

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

West Virginia Citizens Defense League, Inc.,

Plaintiff,

Civil Action No. 3:11-cv-5-JPB

(Bailey, C.J.)

v.

City of Martinsburg, *et al.*, Defendants

Declaration of James M. Mullins, Jr., in Support of
Plaintiff's Motion to Strike Certain Insufficient Defenses or, in the
Alternative, Test Certain Defenses in the Defendants' Answer;
Plaintiff's Motion to Reconsider Order of Abstention; and
Plaintiff's Motion to Certify Questions

Pursuant to 28 U.S.C. § 1746, I, James M. Mullins, Jr., declare the following:

1. I have personal knowledge of the facts alleged herein.
2. I am a natural person who current resides in the city of Beckley, Raleigh County, West Virginia.
3. I am the Plaintiff's attorney in the above-entitled action.
4. On September 6, 2011, all Defendants, by and through their attorney, Floyd M. Sayre, III, filed an answer to the Plaintiff's First Amended Complaint.
5. Exhibit A is a true and accurate copy of a series of e-mail communications between myself and Mr. Sayre between September 5, 2011, and September 13, 2011.
6. In the e-mail I sent Mr. Sayre at 3:28 PM, September 7, 2011, I requested information concerning the basis of the Defendants' unqualified denials of the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint.
7. At 4:13 PM, September 7, 2011—45 minutes after my inquiry—Mr. Sayre provided specific information concerning the basis of the Defendants' unqualified denials of the

allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint that, in my opinion, proves the unqualified denials in the answer did not comply with Fed. R. Civ. P. 8(b)(2) and (4) and 11(b)(4).

8. At 4:45 PM, September 11, 2011, I notified Mr. Sayre that I believed that the Defendants should have answered the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint with much greater specificity. I further suggested a form of answers that, based upon the information Mr. Sayre previously supplied, would properly admit the portions of the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint that Mr. Sayre either directly or by fair implication admitted were true and deny those portions of said allegations that I understood Mr. Sayre to deny on behalf of his clients.
9. Mr. Sayre was nonresponsive to my 4:45 PM, September 11, 2011, e-mail.
10. At 6:27 PM, September 13, 2011, I sent Mr. Sayre a follow-up e-mail requesting a reply to my September 11, 2011, e-mail. I set this e-mail to request an electronic read receipt. I received an electronic read receipt less than 3 minutes later.
11. Mr. Sayre has continued to be nonresponsive to the e-mail messages I sent him on September 11 and 13, 2011.
12. Based upon the timing and substance of the filing of the Defendants' answer to the First Amended Complaint; my e-mail to Mr. Sayre on September 7, 2011; Mr. Sayre's prompt and specific reply within 45 minutes, it is my opinion that an answer that pleaded with particularity limited denials of those portions of the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint that the Defendants could deny in good faith and admissions to those portions of said allegations that are true, would eliminate or significantly reduce the realm of factual issues to be determined in this action.
13. Had the Defendants responded to the allegations in Paragraph 45 of the First Amended Complaint with greater specificity, it is my opinion that my client's claims in Counts 5 and 6 of the First Amended Complaint would have immediately ripened for judgment on the pleadings or certification of questions of law to the Supreme Court of Appeals of West Virginia based upon a fully developed factual record on what would have been pure questions of law on which there would be no need for any factfinding.

Executed on September 27, 2011,

s/ James M. Mullins, Jr.

James M. Mullins, Jr. (WV State Bar # 11129)

Attorney for Plaintiff

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