NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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

703-246-2221 · Fax: 703-246-5496 · TDD: 703-352-4139

DENNIS J. SMITH, CHIEF JUDGE
MARCUS D. WILLIAMS
JANE MARUM ROUSH
JONATHAN C. THACHER
R. TERRENCE NEY
RANDY I. BELLOWS
CHARLES J. MAXFIELD
BRUCE D. WHITE
ROBERT J. SMITH
DAVID S. SCHELL
JAN L. BRODIE
LORRAINE NORDLUND
BRETT A. KASSABIAN
MICHAEL F. DEVINE
JUDGES

COUNTY OF FAIRFAX CITY OF FAIRFAX

BARNARD F. JENNINGS
THOMAS A. FORTKORT
RICHARD J. JAMBORSKY
JACK B. STEVENS
J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
LESLIE M. ALDEN
RETIRED JUDGES

June 14, 2013

Gregory L. Murphy, Esq.
VORYS, SATER, SEYMOUR & PEASE LLP
1909 K Street, Ninth Floor
Washington, DC 20006-1152
Counsel for Defendants

Stephen C. Glassman, Esq.
GLASSMAN & MICHAEL, PLLC
1950 Old Gallows Road, Suite 700
Vienna, Virginia 22182
Counsel for Plaintiff

William D. Dolan, III, Esq.
VENABLE LLP
8010 Towers Crescent Drive, Suite 300
Vienna, Virginia 22182
Counsel for Stephen C. Glassman
and Billy B. Ruhling, II

Re: *Yvonne Christ v. Flinthill Space Communications Trust, et al.*
Case No. CL-2008-8220

Dear Counsel:

This matter came to the Court on Defendants' Motion for Sanctions and Costs against Plaintiff Yvonne Christ and her attorneys, Stephen C. Glassman and Billy B. Ruhling, II. After hearing multiple days of testimony and receiving thousands of documents into evidence, the Court took the motion under advisement. The Court has carefully considered the evidence, pleadings, arguments of counsel, and the

OPINION LETTER

applicable governing authorities. For the reasons that follow, the Court grants Defendants' motion and imposes sanctions.

BACKGROUND

I. Maryland Divorce

In 2005, Plaintiff Yvonne Christ ("Christ") filed for divorce from her then-husband, Defendant Wolfgang Wagner ("Wagner"), in the Circuit Court of Montgomery County, Maryland ("Maryland Divorce"). This case is predicated on the parties' Maryland Divorce and is intricately related in all respects. The divorce proceedings proved hostile and relatively compound, given Wagner's financial interest in the Flinthill Space Communications Trust ("Flinthill Trust" or the "Trust").

Wagner is the sole beneficiary of the Flinthill Trust, a spendthrift trust that was established in 1998 to receive payment for disbursement of the minority stockholder interest that Wagner held in the company Spacelink International LLC ("Spacelink"). Wagner's minority interest in Spacelink was shared with Donna Flora; Wagner held 75.862 percent of the minority interest and Mrs. Flora held the remaining 24.138 percent. Spacelink made payments for Wagner and Mrs. Flora's minority interest into FHF Holdings, LLC ("FHF Holdings"), which then disbursed Wagner's portion into the Flinthill Trust. Defendant Russell Mack Lee, Jr. ("Lee") was appointed as trustee of the Flinthill Trust. Under the Trust agreement, Lee received five percent of the Trust's distributions. In early 2005, Spacelink was sold. Ultimately, the value of the minority interest was determined to be $17.2 million, which would be allocated to Wagner and Mrs. Flora, proportionate to their respective interests, via a final buy-out installment. Except the buy-out installment, all of Spacelink's payments had been disbursed to Wagner via the Trust and deposited into the Wagner and Christ's marital accounts during the marriage. Consequently, when Christ initiated the Maryland Divorce in 2005, the only money remaining in the Flinthill Trust was Wagner's portion of the $17.2 million installment, which equated to approximately $13 million.

Christ was represented in the divorce by Bryan C. Renehan, a Maryland-licensed attorney ("Renehan"). Upon instituting the Maryland Divorce, Renehan sought the assistance of Stephen C. Glassman, a Virginia-licensed attorney and partner at the law firm where Renehan's wife worked as an associate attorney ("Glassman"), to file a simultaneous action in this Court. Subsequently, on behalf of Christ, Glassman filed for a temporary injunction in this Court to freeze Wagner's interest in the Flinthill Trust and FHF Holdings ("Fairfax Injunction"). This Court entered three orders: (1) a consent temporary injunction on March 30, 2005,

enjoining the trustee from transferring Trust assets, which was to be in effect until further order or until sixty days after a final judgment was entered in the Maryland Divorce; (2) an order for accounting on April 14, 2005, directing FHF Holdings to provide Christ with an accounting of all of its assets within five business days; and (3) a consent order on August 19, 2005, which modified the March 30, 2005 temporary injunction, ordered the payment of previously incurred administrative expenses, and enjoined further distributions except by Court Order or by agreement of the parties and Wagner.

After instituting the Fairfax Injunction, Christ sought *pendente lite* relief in the Maryland Divorce. On June 15, 2005, the Circuit Court of Montgomery County issued a *Pendente Lite* Order, directing Wagner to "provide a full accounting to [Christ] of the Flint Hill Trust accounts and make available all and any documents in his possession, custody or control, relating to the Flint Hill Trust to [Christ's] experts, and that the parties agree to mutually cooperate in the full exchange of information regarding this and all marital assets." *Wagner v. Wagner*, Fam. Law No. 45762, *Pendente Lite* Order entered June 15, 2005 (Md. Cir. Ct. Montgomery County). Additionally, pursuant to the *Pendente Lite* Order, Christ and Wagner evenly divided $10 million in Flinthill Trust funds prior to September 1, 2005.

In preparation for the May 1, 2006 equitable distribution hearing in the Maryland Divorce, Wagner and Christ exchanged a vast amount of financial documents during the course of discovery. Presently, the parties disagree as to the extent and completeness of discovery produced.[1] Ultimately, the record demonstrates that Christ did not at any time–prior to, during, or subsequent to the equitable distribution hearing in the Maryland Divorce–exercise her remedy for her purported discovery grievances. Admittedly, Christ never filed a motion to compel, nor did she move for a rule to show cause or a contempt hearing, in either the Maryland Divorce or Fairfax Injunction, alleging noncompliance with a court order.

Nevertheless, during the May 1, 2006 equitable distribution hearing, Christ and Wagner entered a stipulation on the record regarding the distribution of the Flinthill Trust's remaining funds–which was the approximate $13 million portion due to Wagner as a result of the buy-out installment, less the $10 million already distributed to the parties pursuant to the *Pendente Lite* Order ("Stipulation"). Accordingly, the Stipulation applied to approximately $3 million in remaining funds.

---

[1] Christ and her attorneys contend that information was not shared on a cooperative basis in the Maryland Divorce and that Wagner never provided a full accounting per the June 15, 2005 *Pendente Lite* Order. Conversely, Wagner insists that information was provided as to all of his business dealings with a number of companies, which included bank statements, balance sheets, invoices, tax returns, and accountant research memoranda from the Trust.

The Stipulation expressly provided:

> [t]he net proceeds from the space link transactions [*i.e.*, buy-out installment], which are currently held in the name of JPPV Limited and the [Flinthill Trust], should be divided equally between the parties on before [sic] December 31, 2006. The net shall be after deduction for the fair and reasonable professional fees, for costs, and trustee's fees required by the trust instrument and the taxes to be paid.

Hr'g Tr. 33:4-11, *Wagner v. Wagner*, Fam. Law No. 45762 (Md. Cir. Ct. Montgomery County, May 1, 2006).

The Stipulation also required Wagner to request, from Lee, that the Trust provide Christ with two separate accountings. The first accounting represented the time period from January 1, 2000 to May 1, 2006, and was defined as the "January 1, 2000 balance in the [Flinthill Trust] and all receipts and all disbursements on an annual basis from January 1, 2000, as to all sums." *Id.* at 33:17-22. This first accounting was to be provided to Christ by September 1, 2006. The second accounting represented the time period from May 1, 2006 to the date of the final distribution, and was defined as a "final accounting as to the full space link transactions with supporting documentation once all funds are distributed." *Id.* at 33:22-24. The second accounting could only be produced to Christ, of course, upon distribution of the funds.

Wagner fulfilled his obligations under the Stipulation during the May 1, 2006 equitable distribution hearing when his attorney advised Lee and the Court, on the record, that Wagner was requesting Lee provide the accounting to Christ, per the terms of the Stipulation.

In October 2006, the Trust filed its tax returns and paid approximately $1.9 million in taxes. The parties anticipated a federal tax refund of approximately $500,000 by year's end, which, pursuant to the Stipulation, would be divided equally between Christ and Wagner. Coincidentally, the Internal Revenue Service decided to audit the tax return ("IRS Audit"). The Trust's accountant worked with the IRS auditors throughout the process; the initial auditor was subsequently replaced, which deferred a resolution on the tax confirmation. Consequently, on December 31, 2006–the intended deadline for final disbursement of Trust funds to Wagner and Christ–the Flinthill Trust, and JPPV, Limited ("JPPV"), did not hold any Trust assets, as the Trust had not yet received its anticipated tax refund.

Ultimately, the tax audit was not resolved until May 2009, nearly one year after Christ initiated this lawsuit.

II. Pre-filing Diligence

Defendants' Motion for Sanctions turns on the objective reasonableness of Christ's claims against Defendants, given the information known or available to her and her attorneys. This Court has carefully examined the Trust's financial documents that Christ and her attorneys had in their possession prior to signing and filing Christ's original complaint on June 26, 2008, her three amended complaints, and numerous other pleadings throughout this case's sixteen-month duration. Based on the documents in Christ's possessions–including those Renehan provided to Glassman–it is evident that, prior to filing this lawsuit, Christ possessed the requisite accounting documentation for January 2000 through May 2006, per the Stipulation's first accounting.

Notwithstanding that the perimeters of the Stipulation limited Christ to further accounting of the Flinthill Trust *only after* the final distributions, Christ continued to request all then-current financial documents from the Trust. To show that no further disbursements to Wagner had been made, the Trust provided Christ with accounting past May 1, 2006. Prior to filing the underlying lawsuit on June 26, 2008, Christ made her last request for financial documents roughly ten months earlier, on August 28, 2007. Wagner, through counsel, responded by pointing out that this information had already been provided.

Prior to the equitable distribution hearing on May 1, 2006, Wagner's counsel carefully explained the Trust's revenues and expenses to Christ's counsel, *i.e.*, "the math,"[2] so that all parties would be cognizant of the expected final disbursements. Although virtually no money remained in the Trust after expenses, the parties anticipated a favorable tax refund of approximately $500,000. Accordingly, consistent with the representations made by Christ's counsel at the equitable distribution hearing, as well as the financial data in Christ's possession before filing this lawsuit, "the math" plainly demonstrates that the funds for an additional disbursement would come from the expected favorable tax refund. Upon receipt of the expected tax refund, a final disbursement would be made to Wagner, of which Christ would receive fifty percent.

---

[2] Of the $17.2 million FHF Holdings acquired as a result of the Spacelink sale: (a) $4.2 million was distributed to Mrs. Flora; (b) $1.9 million was due in taxes; (c) $650,000 was due to the Trustee; (d) $10 million was distributed to Wagner, which the parties stipulated had been equally divided between Christ and Wagner prior to the equitable distribution hearing and pursuant to the *Pendente Lite* Order; and (e) an estimated $600,000 was due in accounting and legal fees.

Before Christ filed this lawsuit, and throughout its duration, Defendants' counsel continued to offer Christ's counsel the opportunity to review and discuss the accounting documents to avoid wasting time and accumulating unnecessary legal expenses. In fact, the record shows that Wagner's counsel repeatedly invited Christ, and her counsel and experts, to confer independently and directly with Lee and the Trust's accountant, so that they could examine the accounting together, and, consequently, show that the "monies in and out" were properly itemized in the documents the Trust had provided. Christ and her attorneys declined all of these offers.

Despite Defendants' repeated invitations to review "the math," examine the accounting documents, and avoid expensive and unnecessary litigation, Christ and her counsel embarked upon a course of protracted, no-holds-barred, scorched-earth litigation. This litigation manifested itself in numerous rounds of complaints, sustained demurrers, burdensome and onerous discovery, and incessant motions practice up to the very morning of trial.

On the morning of the first day of trial, Glassman moved to nonsuit Christ's case, pursuant to Virginia Code § 8.01-380(B). Defendants then moved the Court for an award of sanctions and costs against Christ and her counsel, pursuant to Virginia Code §§ 8.01-271.1 and 8.01-380(C).

ANALYSIS

I. Glassman's and Christ's Objection to Jurisdiction

As a threshold matter, the Court must first address Christ and Glassman's argument that this Court no longer possesses jurisdiction over this case, pursuant to Rule 1:1 of the Rules of the Supreme Court of Virginia. Glassman and Christ argue that the Court no longer possesses jurisdiction to decide Defendants' Motion for Sanctions because a final order was entered on November 2, 2009.

In providing a jurisdictional limitation on the trial courts, Rule 1:1 states, "[a]ll final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer." Va. Sup. Ct. R. 1:1 (2013). As a result, upon expiration of the twenty-one day period, the court rendering judgment loses jurisdiction and the case is final. *Rook v. Rook*, 233 Va. 92, 95 (1987).

Yet, where a trial court enters an order within the twenty-one day time period that expressly modifies, vacates, or suspends the final judgment order, the

order serves to "interrupt or extend the running of the time period so as to permit the trial court to retain jurisdiction in the case." *Super Fresh Food Mkts. of Va., Inc. v. Ruffin*, 263 Va. 555, 560 (2002).

This Court entered an order of nonsuit on November 2, 2009 ("November 2nd Order"), which constituted a final order that triggered the twenty-one day period under Rule 1:1. *See James v. James*, 263 Va. 474, 481 (2001) (an order of nonsuit is a final order and is "sufficiently imbued with the attributes of finality to satisfy the requirements of Rule 1:1"); *Daniels v. Truck & Equip. Corp.*, 205 Va. 579, 586 (1964) (citations omitted) (an order that disposes of the entire case and leaves nothing to be done is a final order for purposes of Rule 1:1). However, on November 18, 2009, within Rule 1:1's twenty-one day time period, this Court entered a subsequent order expressly modifying the November 2nd Order ("November 18th Order"). The November 18th Order provided:

> THIS MATTER came before the Court upon the Consent Motion of the Parties . . . for an amendment of the Order of Nonsuit entered in this cause on November 2, 2009, solely in order to preserve this Court's jurisdiction to adjudicate the issue of . . . sanctions in the nonsuited case, and . . .
>
> it is therefore Ordered that the Order of Nonsuit entered on November 2, 2009, in this cause is hereby AMENDED and this court shall retain jurisdiction to hear and determine the issue of an award of . . . sanctions . . .

The November 18 Order clearly and expressly modified the November 2nd Order. Most importantly, the November 18th Order appropriately amended the November 2nd Order to vest the Court with jurisdiction over this case pending a decision on Defendants' Motion for Sanctions. *See Northern Va. Real Estate, Inc. v. Martins*, 283 Va. 86, 104-05 (2012); *Super Fresh*, 263 Va. at 560-63; *Johnson v. Woodard*, 281 Va. 403, 409-410 (2011). Accordingly, per the November 18th Order, this Court retains jurisdiction to decide Defendants' Motion for Sanctions.

II. Defendants' Motion for Sanctions Pursuant to Virginia Code § 8.01-271.1

Section 8.01-271.1 requires that "every pleading, written motion, and other paper" filed on behalf of a represented party must be signed by at least one attorney of record in his individual name. Va. Code Ann. § 8.01-271.1 (2013).

Under § 8.01-271.1, an attorney makes three certifications when signing a pleading:

> (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Id.

If any of the three certifications are violated, § 8.01-271.1 instructs that the court "shall impose" an appropriate sanction upon the attorney, a represented party, "or both," and such sanctions may include reasonable attorney's fees. *Id.*; *see Martins*, 283 Va. at 105.

A. Well-grounded in fact and warranted by law

The Court applies an objective standard of reasonableness to ascertain whether Christ's counsel, after reasonable inquiry, could have formed a reasonable belief that Christ's pleadings were well grounded in fact and law. *Ford Motor Co. v. Benitez*, 273 Va. 242, 253 (2007). The Court is not limited to the record in the underlying case, "but may properly consider any relevant and admissible evidence tending to show the attorney's state of knowledge at the time in question." *Martins*, 283 Va. at 105-06 (quoting *Benitez*, 273 Va. at 251).

1. Complaints

As Christ's attorney, Glassman signed each of Christ's four complaints filed in this case. To determine whether Glassman violated § 8.01-271.1 by signing Christ's original complaint and her three subsequent amended complaints, the Court separately analyzes the causes of action that were alleged in the pleadings. *See Gilmore v. Finn*, 259 Va. 448, 466 (2000); *see also Nedrich v. Jones*, 245 Va. 465, 471-72 (1993). Collectively, Christ's pleadings alleged four counts against Defendants: Breach of Contract (Count I); Breach of Fiduciary Duty (Count II); Conspiracy (Count III); and Conversion (Count IV). The original complaint, Second Amended Complaint, and Third Amended Complaint each allege all four counts; the first Amended Complaint alleges Count I through III, but abandons the conversion claim.

Count I – Breach of Contract

In her breach of contract claim against Wagner, Christ does not dispute that Wagner requested the Trust provide Christ with an accounting, as required of him under the Stipulation. Rather, Christ's breach of contract claim relies on the allegation that, subsequent to the May 1, 2006 hearing, Wagner breached the Stipulation by "directing or otherwise frustrating the accounting of Trust assets and the distribution of one-half of Trust assets to [Christ]." Compl. ¶ 19; Am. Compl. ¶ 22; 2d. Am. Compl. ¶ 26; 3d. Am. Compl. ¶ 26. Moreover, Christ alleges that Wagner failed to conduct a complete accounting of the Trust assets as agreed in the Stipulation.

To confirm that Christ had already received a full accounting of the Trust under the Stipulation, Defendants contend that Glassman had to look no further than the documents provided to him by Renehan from the Maryland Divorce. Defendants claim that this collection of documents, contained in four volumes and moved into evidence by Glassman during this hearing, showed a full accounting of all "monies in and out" of the Trust. Consequently, Defendants argue that a review of these documents demonstrates that there is no reasonable breach of contract claim. Glassman contends that the Stipulation required an accounting report based on generally accepted accounting principles, and not a compilation of documents. Therefore, Glassman argues, Christ's breach of contract claim was warranted because Defendants had failed to condense the documents into a workable accounting format. The parties do not dispute that the Stipulation was never memorialized in writing. As Glassman describes, the Stipulation announced in the Maryland Divorce was "not a model of clarity." Glassman Mem. in Opp'n at 13.

The Court focuses the issue on whether Glassman could reasonably maintain that Christ was still entitled to an accounting under the Stipulation, despite the production of Trust's financial documents provided to him by Renehan.

Despite the unknown boundaries of the parties' agreement, the record plainly reveals that Glassman, by his own admission, did not examine the vast quantity of Trust accounting documents that had been produced to Christ in the Maryland Divorce, nor the ten to thirty boxes of documents related to the Trust that Christ held in her home. Given how central these accounting documents are to this case, surely, the question must be asked: how can you reasonably sign pleadings claiming your client has not received a complete accounting–and that the Trust has "fail[ed] to make the books and records of the Trust available"–when you have failed to review the accounting documents that your client *has* received? Put even more simply, how do you know you are missing something, if you do not bother to look at what you have?

Glassman's answer is simple: Renehan told him that the experts he had hired in the Maryland Divorce could not put together an accounting from the information they had been supplied. When asked whether he thought he had any responsibility to make sure that what he was being told was, in fact, accurate, Glassman responded:

> A: Yeah. I figured I'd better go out and get an expert to look over this thing, and he did, and said there were documents missing so that he couldn't do the accounting that [the Trust] was supposed to do.

Hr'g Tr. 194:17-21, April 15, 2010.

The Court interjected, asking Glassman to confirm that the expert he was referring to was not actually obtained until almost a year after he signed and filed the original complaint on Christ's behalf. Glassman conceded that was correct, but his decision to file the lawsuit was "based upon what the experts were telling Mr. Renehan, what Mr. Renehan was reporting to us, and what gaps in documents were necessary to complete an accounting." *Id.* at 195:8-12. Remarkably, nearly two years after filing this lawsuit, Glassman was still unable to identify which "gaps in documents" were needed–and allegedly not provided–to complete an accounting. *Id.* at 195:15-196:5.

The record shows that Defendants repeatedly offered to review the documents that had already been provided to Christ with Glassman and Christ's accountants, in order to demonstrate that the accounting had been satisfied. Without exception, Glassman rejected all of these invitations to review the Trust's accounting documents. While Glassman self-admittedly lacked the expertise to interpret the Trust's accounting documents, he opted not to confer with an accounting expert, who would be capable of interpreting such financial information, until nearly a year after filing the lawsuit. Instead, in alleging a breach of the Stipulation based on an inadequate production of accounting documents, Glassman relied on an interpretation (as to the accounting Christ received) that was relayed to him by Renehan. Renehan purportedly received such interpretation from "two experts," one of which was an accountant and the other a lawyer, but neither of whom Glassman met or could identify by full name. To be clear, Glassman cannot be certain of what documents Renehan's experts were provided or reviewed to conclude that they were unable to produce an accounting. Moreover, he cannot be certain what the two experts shared with Renehan as to their interpretation or conclusions regarding the accounting documents they were provided. Glassman can only be certain as to what Renehan told him, that is, the conclusion that an accounting had not been provided as required under the Stipulation. Ultimately,

Glassman's factual basis for alleging Christ's breach of contract claim hinges on an unverified conclusion constituting multiple levels of hearsay.

Glassman's billing invoices demonstrate he dedicated less than nine hours on any type of fact research before filing this action, and approximately four hours of which was spent reviewing transcripts. The remaining five hours consisted of document review and teleconferences with Christ and Christ's divorce counsel. Although Glassman's invoices report he spent approximately five hours conducting document review, other evidence suggests Glassman failed to review the documents that were in Christ's possession at all. During a March 11, 2009 telephone call with Defendants' attorney, an attorney from Glassman's office admitted that the office had not yet received, much less reviewed, any documents directly from Christ.[3]

Parties have a duty to make a reasonable inquiry to avoid the unnecessary time and expense of baseless litigation. *Martins*, 283 Va. at 86. Whether an appropriate amount of pre-filing investigation was exercised is a fact-bound inquiry that requires judicial discretion, and, inevitably, requires the Court to make a judgment call. *Benitez*, 273 Va. at 250. In determining whether the duty of "reasonable inquiry" required by § 8.01-271.1 has been satisfied, "it is not necessary that an investigation into the facts be carried to the point of absolute certainty. . . . [t]he investigation need merely be reasonable under the circumstances." *Kraemer v. Grant County*, 892 F.2d 686, 689 (7th Cir. 1990).

The Court rejects any notion that, under the facts of this case, the blind reliance employed by Glassman constitutes a reasonable pre-filing factual investigation. Given that Christ's claims centered on accounting allegedly withheld from Christ, the Court finds that Glassman's disregard of the pertinent Trust records—given to him by Renehan and in his client's possession—prior to filing this lawsuit for accounting is patently unreasonable. For a case of this magnitude, and for an attorney admittedly untrained in accounting, the five hours Glassman spent

---

[3] Glassman testified that his associate, Alexa Renehan, a Maryland-barred attorney, who is also Renehan's wife, reviewed the Trust materials. However, this review occurred in 2005 and does not remotely qualify as "reasonable," because many of the records that are pertinent to this case were not yet available in 2005. Of course, much of this case is contingent on the Trust allegedly failing to perform an accounting and distribute assets after 2006, pursuant to the Stipulation. Additionally, based on Glassman's testimony, the Court only learned that Glassman observed Ms. Renehan reviewing some documents at divorce counsel's [Renehan's] office; Glassman never revealed whether he learned anything from Ms. Renehan's review.

reviewing the Trust records that Renehan provided was insufficient to constitute a reasonable inquiry as required by § 8.01-271.1.

The Court finds that Glassman failed–either negligently or through willful ignorance–to conduct a reasonable inquiry, and could not have formed a reasonable belief that Christ's claim for breach of contract was well grounded in fact and warranted by law. Accordingly, the Court holds that Glassman violated § 8.01-271.1 as to Christ's breach of contract claim.

Count II – Breach of Fiduciary Duty

Count II alleges that Lee, as trustee of the Flinthill Trust, owed Christ a fiduciary duty by virtue of the Stipulation. Christ contends that Lee allegedly breached his fiduciary duty to her because he refused Christ access to the Trust records, and failed to provide Christ with an accounting of the Trust assets and her share of the funds.

Defendants contend that Glassman had no reasonable basis to allege that Lee owed Christ a fiduciary duty because, as trustee, Lee only owed fiduciary duties to beneficiaries. Under the Trust agreement, Wagner is the sole beneficiary. Additionally, the Trust included spendthrift and "no assignment" provisions, which foreclosed Wagner from assigning his beneficial interest. Therefore, Defendants contend, it was unreasonable for Glassman to allege that the Stipulation transferred any interest to Christ, such that Christ could assert a breach of fiduciary duty claim against Lee. Glassman disagrees, arguing that Count II aimed to advance his novel legal theory of a breach of fiduciary duty claim premised upon a constructive trust. Glassman contends that alleging Lee owed a fiduciary duty to Christ was appropriate because, as a result of the Stipulation, Lee was holding funds in trust, which would ultimately be distributed to both Christ and Wagner. Moreover, Glassman asserts that, "[g]iven this Court's expression of concern late in the proceedings over the possible unenforceability of the Maryland stipulation due to statute of fraud concerns, [his] attempt to invoke fiduciary duties as an alternative basis for relief was not only warranted, but appropriate" to advance Christ's interests. Glassman Mem. in Opp'n at 17.

It is fundamental that a beneficiary of a trust may maintain a claim against the trustee for breach of fiduciary obligations. *See, e.g., Broaddus v. Gresham,* 181 Va. 725, 733 (1943); *Ivey v. Lewis,* 133 Va. 122, 136 (1922). However, such a claim is limited to the beneficiaries of the trust, because a trustee only owes fiduciary obligations to beneficiaries. *See* Va. Code Ann. § 64.2-764 (2012) (a trustee administers a trust "solely in the interests of the beneficiaries"). Outside parties, such as creditors, are restricted in the remedies available. *See* Va. Code Ann. §

64.2-742 (2012) (to the extent a beneficiary's interest is not subject to a spendthrift provision, a court may authorize the beneficiary's creditor or assignee to reach present or future distributions by attachment).

Despite the issue not surviving demurrer, Glassman properly pleaded the existence of a fiduciary relationship between Christ and Lee for purposes of Defendants' Motion. Under § 8.01-271.1, the question is not whether Christ was ultimately successful in her claim. Rather, the question is whether Glassman pleaded a cause of action "warranted by existing law *or a good faith argument for the extension of existing law.*" *Gilmore,* 259 Va. 448 (emphasis added).

Critically, however, properly pleading that Lee owes Christ a fiduciary duty as a result of the Stipulation, does not equate to properly pleading the *breach* of such fiduciary duty. Certainly, the cause of action in Count II is the alleged *breach* by Lee of a fiduciary duty he purportedly owed to Christ. The crux of Christ's breach of fiduciary duty claim is that Lee failed to provide a complete accounting, refused Christ access to the Trust's financial records, and failed to provide Christ with her share of the disbursed funds under the Stipulation. Accordingly, the issue before this Court is whether Glassman, after reasonable inquiry, could form a reasonable belief that Christ's breach of fiduciary claim against Lee was warranted by fact and law.

For the reasons explained in the Court's consideration of Count I – Breach of Contract, the Court finds that Glassman failed to conduct a reasonable inquiry, and, consequently, violated § 8.01-271.1 by pleading Christ's breach of fiduciary duty claim without the requisite factual basis. Accordingly, the Court holds that Glassman violated § 8.01-271.1 as to Christ's breach of fiduciary duty claim.

Count III – Conspiracy

In Christ's original complaint and Amended Complaint, Count III charges Lee and Wagner with conspiring to defy an order of the Montgomery County Circuit Court–namely, the Stipulation–which directed the accounting and distribution of Trust assets before the expiration of the Trust on January 1, 2007. In her Second Amended Complaint and Third Amended Complaint, Christ claims that Lee and Wagner conspired to defy the Stipulation, as well as orders of this Court in the Fairfax Injunction. Christ alleges that Lee and Wagner allegedly accomplished their illegal purpose because the share of the Trust assets due to be distributed to her were not ever distributed, and she suffered damages as a result.

To have properly pleaded Christ's conspiracy claim under § 8.01-271.1, Glassman, after reasonable inquiry, must have formed a reasonable belief

warranted by the facts, that Wagner and Lee, by some concerted action, combined to violate the Stipulation and/or Fairfax Injunction orders. *See Commercial Bus. Sys. v. Bellsouth Servs., Inc.*, 249 Va. 39, 48 (1995).

Glassman argues that the following facts formed an objectively reasonable belief that Christ's civil conspiracy claim was warranted: Wagner and Lee coordinated efforts on various matters, including the investment and administration of the Trust; Wagner "ghost-wrote" correspondence ostensibly from Lee; despite these actions, Defendants still took the position that Wagner could have no involvement in the Trust because it was a "blind trust"; and Wagner and Lee were represented by the same counsel, who made efforts to distance the relationship between the two in the operations of the Trust. Glassman contends that the Trust's purported status as a "blind trust" was used as an attempt to assure Christ that Wagner was not working with the trustee.

Applying an objective standard of reasonableness, the Court finds that Glassman lacked the requisite factual basis, at the time he signed and filed Christ's original complaint and each of the three amended complaints, to allege that Wagner and Lee conspired to violate the Stipulation and this Court's orders in the Fairfax Injunction.

First, Glassman identifies facts that merely demonstrate an association between Wagner and Lee, and that Wagner was involved in the activities of the Trust. The leap from these limited facts to a full-fledged allegation of conspiracy to breach the Stipulation and Fairfax Injunction orders, and to cause damage to Christ, is unjustified and manifestly unreasonable. In a word, it is speculative. Relying on such speculation "is self-refuting of a conclusion that the [pleadings] were well grounded in fact." *Williams & Connolly, LLP v. People for the Ethical Treatment of Animals, Inc.*, 273 Va. 498, 512 (2007).

Glassman argues that "the lack of knowledge and inability to plead specific details of the conspiracy may have rendered the claim subject to demurrer; but it does not make the assertion subject to sanction." Glassman Mem. in Opp'n at 19. Yet, it is precisely this admitted "lack of knowledge" that should have cautioned Glassman to investigate the facts before pleading Christ's conspiracy claim in her original and three amended complaints. Instead, Glassman pressed forward, relying on suspicion and speculation, with the hope that discovery would reveal information that substantiated a conspiracy claim. Under § 8.01-271.1, Glassman was not permitted to plead Christ's conspiracy claim, unless and until he conducted a reasonable inquiry and formed a reasonable belief from the *facts*, not mere unsupported suspicions. Still, Glassman continued to make these unfounded allegations in successive complaints. Consequently, Defendants shouldered the

burden to dispute the validity of Christ's conspiracy claim through multiple pretrial motions.

Second, testimony from both Glassman and Renehan reveals that Glassman never had a sufficient factual basis to plead Christ's conspiracy claims. In answering how Christ could allege conspiracy against Wagner and Lee in each of her complaints, Glassman admitted that their hope was "discovery would point to the proposition . . . that Mr. Lee in conjunction with Mr. Cilenti [accountant] was paying Mr. Cilenti large dollars . . . and that this was a method of getting Cilenti money . . . That was our theory." Hr'g Tr. 97:12-20, July 15, 2010.

None of Christ's four complaints identify this theory as the basis for her conspiracy claim. Notwithstanding, if this was Glassman's theory for Christ's conspiracy claim, then Glassman–by his own admission–did not have a factual basis for pleading such claim at the time he signed and filed Christ's original and three amended complaints. Indeed, Glassman admitted he was relying on discovery in the hope of ferreting out facts to support Christ's conspiracy allegation. Such reliance on future discovery is a blatant violation of § 8.01-271.1:

> A pleading that puts the opposing party to the burden of preparing to meet claims and defenses the pleader knows to have no basis in fact is oppressive. It constitutes an abuse of the pleading process and results in the wrong that Code § 8.01-271.1 was enacted to prevent.

Benitez, 273 Va. at 207; *see also Keeler v. Keeler*, 80 Va. Cir. 205, 208 (Va. Cir. Ct. 2010) (holding that a party's use of the legal process as a means to embark on a fishing expedition, in order to develop unfounded suspicions, violates § 8.01-271.1). If evidence supporting a claim for conspiracy becomes known or available during discovery, Rule 1:8 of the Rules of the Supreme Court of Virginia provides Christ the proper remedy–that is, to seek leave of the court to amend her complaint. *Benitez*, 273 Va. at 208. Rule 1:8 takes into account that new evidence revealed during discovery may warrant the assertion of new claims or defenses. *Id.* Accordingly, "[l]eave to amend [a pleading] shall be liberally granted in furtherance of the ends of justice." Va. Sup. Ct. R. 1:8 (2013).

Glassman is surely aware of this well-established procedure, as it was a claim of newly-found facts in discovery by his associate, Billy B. Ruhling, II ("Ruhling"), that allowed Christ's conspiracy claim to survive Defendants' Demurrer to the Amended Complaint. As a result of the April 3, 2009 hearing, the Court sustained Defendants' Demurrer, but granted Christ one week to file her Second Amended Complaint. The Court's decision to sustain the Demurrer *without*

prejudice was based on the representation by Ruhling that new information had been discovered since the filing of the Amended Complaint on December 23, 2008. In response to the Court's question as to what specific facts supported the conspiracy claim, Ruhling, told the Court:

> [W]e're still going through discovery here, and we have got some additional contours that we think we can go into later, and we can add in a Bill of Particulars of how Defendant Wagner and Defendant Lee took, for example, legal bills and charged them to the trust when they were actually loans by Mr. Wagner and then paid the money on the loan, got paid back to Mr. Wagner to convert the funds. We have just recently found that was long after we filed the amended complaint, but those are the types of things that we suspect we're going to file as we get the defendants – from the defendants.

Hr'g Tr. 9:19–10:8, April 3, 2009.

Rather than seek proper relief under Rule 1:8 when or if evidence supporting a conspiracy was, in fact, discovered–as Defendants urged–Ruhling asked the Court to "grant us leave to amend now that we do have some facts that we have identified and we can add those in?" Hr'g Tr.12:10-12, April 3, 2009. In doing so, Ruhling made an oral motion to the Court for leave to amend Christ's Amended Complaint.

In addition to the admission that Christ was relying on discovery to produce "additional contours," i.e., facts, to support her conspiracy claim, this Court is dismayed by Ruhling's representation that the above-described loan was "just recently found . . . long after we filed the amended complaint." Hr'g Tr. 9:20; 10:4-5, April 3, 2009. In reality, Christ did not just learn of this loan, which was to attorney Dennis Burnett in 2003 and was addressed and fully accounted for in the Maryland Divorce proceedings in 2006 ("2003 Burnett Loan"). While Christ's attorney suggests this new information was revealed during discovery, the information was readily available in documents that had long been in Christ's possession prior to filing both the original complaint and Amended Complaint. Undoubtedly, the fact of the 2003 Burnett loan could only have been "new" if counsel failed to review the documents readily available to him.

Under § 8.01-271.1, an oral motion by an attorney or party in any court in the Commonwealth constitutes the same three representations as those made when an attorney or party signs a pleading. *See* Va. Code Ann. § 8.01-271.1. Glassman admitted he was aware of the 2003 Burnett Loan before filing Christ's lawsuit, but

claimed ignorance of Ruhling's representation to the Court, as well as the Court's basis for granting Christ leave to file her Second Amended Complaint. Notwithstanding, the Court finds that it was unreasonable for Ruhling to claim that the 2003 Burnett Loan was newly-discovered when he moved the Court for leave to file Christ's Second Amended Complaint, and that such motion was in violation of § 8.01-271.1.

Thereafter, Glassman signed both Christ's Second Amended Complaint, filed April 10, 2009, and her Third Amended Complaint, filed June 19, 2009. Both complaints claimed:

> It is believed and therefore alleged that Defendant Wagner has exercised, and continues to exercise, control over the Trust by virtue of his relationship with Lee and has personally hindered the implementation of the Court's Order. This relationship is borne out by the continuous course of conduct between Wagner and Lee through out the life of the Trust. A number of transactions demonstrate, that Lee acted under direction from and in agreement with Wagner whenever he took action on behalf of the Trust.

2d. Am. Compl. ¶ 14; 3d. Am. Compl. ¶ 14.

Further, Christ alleges that "Lee's creative accounting" enabled Wagner to take assets out of the trust by booking a $150,000 loan to the Trust's legal counsel as a bill for professional services, in which the loan was subsequently repaid to Wagner personally. 2d. Am. Compl. ¶ 14(b); 3d. Am. Compl. ¶ 14(b). Certainly, Christ is referencing the 2003 Burnett Loan, which occurred long before the 2005 Fairfax Injunction orders and the Stipulation in May 2006. As noted above, the transaction involving Dennis Burnett was directly addressed and accounted for in the Maryland Divorce, as Wagner had deposited the repayment from the loan into the parties' marital account, which was ultimately divided equally between Wagner and Christ.

Moreover, despite the fact Glassman knew of the 2003 Burnett Loan prior to this case being filed, Glassman did not bother to allege the existence of the loan to support the conspiracy and conversion claims in Christ's original complaint or Amended Complaint. Instead, Glassman raises this allegation in Christ's second and third amended complaints in, what the Court deems, a desperate and insincere effort to survive demurrer on the conspiracy claim. Regardless of the timing, the Court finds that it is objectively unreasonable to believe, after even just a cursory

review of the facts in this case, that the 2003 Burnett Loan somehow supports a conspiracy to subsequently injure Christ.

Similarly, as factual support for her conspiracy claim in her second and third amended complaints, Christ alleges that Lee, under Wagner's guidance, unlawfully transferred assets from the Flinthill Trust to JPPV, in violation of court orders. In August 2005, the Flinthill Trust transferred nearly all of its assets from its Merrill Lynch account to a separate Merrill Lynch account in Nevada in the name of JPPV, Limited. JPPV was specifically created in order to achieve tax savings from the final buy-out installment. Consequently, the $10 million Christ and Wagner evenly divided in September 2005, pursuant to the *Pendente Lite* Order, was paid from JPPV to the Flinthill Trust, so that the funds could then be disbursed to Wagner, and, thus, to Christ. Accordingly, the final disbursement to Wagner, of which Christ would be entitled to half, was also to be paid from JPPV to the Flinthill Trust. Unquestionably, both Christ and Wagner knew that JPPV was holding the majority of the Trust's assets, and that these assets were to be paid out equally to the parties upon the final disbursement, upon entering the Stipulation. In fact, it was Renehan who first advised the Maryland court during the May 1, 2006 hearing of the existence and purpose of JPPV. This Court finds it utterly implausible that Glassman could believe–reasonably or otherwise–that either the transfer from the Trust to JPPV or from JPPV to the Trust "directly contrave[ned]" the Fairfax Injunction orders. 2d. Am. Compl. ¶ 14(f); 3d. Am. Compl. ¶ 14(f). Given the glaring, acknowledged purpose of the JPPV transfer–which was or reasonably should have been known to Glassman prior to initiating this lawsuit, and certainly before signing the second and third amended complaints a year into this litigation–the Court finds Christ's allegation that this transfer supports an action for conspiracy is unreasonable, if not imprudent.

Lastly, as the Court has explained, Glassman failed to reasonably inquire whether Christ was, in fact, still owed accounting from the Trust before signing pleadings alleging that Wagner and Lee frustrated the accounting to Christ. Therefore, Glassman also lacked a factual basis to allege Wagner and Lee *combined* to frustrate the accounting to Christ by breaching the Stipulation and Lee's purported fiduciary duties. "The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use an unlawful means." *Almy v. Grisham*, 273 Va. 68, 81 (2007) (quoting *Gallop v. Sharp*, 179 Va. 335, 338 (1942)). In other words, without proof of the underlying breach, there can be no conspiracy to commit the breach. *See Commercial Bus. Sys. V. Halifax Corp.*, 253 Va. 292, 300 (1997). Because Glassman lacked a reasonable factual basis to allege the underlying breaches, he also lacked a reasonable factual basis to allege *a conspiracy to commit* the underlying breaches.

The Court finds the evidence overwhelmingly establishes that Glassman signed each of Christ's four complaints, alleging conspiracy against Wagner and Lee, without any reasonable factual basis to support these allegations. Accordingly, the Court finds that Glassman violated § 8.01-271.1 as to Christ's claim of conspiracy.

Count IV – Conversion

In Count IV of the original complaint, Second Amended Complaint, and Third Amended Complaint, Christ pleads a claim of conversion against Wagner, Lee, and the Trust. Christ alleges that, "by refusing to distribute the portion of the Trust assets due [to her], Defendants exercised ownership, dominion, and control over the Trust assets in a manner inconsistent with [her] rights and ownership and in contravention of [the Stipulation]." Compl. ¶ 30; 2d. Am. Compl. ¶ 38; 3d. Am. Compl. ¶ 38.

A claim for conversion requires proof of a "wrongful exercise or assumption of authority . . . over another's goods, depriving him of their possession." *Condo. Servs. v. First Owners' Ass'n of Forty Six Hundred Condo.*, 281 Va. 561, 574 (2011) (quoting *Universal C.I.T. Credit Corp. v. Kaplan*, 198 Va. 67, 75 (1956)). Still, any distinct act of dominion wrongfully exerted over the property of another, in a manner that is inconsistent with that party's right to immediate possession of the property, may be treated as conversion. *Id.* (internal citations omitted). Importantly, however, an action for conversion may only be maintained by a person who has a property interest in the allegedly converted property and is entitled to its immediate possession. *Economopoulos v. Kolaitis*, 259 Va. 806, 814 (2000) (citing *United Leasing Corp. v. Thrift Ins. Corp.*, 247 Va. 299, 305 (1994)).

Because Christ alleges conversion against all Defendants, the Court determines, separately, whether a claim of conversion was proper under § 8.01-271.1 against the Trust, as well as against the individual defendants, Wagner and Lee.

Count IV – Conversion as to Defendant Flinthill Trust

Christ's conversion claim alleges that the Trust committed conversion of its own assets by refusing to distribute the portion of Trust assets due to Christ, thus exercising ownership, dominion, and control in a manner inconsistent with her rights. Defendants argue that if Glassman had performed the requisite reasonable inquiry, he would have known that the Trust was incapable of converting its own assets–that it is a legal impossibility.

Two months before the first day of trial, during the hearing on Defendants' Demurrer to the Third Amended Complaint, Ruhling acknowledged, "[w]ith regard to the conversion, we do concede the trust cannot be liable for conversion and we are fully willing to accept that..." Hr'g Tr. 17:19-21, August 14, 2009. Notwithstanding, Glassman does not address whether alleging conversion against the Trust was appropriate under § 8.01-271.1.

By conceding that the conversion claim against the Trust was a legal impossibility, and failing to offer a good faith argument for the extension, modification, or reversal of this existing law at any time during this case, the Court finds that Glassman pleaded these allegations in Christ's complaints in violation of § 8.01-271.1.

Count IV – Conversion as to Defendants Wagner and Lee

Christ alleges conversion against Wagner and Lee on the premise that they refused to distribute the portion of Trust assets due to her under the Stipulation. It is evident to the Court that Glassman based Christ's conversion claim against Wagner and Lee on an assortment of "what ifs," and lacked any reasonable, factual basis to allege conversion before he signed the complaints. During the hearing on Defendants' Demurrer to the Third Amended Complaint–well over a year after Christ filed her original complaint alleging conversion–Ruhling shined light on Christ's theory:

> [Wagner and Lee] have converted to their own use, whether it is by retaining it or it is by making payments, which we contend have been made that are inappropriate, which is why we have an action for an accounting out there – we can't say 100 percent because quite frankly, we haven't gotten the accounting to know where we're at. Ultimately, when you look at the pleading itself . . . we have set forward that there is a conversion of the funds, which she has a right to the distribution of, which in addition, the way that the conversion count is structured is that we have asserted that [Wagner] has gotten something in there. We have never received anything. If [Wagner] has gotten one penny, she's entitled to half of it. That's where the conversion can come in as well.

Hr'g Tr. 18:11–19:4, August 14, 2009.

Likewise, if Wagner had not received any payment from the Trust since the September 2005 disbursement–because the IRS Audit interrupted the Trust's receipt and subsequent disbursement of a predicted tax return– then Christ would not receive any payment either; of course, half of zero is zero. At the crux of this conversion claim is the necessary, yet uninvestigated and unsupported, allegation that the Trust actually held funds that could be distributed, or withheld for that matter.

The Court questions how, given "the math" and the fact that the IRS Audit delayed a tax refund to the Trust until May 2009, this case could have spanned over sixteen months and survived four demurrers. The answer is as clear as it is inexcusable: Glassman pleaded "facts" which he knew, or should have known, were unsupported or contrary to the evidence, simply to bolster his chances of avoiding dismissal on demurrer. As a prime example, Glassman claimed in each of the four complaints, "[i]t is believed and therefore alleged that the Trust presently holds assets of not less than Five Million dollars ($5,000,000)." Compl. ¶10; Am. Compl. ¶10; 2d. Am. Compl. ¶ 12; 3d. Am. Compl. ¶12. The record not only demonstrates that there was no reasonable factual basis for Glassman to plead this allegation, but it plainly contradicts the facts and records readily available to him. During the equitable distribution hearing in the Maryland Divorce, Christ's counsel reported to the court that the expected trust proceeds, after payment of taxes and expenses, would be approximately $500,000. Christ and Glassman also possessed financial records and other evidence from the Maryland Divorce to know how much money remained in the Trust. If Glassman had conducted a reasonable inquiry prior to filing suit, he would have recognized that such an allegation was wholly unsupported by the evidence and, ultimately, impossible given "the math." Despite abundant evidence proving that the $5 million figure was inaccurate, Glassman continued to make the allegation in each of the complaints.

Additionally, Christ alleges in each complaint; that "[i]t is unknown if Defendants Lee and Wagner or other parties have terminated the Trust and distributed its corpus." Compl. ¶ 14; Am. Compl. ¶ 14; 2d. Am. Compl. ¶ 17; 3d. Am. Compl. ¶ 17. Actually, the Trust records readily available to Glassman before filing Christ's original complaint clearly indicated that the Trust corpus had not been distributed, and that the IRS was conducting an audit of the Trust. Even a cursory review of these documents, or a basic inquiry into the status of the tax refund, would have revealed this fact. Therefore, Glassman either failed to conduct a reasonable inquiry, or it was completely false for him to allege on June 26, 2008, when he signed Christ's original complaint, that the Trust held not less than $5 million and that it was unknown whether the Trust had been distributed. Under either scenario, Glassman violated § 8.01-271.1. Glassman continued to breach his obligations under § 8.01-271.1 when he re-pleaded these allegations on December

23, 2008, when filing the Amended Complaint, April 10, 2009 when filing the Second Amended Complaint, and June 19, 2009, when filing the Third Amended Complaint.[4]

On September 17, 2009, Christ's own expert testified that no Trust monies had been distributed to Wagner since the September 2005 disbursement. He also testified that there was no evidence that any sums had been distributed to others and paid back to Wagner. Despite learning from Christ's own expert that Wagner had not converted any Trust assets, and demonstrating no other factual basis for raising the claim, Glassman continued to allege conversion against Wagner and Lee up until the eve of trial. Therefore, the Court finds that Glassman failed to conduct a reasonable inquiry and, consequently, lacked an objectively reasonable belief that the conversion claim was well grounded in fact, in violation of § 8.01-271.1.

Moreover, the Court finds that Christ's conversion claim against Wagner and Lee was not warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law. The gravamen of Christ's conversion claim is that by allegedly refusing to distribute the portion of the Trust assets due to her under the Stipulation, Defendants exercised ownership, dominion, and control over Trust assets in a manner inconsistent with her rights. Accordingly, Christ's claimed entitlement to the property arises from the Stipulation.

An objective review of the record plainly reveals that no reasonable attorney could have concluded, at the time this case was filed, that the Stipulation granted Christ a right to immediate possession of the Trust assets. Despite the Stipulation never being reduced to writing, this Court is unable to find any version on the record that did not explicitly state that Christ was entitled to half the Trust's remaining proceeds *after* the payment of its 2006 taxes. The evidence in Christ's possession clearly shows that, due to the IRS Audit, the Trust had yet to finalize its 2006 taxes at the time the original complaint was filed. Furthermore, it is clear that Glassman knew, or at least reasonably should have known, that the Trust was being audited. A reasonably prudent attorney–with the evidence that was available to Glassman prior to filing this lawsuit–would have performed a sufficient investigation to recognize that, due to the IRS Audit, Christ had no right to immediate possession of the Trust funds, and, therefore, no claim for conversion.

---

[4] Throughout Christ's pleadings, Glassman pleads facts with the caveat that "it is believed and therefore alleged." This phrase–and its cousin, the oft-used "upon information and belief"–misstates the pleading standard in Virginia. Indeed, one could scour the legal lexicon and not find phrases more devoid of value. Every allegation, in every pleading filed with a Virginia court, must be pleaded upon *knowledge*, information, and belief, *formed after a reasonable inquiry*. Parties and their counsel cannot unilaterally lessen the requisite threshold by prefacing allegations in their pleadings with these qualifiers.

Glassman either failed to conduct reasonable research, which would have alerted him that the conversion claim lacked any basis in law, or he simply chose to ignore the well-established authority without offering a good faith argument for its modification. Regardless, under both excuses, the Court finds Glassman violated § 8.01-271.1 by pleading the conversion claim against the Trust, Wagner, and Lee, without a reasonable legal basis.

Punitive Damages Request

Christ seeks punitive damages against Wagner and Lee in each of her complaints for their alleged malicious and intentional, concerted action to breach the Stipulation. Defendants argue that Christ had no basis in law or fact to seek punitive damages against Wagner and Lee, and, as a result, Defendants exhausted resources contesting these baseless claims.

On demurrer, this Court determined that Christ failed to allege facts sufficient to support an award of punitive damages. However, the issue before the Court now is whether Glassman, after reasonable inquiry, could have formed a reasonable belief that Christ's punitive damages claims were well-grounded in fact and warranted by law, or its modification, despite any pleading deficiency.

The general rule governing an award of punitive damages is that such damages may only be recovered where there is intentional misconduct or actual malice, or such recklessness or negligence as to evince a conscious disregard of the rights of others. *Giant of Va., Inc. v. Pigg*, 207 Va. 679, 685 (1967); *Hamilton Dev. Co. v. Broad Rock Club, Inc.* 248 Va. 40, 45 (1994).

The Court has determined that Glassman violated § 8.01-271.1 as to each of the four counts pleaded in Christ's complaints, because he failed to conduct a reasonable investigation, and lacked a reasonable legal and/or factual basis to allege the claims in the complaints. Therefore, the Court finds that Glassman also lacked a reasonable factual and legal basis to then allege that the purported conduct giving rise to these claims was performed with malice, or the requisite disregard, as to warrant punitive damages. This conclusion is further bolstered by the fact that, when asked by the Court to specify the factual basis he believed supported a claim for punitive damages, Glassman was unable to identify any specific conduct or facts.

Applying an objective standard of reasonableness, the Court holds that Glassman, after conducting a reasonable inquiry, could not have formed a reasonable belief that a claim for punitive damages was well grounded in fact or law. Accordingly, the Court holds that Glassman violated § 8.01-271.1 by signing

the original complaint and three amended complaints, in which he pleaded claims for punitive damages that lacked a reasonable factual and legal basis.

2. Expert Witness Disclosure for Jeffery Capron

Defendants contend that Christ's designated accounting experts had not formed an opinion when Christ submitted her interrogatory responses and expert disclosures pursuant to Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme Court of Virginia. Therefore, Defendants aver Christ's counsel signed and filed Christ's three expert disclosures without first conducting a reasonable inquiry, and, thus, the pleadings were not well grounded in fact or law.[5]

Rule 4:1(b) provides, in relevant part:

> A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Va. Sup. Ct. R. 4:1(b)(4)(A)(i) (2013).

Accordingly, in their first set of interrogatories, Defendants asked Christ to identify all expert witnesses she expected to call at trial, as well as the subject matter on which the expert would testify, a summary of the grounds for each opinion, and all documents submitted to, reviewed by, relied upon, and prepared by the expert. On February 11, 2009, Christ filed her expert witness disclosure naming four experts, which included accountant Jeffrey D. Barsky, CPA ("Barsky"). This disclosure, signed by Glassman, failed to include the requisite details of the experts' opinions under Rule 4:1(b)(4)(A)(i), or as requested by Defendants' interrogatory.

On March 23, 2009, Christ filed an amended expert disclosure, which eliminated Barsky, but identified a new accounting expert, Jeffery P. Capron, CPA

---

[5] The certifications set forth in § 8.01-271.1 apply to "every pleading, written motion, and other paper" filed on behalf of a represented party. Accordingly, Capron's Designation falls within the purview of § 8.01-271.1.

("Capron").[6] This disclosure, signed by Glassman, again failed to satisfy the requirements under Rule 4:1(b)(4)(A)(i), merely stating, "[Capron] will testify as to the transactions associated with the Trust account, the standards and procedures that apply thereto, and presumably will comment on the expert testimony of the Defendants if it is disclosed" ("Capron's March Disclosure").

On July 1, 2009, Christ again amended her expert witness disclosure, this time signed by Ruhling,[7] which added, "[Capron's] testimony will also include his opinion with regard to the professional fees paid by the Trust, the billing structure charged by the professionals whom the Trust has paid, and the payment of all other expenses by the Trust and whether or not they are reasonable and necessary" ("Capron's July Disclosure"). Yet, again, Christ's expert disclosure failed to identify what Capron's opinions on these subjects actually were–let alone the basis for those opinions–as required under Rule 4:1(b)(4)(A)(i).

Defendants moved to exclude Capron from testifying at trial and the Court heard argument on October 30, 2009. Defendants argued that Capron did not review his expert disclosures at the time they were filed, nor had he analyzed any documents or materials to be able to form an opinion. Addressing Capron's March Disclosure, the Court asked Christ's counsel to explain how Christ could contend the expert designation was sufficient, despite not actually disclosing the content of Capron's opinion.

> Ruhling: Your Honor, that was days after he had been retained. He hadn't analyzed anything. We couldn't give him an opinion until he analyzed and we knew that we'd have to supplement. We understand that.
>
> Court: Wait, wait, wait. You're offering him up as an expert and he didn't have an opinion?
>
> Ruhling: Your Honor, we merely were identifying that he is going to be an expert, that we understand at that point we have to supplement and let them know what his opinions are.

---

[6] Titled "Plaintiff's Corrected Expert Witness Disclosure Pursuant to Va. Code Ann. Rule 4:1(B)(4)(A)(1)."

[7] Titled "Plaintiff's Amended Expert Witness Disclosure Pursuant to Va. Code Ann. Rule 4:1(b)(4)(A)(1)."

Hr'g Tr. 19:10-21, October 30, 2009.

Indeed, on March 19, 2009, when Capron's Disclosure was signed and filed, neither Christ, nor her counsel, knew the content of Capron's opinion–or if Capron had formed any opinion at all. In fact, Capron's testimony from his September 17, 2009 deposition reveals that Capron only ever formed two opinions: first, that he found no final distribution had been made to Wagner; and second, that, in his opinion, the Trust accountant's fees were unreasonable–an opinion which Capron did not share with Christ's counsel until September 14, 2009, nearly six months after Capron's March Disclosure and two-and-a-half months after Capron's July Disclosure.

The evidence establishes that, at the time Christ's counsel signed Capron's expert witness designations, Capron had not yet formed an opinion, nor had he reviewed the Trust documents and materials to even be able to form an opinion. Consequently, Christ designated Capron as an expert witness without knowing what, if any, opinion Capron had formed, in apparent hope that he would, ultimately, render an opinion that supports her case. This behavior is a blatant violation of reasonable conduct under § 8.01-271.1.

The Court holds that no reasonable attorney could believe that Capron's two expert disclosures were based in fact, given that Capron had not yet reviewed the documents, nor formed an opinion, as to the subjects identified in the disclosures when those disclosures were signed and filed. Accordingly, the Court finds that, by signing Capron's March Disclosure and Capron's July Disclosure, Glassman and Ruhling, respectively, violated § 8.01-271.1.

B. Improper Purpose

Clause (iii) of the second paragraph of § 8.01-271.1 defines a pleading filed for an "improper purpose" to include factors "such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."[8] This provision "is designed to ensure dignity and decorum in the judicial process" and "deters abuse of the legal process and fosters and promotes public confidence and respect for the rule of law." *Taboada v. Daly Seven, Inc.*, 272 Va. 211, 216 (2006). The possibility of a sanction

---

[8] This list is not exhaustive. *See e.g., Williams & Connolly, LLP*, 273 Va. at 519 ("Contemptuous language and distorted representations in a pleading never serve a proper purpose and inherently render that pleading as one 'interposed for [an] improper purpose,' within the meaning of *clause (iii) of the second paragraph of § 8.01-271.1*"); *Taboada v. Daly Seven, Inc.*, 272 Va. 211, 216 (2006) (A pleading that ridicules and derides the court, by repeatedly using intemperate language to express displeasure with the court's opinion, constitutes an "improper purpose" under § 8.01-271.1).

serves to protect parties from the expense of frivolous lawsuits based on unfounded factual and legal claims. *Oxenham v. Johnson*, 241 Va. 281, 286 (1991).

Therefore, sanctions will be imposed to protect courts against those who abuse the judicial process by filing pleadings for an improper purpose. *Id.* Certainly, if a complaint or other pleading, signed and filed with this Court, is not filed to vindicate rights in court, its purpose is inherently improper under § 8.01-271.1. *Accord In re Kunstler*, 914 F.2d 505, 518 (4th Cir. 1990) (interpreting "improper purpose" under Fed. R. Civ. P. 11).

Christ contends she was a passive participant in this action, and did not engage in any coordinated effort with her counsel to violate § 8.01-271.1. Christ insists that her sole purpose in filing this lawsuit was to obtain an accounting, and that she relied on her counsel and experts to develop her case. Thus, Christ reasons that her counsel, alone, is responsible for any conduct the Court finds to be sanctionable under § 8.01-271.1, especially such conduct related to claims other than a claim for accounting.

The Court disagrees. Applying an objective standard of reasonableness, the Court finds that Christ was the integral catalyst in filing this lawsuit, and that she did so not to prevail on the merits of her claims, but to retaliate against her ex-husband and other perceived adversaries from the Maryland Divorce. Christ's motivation for filing this lawsuit is unmistakable. On March 19, 2008, as a result of a contempt proceeding in the Maryland Divorce, the Maryland court stripped Christ of her visitation rights to the parties' son, and awarded temporary sole legal and physical custody to Wagner. Three months later, believing she was wronged and armed with Virginia counsel, Christ waged another lawsuit in this Court with no holds barred.

Although Christ attempts to deflect all responsibility and culpability onto her attorneys, there is simply no evidence that Christ was unaware of the claims she had alleged against Defendants, or that she was not directing this case.

First, the Court finds no merit in Christ's claim that she only brought this lawsuit to obtain an accounting and that, in doing so, she aptly relied on her attorneys and accountants. If that were true, then it is wholly inexplicable why Christ failed to provide her attorneys and accountants pertinent Trust documents until, at the earliest, March 11, 2009–eight months after filing her lawsuit. Instead, Christ held ten to thirty boxes of original financial Trust documents, belonging to Wagner, under the stairs of her home and in a storage facility, until she was required to provide them to her counsel as a result of Defendants' discovery requests. Christ brought her claim for the Trust's accounting without first

determining whether she had already, in fact, received such accounting. Christ claims she is "not a professional accountant, so [she] gave it to the professional." Christ Dep.103:4-5, July 8, 2009. Yet, at the time she initiated this lawsuit, and even more than one year later during her depositions, Christ's "professionals" had still not determined whether Christ was owed the accounting she sought in her complaints.

Overwhelmingly, Christ's testimony demonstrates her utter disinterest in, and disregard for, the merits of her claims:

> Q: When can we expect you to finish looking at the accounting documents that you've been provided so far?
>
> Mr. Glassman: If you know.
>
> Christ: I don't know.
>
> Q: You don't know. So when can we expect to be able to have you available to answer questions regarding the accounting documents?
>
> A: I don't know.
>
> Q: When do you expect that we can ask you whether you have gotten the full accounting that you have asked for in this lawsuit?
>
> A: I don't know.
>
> Q: When can we expect you to be able to tell us whether you've seen all of the information you need for the accounting which you seek in this case?
>
> A: I don't know.

Id. at 127:15 – 128:10. Nevertheless, throughout her deposition, Christ showcased a selective knowledge of information, demonstrating proficiency where the answers seemingly benefited her, but evading answers to pertinent questions that went to the heart of her allegations.

Furthermore, Christ's testimony makes clear that she brought this lawsuit because she believed money had been paid out of the Trust without her consent, and she held Wagner and Lee responsible for her not receiving a final installment payment by December 31, 2006. The evidence shows that, far from merely pursuing a claim for accounting, Christ sought to re-open discovery and re-litigate the Maryland Divorce, expecting to discover an imagined undisclosed banking account belonging to Wagner. In doing so, Christ converted this case, alleging four separate causes of action, into a full-fledged fishing expedition.

Second, Christ is not a novice to the legal process. To the contrary, she knows how to use the court process to assert claims, and, in purporting to do so, she has manipulated the legal systems of two countries in order to execute her retaliation plan against her ex-husband. Prior to this case, and simultaneous to the Maryland Divorce and Fairfax Injunction, Christ contacted German authorities and falsely accused Wagner of murdering a child in Germany. As a result, Wagner was arrested and jailed until he could establish by his passport entries that he was not even in the country at the time of the murder. Christ was subsequently cited for making false statements in connection with this allegation. Additionally, in hopes of stumbling upon some wrongdoing, Christ also hired at least two private detective firms–one based in California and the other in Germany–to investigate virtually every aspect of Wagner's life. One such detective prepared a letter to Maryland authorities on Christ's behalf, implicating Wagner to a host of criminal activities.

Moreover, the Court finds that Glassman also filed this vindictive lawsuit for an improper purpose at Christ's request, and also employed needless gamesmanship throughout its pursuit. Instead of cautioning Christ against her improper conduct, Glassman furthered this baseless action to his own enrichment, and to the great expense of Defendants. The combination of so many frivolous claims, supported only by gross speculation–and a demonstrated, consistent unwillingness to examine or reconcile the accounting documents in his possession that were absolutely central to Christ's claims–convinces the Court that Glassman pursued this case for an improper purpose.

Standing alone, the Court might not conclude that Christ's evasive and indifferent attitude towards the resolution of her claims is entirely intentional. However, after reviewing all of the evidence, there is no mistaking–Christ's desire to "get revenge" on her ex-husband is the be-all and end-all of this case. Such lawsuits are an ignominy to the legal system and cannot be tolerated.

Accordingly, the Court holds that both Christ and Glassman violated § 8.01-271.1, by bringing and maintaining this lawsuit for an improper purpose.

C. Appropriate Sanction

Defendants request that the Court impose sanctions in the form of attorneys' fees and costs, against Christ and her attorneys, for their conduct in violation of § 8.01-271.1. Specifically, Defendants seek an award of $912,900.76, which represents the amount of attorneys' fees and costs Defendants contend they incurred in defending against Christ's claims.

Pursuant to § 8.01-271.1, the Court is required to impose,

> upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

Va. Code Ann. § 8.01-271.1.

In determining the appropriate sanction, this Court is mindful of the underlying purposes of § 8.01-271.1. "With regard to acts of attorneys, the manifest purpose of the statute is to hold attorneys, who are officers of the court, responsible for specified failures involving the integrity of the documents that they have signed." *Williams & Connolly*, 273 Va. at 510. Importantly, the statute serves to protect litigants, who are forced to defend baseless claims, as well as the courts and the integrity of the legal system, which are manipulated by lawsuits and pleadings that are filed for an improper purpose. *See id.* at 519. Ultimately, however, sanctions imposed pursuant to § 8.01-271.1 must be sufficient to punish the offending party and deter others from acting similarly. *See Switzer v. Switzer*, 273 Va. 326, 331 (2007); *Gentry v. Toyota Motor Corp.*, 252 Va. 30, 34 (1996).

The conduct exhibited by Christ and her attorneys in this case demonstrates an absolute disregard for the integrity of this Court and the certifications under § 8.01-271.1. For 495 days, Christ exploited this Court and the legal process to harass her ex-husband and his associates with baseless, purely speculative allegations, in an effort to re-litigate the Maryland Divorce in a new lawsuit. Over this period of time, the Court studied, prepared, and heard arguments on thirteen separate motion docket weeks, addressing Defendants' challenges to Christ's claims and various other disputes throughout the litigation. Inexcusably, Christ and her attorneys perpetrated this litigation with four iterations of a complaint, alleging four causes of action, that they knew, or should have known, did not have any

factual basis. Significantly, because Christ's attorneys continued to assert "new facts" to ostensibly support these causes of action, Christ's unwarranted claims survived and continued onward–only to be argued again in a subsequent motion and dismissed. The course of this lawsuit illustrates how a well-pleaded lie can waste a substantial amount of an adversary's resources. In choosing not to examine relevant, critical information in their possession before filing this lawsuit–or throughout its 495 day course–Christ and her attorneys not only abused the Court's time and resources, but forced Defendants to incur significant costs and fees to defend the allegations against them. Such blatant abuse of the Court and the legal process certainly has a cost. Without the imposition of sanctions as required by § 8.01-271.1, the innocent party forced to defend against an improper, frivolous lawsuit inevitably bears this cost.

Accordingly, the Court finds that the appropriate sanction in this case is an award of the reasonable attorneys' fees and costs that Defendants incurred because of the improper and baseless claims brought by Christ and her counsel in this lawsuit.

Reasonable Attorneys' Fees and Costs

Of course, Defendants must establish the reasonableness of the legal fees and costs incurred. *See Chawla v. BurgerBusters, Inc.*, 255 Va. 616, 623 (1998). As the fact finder, this Court determines the reasonable amount of fees and costs under the facts and circumstances of this particular case. *West Square, L.L.C. v. Commun. Techs.*, 274 Va. 425, 435 (2007) (quoting *Mullins v. Richlands Nat'l Bank*, 241 Va. 447, 449 (1991)). In doing so, the Court weighs the testimony and other evidence, and applies its own experience and knowledge of the character of the services Defendants' counsel provided. *See Martins*, 283 Va. at 118; *Holmes v. LG Marion Corp.*, 258 Va. 473, 479 (1999). Thus, the Court notes, expert testimony is not required in all instances to prove the reasonableness of fees. *Seyfarth, Shaw, Fairweather & Geraldson v. Lake Fairfax Seven Ltd. Pshp.*, 253 Va. 93, 96 (1997); *Tazewell Oil Co. v. United Va. Bank*, 243 Va. 94, 112 (1992).

Defendants submitted their counsel's affidavits and over 185 pages of contemporaneous time records in the form of billing invoices, which detailed the legal services provided to Defendants, the time spent and fees charged for such services, as well as other costs that were incurred. Further, Defendants' counsel testified to the accuracy of the time billed, the nature of the legal services provided, and the reasonableness of the fees charged in the billing invoices. He testified that the fees Defendants incurred are fees ordinarily charged in similar types of legal representation, including those fees charged by Christ's counsel, and also identified reductions he made to the time records, for which Defendants were not billed.

Additionally, Defendants' counsel explained how Defendants inescapably incurred these legal fees and costs as a result of Christ and her attorneys' continued pursuit of the four causes of action alleged in this lawsuit.

Neither Christ, nor Glassman, presented any evidence to refute the reasonableness of the services Defendants' counsel provided or the hourly fee rate charged. However, Christ argues that Defendants failed to mitigate their expenditures, which she contends could have been significantly reduced had Defendants provided a compiled accounting report. Additionally, Christ and Glassman stress that the award should not include fees incurred for Defendants' motions that were ultimately denied by the Court, or otherwise unsuccessful in defeating Christ's claims. Further, Glassman argues that an award of attorney's fees would improperly convert Code § 8.01-271.1 into a fee shifting statute.

In determining the amount of reasonable attorneys' fees incurred by Defendants, the Court considers the following factors:

> [T]he time and effort expended by [Defendants' counsel], the nature of the services rendered, the complexity of the services, the value of the services to [Defendants], the results obtained, whether the fees incurred were consistent with those generally charged for similar services, and whether the services were necessary and appropriate.

Chawla, 255 Va. at 623.

The Court has carefully reviewed Defendants' billing records in full, and considered each of the above factors. Undoubtedly, Defendants' counsel performed a great deal of work in defending their clients from Christ's frivolous and improper claims. However, the amount of time billed, and the rates charged to Defendants, are not at all exorbitant, especially given the alleged amount in controversy and the relatively compound nature of the claims. Defendants' counsel appropriately assigned work among associate attorneys and partners–and regularly reduced charges where two or more attorneys were present, and in counsel's general discretion–to limit the amount of legal fees their clients incurred. The evidence demonstrates that Defendants' counsel provided valuable services to their clients, by attempting to resolve issues with Christ's counsel upon the filing of this lawsuit, and then aggressively defending against the allegations once those efforts proved futile. Defendants successfully litigated this case to reveal the lack of any viable claim, which ultimately resulted in Christ taking a voluntary nonsuit on the morning of trial.

Christ's argument that Defendants could have mitigated this case by performing and providing an accounting report wholly ignores the fact that Christ already possessed the accounting that she was seeking in her lawsuit. Surely, litigation expenses could be eliminated almost entirely if defendants just surrendered, without reservation, to a plaintiff's requested relief.[9] Considering all of the facts, and the antagonistic, yet aloof, manner in which Christ and her counsel litigated this case, Defendants appropriately and necessarily defended against the claims Christ waged against them.

Likewise, the Court is not persuaded by Christ's and Glassman's arguments that the Court should disregard the attorneys' fees and costs Defendants incurred in pursuing unsuccessful motions. These arguments fail to account for the fact that Defendants' motions were considered alongside–or in context with–Christ's complaint, which was comprised of frivolous allegations lacking any legitimate factual basis.[10]

The Court also rejects the argument that an award of attorneys' fees converts § 8.01-271.1 into a fee-shifting statute. Although Virginia courts adhere to the "American rule," which generally requires litigants to bear their respective legal fees (save for a contractual or statutory provision providing otherwise), this case is not a standard attorneys' fees award case. The Court has determined that Christ and her attorneys violated § 8.01-271.1, and that the proper sanction should be based upon the attorneys' fees Defendants reasonably incurred as a result–"a remedy expressly provided in the statute." *Martins*, 283 Va. at 117.

Therefore, the Court finds that Defendants incurred $880,748.26 in reasonable attorneys' fees and costs in defending against the frivolous, improper claims brought and maintained by Christ and her counsel in this lawsuit. Although the Court finds the time billed by Defendants' counsel to be largely reasonable, the

---

[9] Actually, Christ and her counsel are the ones who failed to mitigate the costs of this lawsuit. Even after initially filing the frivolous claims in Christ's original complaint, Christ's counsel could, and should, have alleviated the incurrence of further fees and costs by conducting the reasonable inquiry required of them under § 8.01-271.1. Instead, Christ and her attorneys drove up the costs of this litigation by continuing to pursue four causes of action for an improper purpose and without factual support.

[10] Of course, on demurrer, the Court accepts as true the factual allegations set forth in the complaint. In nearly all motions brought before the trial court, including discovery disputes, motions in limine, and other dispositive issues, the court inherently relies on the complaint–a pleading signed by a party or their counsel certifying compliance with § 8.01-271.1–to determine whether information or an issue is germane to a plaintiff's case.

Court has made thorough deductions in arriving at this award.[11] A chart demonstrating the total deductions made per billing invoice is attached and incorporated herein. The Court's award includes not only a recovery of the fees and expenses incurred in defending against Christ's unwarranted claims, but also a recovery of those fees and expenses that Defendants have incurred in pursuing this sanctions award. *See Cardinal Holding Co. v. Deal*, 258 Va. 623, 632 (1999).

Aptly, as the Virginia Supreme Court reasoned,

> [i]n empowering a court to award an 'appropriate sanction,' Code § 8.01-271.1 also authorizes an award of a reasonable attorney's fee and reasonable expenses "incurred because of the filing of the pleading." We read the quoted language as permitting not only a recovery of such fees and expenses incurred in defendant against an unwarranted claim, but also a recovery of those fees and expenses incurred in pursuing a sanctions award arising out of such a claim.

Id.

Although considerable, the amount of this sanction is not only warranted, but necessary, given the egregious nature of the conduct exhibited by both the litigant and her counsel in this case, and the time and resources pointlessly wasted as a result. Notwithstanding, the Court is mindful that the litigation of a sanction issue should not itself defeat one of the purposes of § 8.01-271.1–that is, to reduce the volume of *unnecessary* litigation. *See Oxenham*, 241 Va. at 286 (emphasis added). A case of this magnitude–pursued through four iterations of a complaint and sixteen months of contentious litigation–necessarily requires the Court to hear significant testimony to determine whether a party, and her attorney, brought and pursued this lawsuit without a factual basis and for an improper purpose. Of course, the Court disallowed additional discovery, and rejected outright any impression that it would permit the evidentiary hearing to turn into a new arena of litigation. The Court took heed to streamline the testimony and arguments during this hearing, while affording the parties a reasonable occasion to present necessary

---

[11] The Court made a total of 111 line deductions. For example, the Court did not include fees in its calculation where the entry describing the time billed merely stated "interoffice conference," without more; nor did the Court include time for a service or task that, although seemingly appropriate, was provided without context. Certainly, although rare, the Court deducted all billed time related to Defendants' counterclaim. Notably, Defendants' counsel consistently made significant deductions to the time billed wherever more than one attorney was present, and otherwise in their general discretion.

evidence. Ultimately, the fundamental purposes of § 8.01-271.1 would be unduly frustrated if Defendants–forced into baseless, improper litigation–were precluded from presenting the appropriate, necessary evidence to support their motion for sanctions under § 8.01-271.1.[12]

Moreover, the amount Defendants unavoidably expended to litigate this case underlines the need for a significant sanction to deter others from bringing and pursuing improper litigation at such a high cost. Christ has revealed herself as a litigant with a vast financial arsenal, and has exhibited an eagerness to use her financial resources to harass her ex-husband in vexatious litigation. Still, the Court notes that an award of attorney's fees as a sanction should not necessarily be a routine matter. This Court has considered all of the facts, including the nature and extent of Christ and her attorneys' conduct throughout this case, and the impact such improper litigation has had on Defendants, this Court, and the integrity of the judicial process. Indeed, this case is not a routine case. Ultimately, this Court, in the exercise of discretion, is certain that the sanctions award in the amount of Defendants' reasonable attorneys' fees and costs, as set forth above, must be imposed against Christ and her attorneys–not only to compensate, but to deter. The Court is firmly convinced that a lighter sanction would fail to send the critical message to Christ that this Court is not an appropriate arena to pursue her personal vendetta against Wagner, and all others she feels wronged her in the Maryland Divorce.

Imposition of Sanction Award

First, pursuant to the Court's determination that Ruhling violated § 8.01-271.1 by signing Capron's amended expert disclosure, the Court finds that the appropriate sanction to be imposed against Ruhling is $990.00. This amount represents the amount for two hours of attorney's fees, which Defendants incurred for their counsel attending and arguing Defendants' motion in limine to exclude Capron's testimony on October 30, 2009. Second, as a result of Ruhling's oral motion seeking leave to file an amended complaint based on purported "new facts" in violation of § 8.01-271.1, the Court finds that the appropriate sanction to be imposed against Ruhling is $1,080.00. This amount reflects the amount for three hours of attorney's fees that Defendants incurred for their counsel attending and arguing the Demurrer to the Amended Complaint on April 3, 2009.

---

[12] The Court notes, just fourteen days after Defendants filed this Motion, Glassman, on behalf of Christ, filed a counter-motion for sanctions; the counter-motion was fully briefed and opposed, and only withdrawn by Christ on the last day of the hearing on Defendant's Motion.

Lastly, the Court finds that both Christ and Glassman are culpable for bringing and maintaining this lawsuit, and, consequently, the amount of reasonable attorneys' fees and costs incurred by Defendants as a result.[13] Christ and Glassman failed to provide the Court with evidence sufficient to allocate fault and apportion sanctions respectively. Accordingly, the Court imposes sanctions in the amount of $878,678.26 against Christ and Glassman, jointly and severally. *See Martins*, 283 Va. at 114.

These amounts are to be paid to the law firm of Defendants' counsel, Vorys, Sater, Seymour and Pease LLP, in the manner instructed by an order of the Court, who shall then apportion the award amongst Defendants according to their contribution to the costs of this suit.

III. Defendants' Motion for Witness Fees and Costs Pursuant to Virginia Code § 8.01-380(C)

Pursuant to § 8.01-380(C), Defendants seek an award of witness fees and costs that were incurred as a result of Christ moving to nonsuit her case on the first day of trial without providing prior notice.

Section 8.01-380(C) provides, in relevant part:

> If notice to take a nonsuit of right is given to the opposing party within seven days of trial, the court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party solely by reason of the failure to give notice at least seven days prior to trial.

Va. Code Ann. § 8.01-380(C) (2013).

Per an agreed scheduling order, the parties set a three-day bench trial to begin on Monday, November 2, 2009. The morning of trial, Christ exercised her statutory right to nonsuit each of her claims against the remaining defendants, pursuant to § 8.01-360(B). Christ did not provide any notice to Defendants before

---

[13] In rejecting Christ's claim that she only filed this lawsuit to obtain an "accounting," the Court found that Christ fully intended to prosecute her four causes of action, all of which were filed for an improper purpose. Therefore, the Court rejects Christ's argument that any sanction imposed on her should not include the attorneys' fees and costs Defendants incurred in defending against her claims of breach of fiduciary, conspiracy, and conversion.

moving to nonsuit. Therefore, Christ's actions fall squarely within the scope of § 8.01-380(C).

Christ argues that if the Court decides to assess witness fees and costs pursuant to Code § 8.01-380(C), sanctions under § 8.01-271.1 would be inappropriate. According to Christ, "sanctions" under § 8.01-380(C) constitute an appropriate penalty for any wrongdoing the Court may find.

The plain language of § 8.01-380(C) vests this Court with the discretion to impose against Christ the amount of reasonable witness fees and expert witness travel costs that Defendants incurred as a result of Christ failing to provide at least seven days' notice prior to trial of her motion to nonsuit. When the two motions are brought before the Court, the Court is not restricted to choose between witness fees and costs under § 8.01-380(C) and sanctions under § 8.01-271.1. Indeed, these statutes address two separate issues, serve two distinct purposes, and are considered by this Court through two discrete lenses.

As addressed previously, on Friday, October 30, 2009, the Court excluded Christ's named accounting expert from testifying at trial because Christ failed to properly designate him as an expert pursuant to Rule 4:1. However, even prior to the October 30, 2009 hearing, the evidence establishes that Christ did not have sufficient evidence, including an expert that would testify, to support her claims. Based on Capron's wholly-deficient designation, as well as his inability to assert a formal opinion during his deposition, Christ should have realized, well in advance of seven days before trial, that she would necessarily nonsuit her claims.

Defendants incurred $1,624.00 and $2,255.00 in witness fees for their expert witnesses, Kevin Herzberg and James Cilenti, respectively, who were scheduled to appear at trial. Christ did not contest the reasonableness of these fee amounts. The Court finds that these fees are reasonable, and were incurred solely because Christ failed to provide notice of her nonsuit to Defendants on Friday, October 30, 2009, which was within seven days of trial.

Accordingly, pursuant to § 8.01-380(C), the Court, in its discretion, assesses witness fees in the amount of $3,879.00 against Christ, to be paid to the law firm of Vorys, Sater, Seymour and Pease LLP in the manner instructed by an order of the Court.[14]

---

[14] Significantly, the Court notes that the witness fees assessed for Defendants' expert witnesses pursuant to § 8.01-380(C), were *not* included in the Court's sanctions award of Defendants' reasonable attorneys' fees and costs under § 8.01-271.1.

CONCLUSION

The actions of Christ and her attorneys in this case have placed the Court in an unenviable position of having to levy a substantial sanction against a represented party and her counsel. By filing and recklessly pursuing this case, alleging four causes of action without any reasonable factual predicate, Christ and her counsel have flaunted an inexcusable disregard for the laws of this Court. They manipulated the legal process in order to regain access to Wagner's finances and to unveil Lee's accounts, in hopes that they would find some evidence to confirm their misgivings about Christ's ex-husband.

This Court will not host fishing expeditions. If, as a litigant, you have facts to reasonably support a cause of action, then plead them. If not, and you choose to file a lawsuit with the Court and sign pleadings anyway, you are not only fighting a perilous uphill battle, you are breaching your obligations under § 8.01-271.1. As a consequence, the Court is required to impose sanctions.

From the outset, Glassman neglected his duty to reasonably investigate Christ's allegations before signing and filing pleadings with the Court. He distorted facts and continued to plead allegations, which he knew, or should have known, did not reasonably support a viable cause of action in this lawsuit. While these actions are inexcusable for all, they are especially troubling when committed by officers of the court. Attorneys must often construct creative and novel arguments to zealously advocate for their clients. The Court certainly appreciates and encourages such advocacy, provided that it comports with the law. Importantly, attorneys have an obligation to resist demands to pursue frivolous and vindictive litigation. Unfortunately, that obligation was neglected in this case.

An order encompassing the Court's ruling is attached.

Sincerely,

[redacted]

Jonathan C. Thacher
Circuit Court Judge, Fairfax County

JCT/kk
Enclosures

OPINION LETTER

Yvonne Christ v. Flinthill Space Communications Trust, et al., CL-2008-8220

June 14, 2013 Letter Opinion

Table of Attorneys' Fees and Costs Awarded

Invoice Period Ending	Attorneys' Fees	Costs	TOTAL (Attorneys' Fees + Costs)
11/30/2008	$32,627.50 (Requested: $34,310.50)	$574.53	$33,202.03
12/30/2008	$9,554.50 (Requested: $10,022.50)	$669.59	$10,224.09
02/27/2009	$24,539.50 (Requested: $24,886.00)	$249.56	$24,789.06
03/31/2009	$43,340.50 (Requested: $44,601.00)	$1315.50	$44,656.00
04/30/2009	$56,314.50 (Requested: $57,156.00)	$6,064.55	$62,379.05
06/30/2009	$54,846.50 (Requested: $55,539.50)	$3,101.07	$57,947.57
07/31/2009	$57,063.50 (Requested: $59,772.00)	$2,173.17	$59,236.67
11/30/2009	$323,529.00 (Requested: $327,786.50)	$23,222.51	$346,751.51
04/13/2010	$130,976.50 (Requested: $138,545.50)	$7,182.52	$138,159.02
04/30/2010	$32,056.00 (Requested: $32,974.00)	$1,934.82	$33,990.82
07/13/2010	$58,768.00 (Requested: $70,175.00)	$10,644.44	$69,412.44

TOTAL: $880,748.26

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

YVONNE CHRIST, Plaintiff, v. FLINTHILL SPACE COMMUNICATIONS TRUST, *et al.*, Defendants.	)	CL-2008-8220

ORDER

THIS MATTER came to the Court on Defendants' Motion for Sanctions and Costs, pursuant to Virginia Code § 8.01-271.1 and Virginia Code § 8.01-380(C).

IT APPEARING to the Court, for the reasons stated in the Court's Letter Opinion of June 14, 2013 ("June 14 Letter Opinion"), that Plaintiff Yvonne Christ and her attorneys, Stephen C. Glassman and Billy R. Ruhling, II, violated § 8.01-271.1 in the manner in which they prosecuted this case against Defendants Flinthill Space Communications Trust, Wolfgang Wagner, and Russell Mack Lee (collectively, "Defendants"); and

IT FURTHER APPEARING to the Court, for the reasons set forth in the June 14 Letter Opinion, that the appropriate sanction, pursuant to § 8.01-271.1, is an award of the reasonable attorneys' fees and costs incurred by Defendants; and

IT FURTHER APPEARING to the Court, for the reasons stated in the June 14 Letter Opinion, that the amount of reasonable attorneys' fees and costs incurred by Defendants is $880,748.26; and

IT FURTHER APPEARING to the Court, for the reasons stated in the June 14 Letter Opinion, that, as a result of his conduct in violation of § 8.01-271.1, the appropriate amount to be imposed against Mr. Ruhling is $2,070.00; and, as a result of their conduct in violation of § 8.01-271.1, the appropriate amount to be imposed against Plaintiff and Mr. Glassman is $878,678.26, jointly and severally;

IT FURTHER APPEARING to the Court that Plaintiff took a nonsuit of right, pursuant to Virginia Code § 8.01-380(B), on November 2, 2009, which was the first day of trial in this case; and

IT FURTHER APPEARING to the Court that Defendants incurred witness fees for their expert witnesses scheduled to appear at trial in the amount of $3,879.00, and that Defendants incurred these costs solely as a result of Plaintiff failing to provide notice of her nonsuit within seven days of trial; it is, therefore,

ORDERED that Defendants' Motion for Sanctions and Costs is GRANTED; it is further

ORDERED that Mr. Ruhling shall pay the reasonable attorneys' fees incurred by Defendants in the amount of $2,070.00; and it is further

ORDERED that Plaintiff and Mr. Glassman shall pay the costs and reasonable attorneys' fees incurred by Defendants in the amount of $878,678.26, and that Plaintiff and Mr. Glassman are jointly and severally liable for this amount; it is further

ORDERED that Plaintiff shall pay the expert witness fees incurred by Defendants in the amount of $3,879.00; it is further

ORDERED that all payments ordered herein be received by the law firm of Defendants' counsel–Vorys, Sater, Seymour and Pease LLP, 1909 K Street, Ninth Floor, Washington, DC 20006–within ninety (90) days of entry of this Order; it is further

ORDERED that the Court's Letter Opinion of June 14, 2013, including the Table of Attorneys' Fees and Costs Awarded attached thereto, is incorporated into this Order.

THIS CAUSE IS FINAL.

ENTERED this 14th day of June 2013.

[redacted]

Judge Jonathan C. Thacher

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT, PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.