer or summary judgment was sustained or granted is dismissed with prejudice; if such were overruled or denied, it will not be readdressed further; and further it is,

ADJUDGED, ORDERED, AND DECREED that the Court previously ruled as to the following motions and issues:

(1) **Standing:** the Court adopts its October 3, 2017 Letter opinion pp. 7-14 and December 6, 2017 Order on standing of the Plaintiffs as its final decision in the case; and as to,

(2) **Count I (statutory violations):** the Court denied Defendants' April 27, 2017 Demurrer and ruled as a matter of law that Virginia Code §§15.2-1812, 1812.1 and 18.2-137 apply to statues in existence in 1997, including the Lee and Jackson statues, in its October 3, 2017 Opinion Letter and December 6, 2017 Order; and further, the Court subsequently granted the Plaintiffs' Motion for Partial Summary Judgment filed on November 13, 2019, finding as fact that the statues at issue in this case are monuments and memorials to Confederate Generals Robert E. Lee and Thomas Jonathan Jackson as veterans of the Civil War, or War Between the States, and as a matter of law that the statues are monuments or memorials to veterans of the War Between the States, one of the wars listed in Virginia Code §15.2-1812, in the Court's April 25, 2019

Opinion letter and July 3, 2019 Order; and further, the Court denied Defendants' December 10, 2018 Motion for Summary Judgment, finding as fact that the City had accepted, authorized and permitted the erection of the Lee and Jackson monuments, in its ruling on the bench July 31, 2019 expressed in the Order dated September 3, 2019, reconsideration denied for reasons stated on the bench September 3, 2019; and as to,

(3) **Count II (*ultra vires*):** the Court has ruled that there is no basis for any *ultra vires* action or claim other than violation of Va. Code §15.2-1812 and 1812.1, and the Court confirmed applicability of Va. Code §§15.2-1812 and 1812.1 to the Lee and Jackson statues as stated as to Count I in (2) above; and has determined that the City acted outside its legal authority in its resolution to remove the Lee statue and in voting to permanently cover both the Lee and Jackson statues under tarps, but not in renaming, repurposing, or designing parks, in its February 23, 2018 Opinion Letter and June 19, 2018 Order; June 13, 2018 Opinion letter and November 9, 2018 Order, and November 17, 2018 Opinion Letter and January 8, 2019 order, and as to,

(4) **Count III (terms of gifts):** the Court hereby confirms Count III was dismissed with prejudice, having sustained the Defendants' April 17, 2017 Demurrer and having ruled that there is no prohibition in the statutes or deeds on the Defendants renaming, redesigning, repurposing, modifying, or transforming the parks except to the extent that such may obscure, interfere with, or encroach upon or obstruct the statues, in the Court's October 3, 2017 Opinion Letter and December 6, 2017 order; November 9, 2018 Order ¶ 5; and in its November 17, 2018 Opinion letter (pg. 4) and January 8, 2019 Order; and as to the

(5) **Request for Relief** including damages, the Court previously ruled that claims based on physical damage and claims for punitive damages were dismissed with prejudice previously, that there has been no physical damage to the statues pleaded and there could be no punitive damages in the case because they are dependent on physical damage to the statues, and the Court ruled that the tarps disturbed, interfered with and encroached upon the monuments, in its February 23, 2018 Opinion Letter and June 19, 2018 order, and June 13, 2018 Opinion letter and November 9, 2018 Order, that damages flow from the encroachment, and damages and whether or not Plaintiffs' litigation costs and attorneys' fees are reasonable; as well as framing the declaratory judgment and injunctive relief, remain to be considered at trial, and further it is,

ADJUDGED, ORDERED, AND DECREED that the Court adopts and reiterates all prior rulings and Orders without further filings or argument and they become law of the case, and further it is,

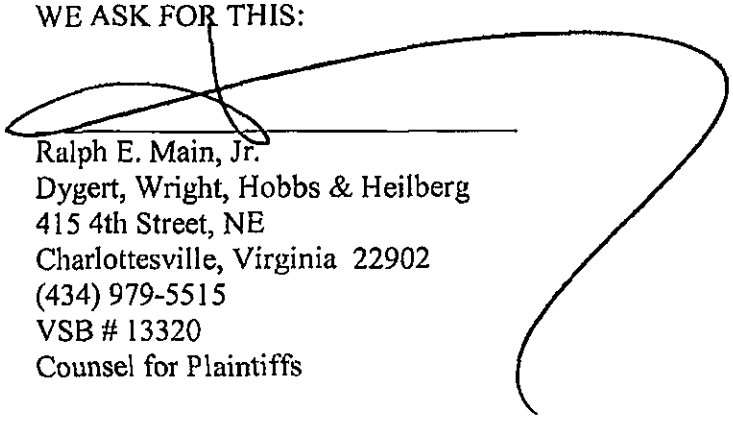
The Clerk will forward certified copies of this Order to Counsel.

It is so Ordered:

ENTER: _____

DATE: 9/11/19

WE ASK FOR THIS:



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SEEN and AGREED/OBJECTED TO, for the following reasons:
Seen and agreed as to matters favorable to Defendants. Seen and objected to for the reasons attached

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DEFENDANTS' OBJECTIONS AND EXCEPTIONS

In accordance with Va. Code §8.01-384 and *Chawla v. Burger Busters,* 255 Va. 616, 622 (1998):

(1) Objection/ exception is taken because Defendants ("Def's")do not believe the wording on p. 4, ¶(5) accurately reflects the Court's in-court statements about the issues that remain for trial. Ref. Transcript 9/3/2019 pretrial conference, p. 20, lines 13-22.

(2) Objection/exception is taken to the ruling that Def's Motions for Summary Judgment were not necessary relative to claims set forth within the Revised Second Amended Complaint (RSAC), as the RSAC was a freestanding complaint. Rulings on prior demurrers had not become the "law of the case" relative to the RSAC as of 7/24/19, when Def's two sets of cross-motions for summary judgment were filed. Rulings favorable to Def's which had previously been dismissed with prejudice following a plea in bar or demurrer were reinserted into the RSAC and Def's motions for summary judgment were procedurally correct to obtain dismissal of those as a matter of law.

(3) Def's note their continuing objections/exceptions to the prior Letter Opinions and Orders incorporated into this Order by reference, as to matters adverse to Def's, for all of the reasons previously stated within their objections/exceptions to the prior orders referred to in this Order, and for all of the reasons and authorities stated in Def's Demurrer to the Complaint, Demurrer and Plea in Bar to the Amended Complaint, and Def's 7/24/2019 and 12/10/2018 Cross Motions for Summary Judgment; and within Def's Motion for Reconsideration of the Court's ruling from the bench on Def's 12/10/2018 Cross Motion for Summary Judgment—all of which is incorporated herein by reference. Def's also note their continuing objection to court opinions and orders which have denied Def's demurrers, pleas in bar and motions for summary judgment asserting claims of sovereign immunity.

(4) Def's object/take exception to the Order, because it does not dispose of issue no. (2) within Def's 7/24/2019 Cross Motion for Summary Judgment on Count I, and it does not dispose of issue nos. (2) and (3) within Def's Cross Motion for Summary Judgment on Counts II and III.

(5) Def's object/take exception to any rewording, paraphrasing or re-characterization of the Court's prior letter opinions and Orders referred to within this Order. (i) at p. 3, ¶(3), the Court's 10/3/2017 letter opinion, fn.1, does not reference §15.2-1812.1; the referenced Court Orders and letter opinions do not contain wording that the City "acted outside its legal authority in its resolution...and in voting", rather, those opinions stated that the coverings were a "disturbance or interference" or an "encroachment"; (ii) p. 3, ¶ (3) does not reflect the Court's prior ruling within the 11/17/2018 opinion letter that a covering/ tarp, itself, does not constitute physical damage, (iii) p. 3, ¶ (3) the specific provisions of this paragraph do not specifically mention that, within its 11/9/2018 Order the Court dismissed Count II (Ultra Vires) with prejudice as to all claims seeking recovery based on Council resolutions expressing an intention to rename, repurpose, or redesign City parks; and as worded this Order may result in confusion with general provisions of p. 1-2 of the Order; (iv) p. 4, ¶(4) to avoid conflict with earlier general provisions in this Order, ¶ (4) should reflect that the Court's prior orders dismissed, with prejudice, all claims seeking recovery based on physical damage to either statue, and all claims for punitive damages—ref. Order entered 11/9/2018; and (v) Def's take exception to the wording at p. 4 ¶(5) of this Order, because it creates conflict with wording of prior rulings: Letter Opinion 2/23/2018 reiterated a ruling that the tarps "interfere with" the statues, and 6/19/2018 Order refers to the tarps as a "disturbance or interference". Neither used the term "encroachment" or referred to damages.