



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-385-4432 • TDD: 703-352-4139

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COUNTY OF FAIRFAX

CITY OF FAIRFAX

March 13, 2009

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RETIRED JUDGES

Stuart Raphael, Esq.
Hunton & Williams LLP
1751 Pinnacle Drive
Suite 1700
McLean, Virginia 22102

Alexander Thomas, Esq.
Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042

John E. Foster, Esq.
City Attorney
City of Falls Church
Office of the City Attorney
300 Park Avenue, 302E
Falls Church, Virginia 22046

Re: Fairfax County Water Authority v. City of Falls Church.
CL 2008-16114

Dear Counsel:

This matter came before the Court on the City's demurrer to the Water Authority's amended complaint. Having considered the pleadings and the written and oral arguments of counsel, the demurrer is overruled.

SUMMARY OF FACTS AS ALLEGED IN THE COMPLAINT

This is a dispute over municipal water service in the northeastern part of Fairfax County. In 1959 the parties entered into a thirty year agreement identifying exclusive service areas for provision of public water. The agreement permitted the City to provide water services for residents and businesses outside the City of Falls Church. The agreement established an exclusive service area for the City in the area of the County lying south and east of a line running (very roughly) north-northeast from the City of Fairfax to the Potomac, and lying to the north of

a line running east from the City of Fairfax to Arlington County.¹ While the agreement was in effect the City developed a public water supply system capable of serving the entire area.

The agreement expired in 1989 and has not been renewed. Both parties currently provide water to businesses and residents in the area, although the Water Authority is not yet capable of providing water for the entire area. In addition to being the City's competitor, the Water Authority is also in some places its customer. The City runs its water service on a for-profit basis, and charges about twice the rate charged by the Water Authority. The City regularly transfers large profits from the water service into their general fund and uses the funds to provide other services to the residents of the City. Although they are not currently doing so, in the past they have charged County residents a higher rate than the rate they charge their own residents. They reserve the right to do so again in the future. About ninety percent of the City's customers are residents of Fairfax County, rather than of the City of Falls Church.

In an area known as the "Halstead Development", the location of the City's water lines interferes with construction of residential units. The developer wants to move the City's water lines, bearing the cost itself, and ensuring no adverse effect on service. Municipal authorities routinely consent to having their easements moved in the interests of permitting additional development so long as it does not interfere with services and is done at no cost to them.

The City has refused to allow the move unless the developer promises to connect the development exclusively to the City's water system. The developer would rather connect to the Water Authority's system because doing so permits them to pay less for the service. The Water Authority stands to lose about \$7 million in assorted service fees and charges if the developer is forced to connect to the City's system. In addition to refusing to cooperate with reasonable requests to relocate water lines unless the developer agrees to forgo service from the Water Authority, the City has told citizens and businesses in the area that it has the exclusive right to provide water to them and has threatened them with civil or criminal sanctions if they attempt to connect to the Water Authority's system.

Although the Halstead development is the center of the instant dispute, the same issues will arise again and again as the Water Authority offers services to residents and businesses in the City's old exclusive service area. The City has no legal basis to threaten people with civil or criminal sanctions if they connect to the Water Authority's system, and has no valid reason to refuse to cooperate with the routine relocation of existing easements and water lines. The only reason they are doing so is to force residents and businesses to connect to their water system rather than the cheaper Water Authority system, resulting in a continuing stream of revenue for their general fund and lower taxes for the residents of the City.

Counts I & II of the complaint allege monopolization and attempted monopolization, in violation of the Virginia Antitrust Act. Count III was dismissed without prejudice by order of February 27, 2009. Count IV alleges tortious interference with a business expectancy. Count V

¹ See Exhibit I to the complaint.

