

**FINAL ORDERS OF THE VIRGINIA COURTS
IN CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
2016**

C. R. Meyer & Sons Company, C. Ray Davenport, Commissioner of Labor and Industry v.
Case No. 15-396 (Circuit Court of the County of Isle of Wight)

Daryl & Company, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. 16-424 (Circuit Court of Williamsburg/James City County)

KBS, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. CL15007591-00 (Circuit Court of the City of Norfolk)
Order on Demurrer and Motion to Dismiss, January 19, 2016

KBS, Inc., C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. CL15007591-00 (Circuit Court of the City of Norfolk)
Dismissal Order, February 26, 2016

Summit Tower Construction, LLC, C. Ray Davenport, Commissioner of Labor and Industry v.
Civil Action No. CL15000071-00 (Circuit Court of the City of Waynesboro)

Tyson's Service Corporation of Virginia, C. Ray Davenport, Commissioner of Labor and Industry
v.
Case No. CL12015-10408 (Circuit Court for the County of Fairfax)

VIRGINIA:

IN THE CIRCUIT FOR ISLE OF WIGHT COUNTY

C. RAY DAVENPORT,)
 Commissioner of Labor and Industry,)
)
 Plaintiff,)
)
 v.)
)
 C.R. MEYER & SONS COMPANY)
 and it successors,)
)
 Defendant.)

Case No.: 15-396

FINAL ORDER

On the 24th day of November, 2015, came the parties on the Defendant's Special Plea and Motion to Dismiss and the Plaintiff's Opposition thereto. Based on said pleadings, argument of counsel, Virginia law, the evidence presented and good cause shown, this Court for reasons stated in its December 16, 2015 letter opinion, sustains the Defendant's Special Plea and grants its Motion to Dismiss.

As such, it is hereby **ORDERED** that this action be and is hereby dismissed with prejudice.

The Clerk shall send a copy of this Order to all counsel of record.

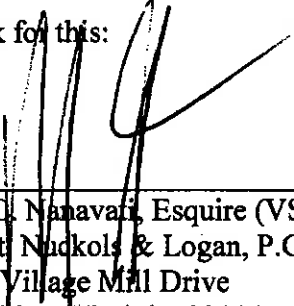
Enter this 2nd day of FEBRUARY, 2016.



 The Honorable L. Wayne Farmer

A COPY:
 ISLE OF WIGHT CIRCUIT COURT
 TESTE: SHARON N. JONES, CLERK
 BY: Laura E. Smith DC

We ask for this:




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Seen and objected to for reasons stated in pleadings, memoranda at oral argument, and summarized as follows:

1. There is insufficient evidence in the record to show Defendant C. R. Meyer suffered either inherent or actual prejudice due to the 25 month interval between its notice of contest and the filing of the complaint, sufficient to dismiss the Complaint; and
2. There is evidence in the record to show Defendant C.R. Meyer contributed to this 25 month interval, over 4 months of the parties' negotiations, sufficient to negate a finding of prejudice sufficient to dismiss the Complaint.



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FIFTH JUDICIAL CIRCUIT OF VIRGINIA

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CITY OF SUFFOLK
CITY OF FRANKLIN
COUNTY OF ISLE OF WIGHT
COUNTY OF SOUTHAMPTON

December 16, 2015

RETIRED JUDGES
E. EVERETT BAGNELL
RODHAM T. DELK, JR.
JAMES C. GODWIN
WESTBROOK J. PARKER
W. RICHARD SAVAGE, III

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Re: C. Ray Davenport, Commissioner v. C.R. Meyer & Sons, Inc.
Case No. CL15-396
Circuit Court for the County of Isle of Wight

Dear Counsel:

This matter came before me for hearing on November 24, 2015, upon the Defendant's Special Plea and Motion to Dismiss. The issue before the Court is whether the delay by the Commissioner in filing the bill of complaint caused inherent or actual prejudice to the Defendant.

RELEVANT FACTS AND PROCEDURAL HISTORY

On October 5, 2012, an accident occurred at a worksite located on property owned by International Paper in Isle of Wight County, Virginia. The Commissioner conducted an inspection of the site and on April 1, 2013 issued a citation against the defendant. On April 15, 2013, the defendant notified the plaintiff of its intention to

contest the citation. The Commissioner filed a complaint with this Court on May 22, 2015.

LAW AND ANALYSIS

Virginia Code §40.1-49.4 provides in part: “Upon receipt of a notice of contest of a citation...the Commissioner shall immediately notify the attorney for the Commonwealth for the jurisdiction wherein the violation is alleged to have occurred and shall file with the circuit court a bill of complaint.” This code section was construed in the case of Barr v. S. W. Rogers, Co. Inc., 34 Va. App. 50 (2000). In Barr, the Court of Appeals held that the bill of the complaint did not need to be filed contemporaneously with the notice to the attorney for the Commonwealth. Further, the Court held that there was no statute of limitations specifically applicable to such filings. However, the Barr Court also stated that “we do not hold that the Commissioner has an unlimited amount of time in which to do so.” To determine if a delay in filing is unreasonable, the Court must determine if the length of delay “was inherently prejudicial, and, if not, whether there was actual prejudice” to the defendant. “To obtain a dismissal for failure to file a bill of complaint within a reasonable period of time” the defendant “must present credible evidence that it was actually prejudiced by the length of the interval between the notice of contest and the filing of the bill of complaint.” Barr at 624.

The defendant urges the Court to adopt the two year statute of limitations set forth in Sections 8.01-243(a) and 8.01-248 of the Code of Virginia. Both establish a statutory limit of two years. The filing in this matter was 25 months after the notice to the Commonwealth’s Attorney and would be outside those periods. The Court rejects that suggestion and finds, pursuant to Barr, that the statute of limitations does not apply. Further, the Court does not find that the 25 month delay is inherently prejudicial.

Therefore, the remaining issue is whether the defendant has established by “credible evidence” that they have been “actually prejudiced” by the delay. Barr at 624.

The defendant called two witnesses – Darren Lett, president the C.R. Meyer and Brian Bork, safety manager for C.R. Meyer. Lett testified that pending citation negatively and significantly affected the defendant’s ratings on internet based review sites utilized by potential customers to evaluate C.R. Meyer and similar companies. He indicated that it was industry practice to utilize these sites when determining what company to employ. He indicated that the sites were utilized by both current customers and potential customers. He further testified that, since the citation and the reduced rating, the defendant has bid for new jobs with some of its current customers and has not been hired to do the work. He did say that he could not specifically say it was a result of the low ratings but believed that it was.

Lett further testified that the company had received communication from a current customer, Clearwater Paper, indicating that they needed to take steps to rectify their negative rating. The defendant offered an email exchange to confirm this exchange. The

implication was that failure to correct the rating would negatively impact the business relationship between Clearwater and the defendant.

Finally, Lett testified that the outstanding citation and the delay in getting the matter resolved had affected the company's business planning and had made it difficult to address the matter with current and potential customers.

Bork testified that he had attempted to conduct a thorough investigation immediately after the accident and had interviewed employees of C.R. Meyers. However, he had not been allowed to interview employees of another company that was on scene at the time and the company had declined to provide names of those employees. He testified that there were a number of employees that had been hired locally in Virginia for the job and that, with the passage of time, the defendant had lost contact with six of the seven employees who were potential witnesses in the matter. Additionally, he testified that three regular employees assigned to the project had left the company and their whereabouts were unknown. Among them was the project manager overseeing the project, a necessary witness.

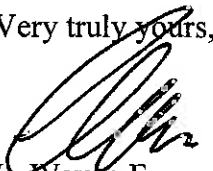
Finally, Bork also testified that, at the time of the accident, the site of the accident was under construction. With the passage of time, the work has now been completed and the site of the accident is an operational facility making investigation more difficult.

The plaintiff called no witnesses and offered no testimony as to the cause of the 25 months between the notice to attorney for the Commonwealth and the filing of the complaint. However, upon questioning by the Court, the attorney for the plaintiff offered that it was a matter of "manpower and caseload."

After considering the testimony of witnesses and reviewing the decision in Barr, the Court finds that the defendant has met the burden of presenting credible evidence that they have been actually prejudiced by the length of the interval between the notice of contest and the filing of the bill of complaint. Further, the Court finds the limited explanation offered by plaintiff's counsel to be unreasonable. Therefore, the Motion to Dismiss filed herein by the defendant is granted and the bill of complaint is ordered dismissed.

Mr. Hobbs will prepare and circulate an order consistent with this ruling, which order shall be submitted within 30 days.

Very truly yours,



L. Wayne Farmer
Judge

CC: Sharon N. Jones

VIRGINIA:

IN THE CIRCUIT COURT OF WILLIAMSBURG/JAMES CITY COUNTY

C. RAY DAVENPORT, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO. – 16-424
)	
DARYL & COMPANY, INC.)	
)	
Defendant.)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That the citation attached to the Complaint is hereby amended as follows:
 - a) Serious Citation 1, Item 1 is affirmed with a penalty of \$400.00;
 - b) Serious Citation 1, Item 2 is affirmed with a penalty of \$400.00;
 - c) Serious Citation 1, Item 3 is affirmed with a penalty of \$400.00;
 - d) Serious Citation 1, Item 4 is affirmed with a penalty of \$400.00;
 - e) Serious Citation 1, Item 5 is affirmed with a penalty of \$400.00;
 - f) Serious Citation 1, Item 6 is affirmed with a penalty of \$400.00;
 - g) Repeat Citation 2, Item 1 is affirmed with a penalty of \$1000.00;
 - h) Other than Serious Citation 3, Item 1 is affirmed with a penalty of \$100.00;
2. That the Defendant will pay the total penalty of \$3,500.00. The Three Thousand Five Hundred (\$3,500.00) is to be paid in (36) payments. Payment one shall be \$105.00, followed by 35 equal payments of \$97.00. The first monthly payment of one hundred five dollars (\$105.00) shall be due on the first day of the month following the date of entry of this order. The next 35

payments of ninety seven dollars (\$97.00) shall be due on the 1st day of the next 35 successive months after the initial payment. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 317551257 noted on the payment;

3. That it is expressly understood that any modifications to penalty level in this agreement are contingent upon the Defendant's full payment of all penalties due. Failure by the Defendant to substantially comply with the terms of this Order or to make a penalty payment by the due date constitutes a breach of this Order. Any breach shall mean that all originally proposed citations and penalties shall be reinstated, and all unpaid amounts shall become due and payable 15 calendar days following the breach.

4. That the Defendant will withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

5. That the Defendant will post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, in a conspicuous location where notices to its employees are generally posted;

6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

7. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority;

8. That, under Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party;

9. That each party shall bear its own costs in this matter.

It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

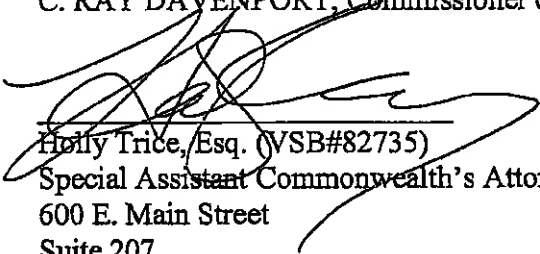
Entered this 30th day of August 2016.

The Clerk shall send an attested copy of this Order to all counsel of record.


Judge

WE ASK FOR THIS:

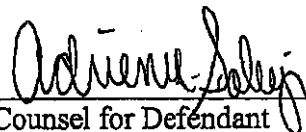
C. RAY DAVENPORT, Commissioner of Labor and Industry


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SEEN AND AGREED:

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Counsel for Defendant

VIRGINIA: CIRCUIT COURT OF THE CITY OF
WILLIAMSBURG & COUNTY OF JAMES CITY:
I CERTIFY THAT THE DOCUMENT TO WHICH THIS
AUTHENTICATION IS AFFIXED IS A TRUE COPY OF
A RECORD IN THIS COURT AND I AM THE
CUSTODIAN OF THAT RECORD.
MONA A. FOLEY, CLERK

BY:  Dep. Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

C. RAY DAVENPORT,
Commissioner of Labor and Industry,

Plaintiff,

v.

KBS, INC.

Defendant.


Civil Action No. CL15007591-00

ORDER ON

KBS, INC.'s DEMURRER AND MOTION TO DISMISS

On the 9th day of October, 2015, came the parties upon defendant KBS, Inc.'s ("KBS's"), Demurrer and Motion to Dismiss the Complaint of Plaintiff C. Ray Davenport, Commissioner of Labor and Industry ("Commissioner"), regarding a contested Virginia Occupational Safety and Health (VOSH") citation and civil penalty. Based on pleadings and argument from both counsel, the evidence presented and application of law, this Court for reasons stated in its letter opinion of January 5, 2016, finds the Commissioner's Complaint states sufficient facts to support a violation of VOSH standard Section 1926.20(b)(2), and describes with particularity the nature of a violation that is recognized in the cited VOSH Standard Section.

UPON CONSIDERATION WHEREOF, defendant KBS's Demurrer is OVERRULED and its Motion to Dismiss is DENIED. The Clerk shall mail certified copies of this Order to all counsel of record.


JUDGE: _____
The Hon. David W. Lannetti

JANUARY 19, 2016
ENTER: _____

To Verify The Digital Signature, visit <https://cisweb.courts.state.va.us/Cdv/ct/main> (Document ID: 710-25485)

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

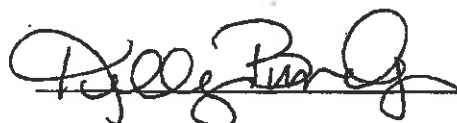
By:  _____

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Counsel for Plaintiff

SEEN AND OBJECTED TO: For the reasons stated in KBS' Demurrer and Motion to Dismiss; KBS' Brief in Support of Demurrer and Motion to Dismiss; KBS' Reply to Commissioner Davenport's Memorandum in Opposition to Defendant KBS' Demurrer & Motion to Dismiss; KBS' Supplemental Brief Regarding Particularity Requirements for a VOSH Citation; KBS' Reply in Opposition to Commissioner Davenport's Rebuttal; and in oral argument:

KBS, INC.

By:  _____

Courtney Moates Paulk (VSB No. 45523)
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Counsel for Defendant



DAVID W. LANNETTI
JUDGE

FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

150 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

January 5, 2016

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Re: C. Ray Davenport v. KBS, Inc.
Civil Docket No.: CL15-7591

Dear Counsel:

Today the Court rules on the demurrer (the "Demurrer") and motion to dismiss (the "Motion to Dismiss") filed by Defendant KBS, Inc. ("KBS") in response to the complaint (the "Complaint") filed by Plaintiff C. Ray Davenport, Commissioner of Labor and Industry (the "Commissioner"), to affirm a Virginia Occupational Safety and Health ("VOSH") citation issued by the Commissioner to KBS. The issue before the Court via the Demurrer is whether the Complaint alleges sufficient facts to support a violation of VOSH Standard Section 1926.20(b)(2). The issues before the Court via the Motion to Dismiss are whether the Citation describes with particularity the nature of the violation and whether the Citation states a cognizable violation of the cited VOSH Standard. The Court finds that the Commissioner's Complaint states sufficient facts, with the requisite particularity, to support a violation of VOSH Standard Section 1926.20(b)(2). The Court also finds that the Citation describes with particularity the nature of a violation that is recognized in the cited VOSH Standard Section.

The Court therefore **VERRULES** KBS's Demurrer and **DENIES** KBS's Motion to Dismiss.

Background

The Commissioner issued a “Citation and Notification of Penalty,” Inspection Number 317309482 (the “Citation”),¹ to KBS on October 3, 2013. The Citation alleges that KBS, a general contractor on a multi-family housing unit construction project, violated VOSH Standard Section 1926.20(b)(2) because its representative “failed to take measures to correct and eliminate three specific workplace hazards on the scaffolding at its worksite” (the “Safety Violations”). (Compl. ¶ 12 & Ex. A.)

According to the Commissioner, on September 10, 2013, a VOSH inspector observed the Safety Violations while inspecting one of KBS’s subcontractors, and upon inquiry of KBS Superintendent Wayne House (“House”), “House acknowledged that he had been aware of the missing guardrails for several days.” (*Id.* ¶¶ 10-11.) The Commissioner alleges that House “provided the VOSH [inspector] copies of photographs of the same conditions, taken ten days previous,”² and that House “averred that it was the responsibility of subcontractors to correct unsafe working conditions, and not the general contractor.” (*Id.* ¶ 11.)

The Commissioner issued the Citation to KBS for a “serious” violation of VOSH standards and proposed a civil penalty of \$1,925.00, “calculated in accordance with the *VOSH Field Operations Manual*, Chapter XI.” (*Id.* ¶¶ 16-19.) Specifically, KBS was cited for a violation of VOSH Standard Section 1926.20(b)(2) because “the employer’s designated individual who conducted frequent and regular inspections and documented hazards at the job site did not meet the definition of ‘competent person’ in accordance with 1926.32(f) where this individual failed to correct the below listed, existing hazards and failed to take prompt corrective measures to eliminate them.” (*Id.*, Ex. A, at 8 (listing the three alleged hazards).) KBS notified the Commissioner in writing on October 8, 2013, that it contested the Citation and the related proposed penalty. (*Id.* ¶ 13.) The Commissioner filed the Complaint, which requests that the Court affirm the Citation and proposed penalty and require KBS to abate the Safety Violations. (*Id.* ¶ 20.)

KBS demurred to the Commissioner’s Complaint and also moved for dismissal. After considering pre-hearing briefs and argument at an October 9, 2015, hearing (the “Hearing”) on the demurrer and motion to dismiss, the Court found that material facts are in dispute regarding whether a closing conference occurred or is required and overruled KBS’s Motion to Dismiss on that ground. (*See* Order on KBS, Inc.’s Demurrer and Motion to Dismiss (Oct. 28, 2015).) The Court also granted the parties leave to submit post-hearing briefs.

¹ A copy of the Citation is attached to and incorporated into the Complaint. (Compl. ¶ 12 & Ex. A.)

² In his Memorandum in Opposition to KBS’s Demurrer & Motion to Dismiss, the Commissioner characterizes the photographs differently. He states that House “photographed at least one similar violation as [the VOSH inspector] had described” and that House provided the VOSH inspector with a copy of the photograph to which he referred. (Mem. in Opp’n 2.) The Court nevertheless assumes the allegations in the Complaint are true for purposes of the Demurrer.

Positions of the Parties

KBS's Demurrer and Motion to Dismiss

In the Demurrer, KBS asserts that “[t]he Complaint fails to allege sufficient facts to support a violation of VOSH Std. § 1926.20(b)(2).” (Dem. & Mot. to Dismiss 7.) Specifically, KBS contends that “the Commissioner fails to allege that KBS failed to conduct frequent and regular inspections of the jobsite” and that “the presence of violations of safety standards does not per se establish a violation of § 1926.20(b)(2).” (*Id.* (citation and internal quotation marks omitted).) KBS further asserts that although at the Hearing

[the Commissioner] argued that it intended to prove that KBS violated VOSH Std. § 1926.20(b)(2) by showing that its designated person failed to meet the definition of a “competent person” under VOSH Std. § 1926.32(f), because Mr. House lacked authority to correct hazards[, t]his does not appear in either the Citation or the Complaint, the latter of which merely seeks to affirm the Citation.

(KBS Suppl. Br. 4.) KBS argues that the Commissioner is attempting to proceed under a new theory, “the factual basis [of which] has never previously been alleged and for which KBS was not cited.” (*Id.*)

In addition to the Motion to Dismiss argument on which the Court already ruled, KBS argues that “[t]he VOSH Standard that forms the basis of the Citation does not require correction of hazards.” (Dem. & Mot. to Dismiss 6.) KBS further contends that the underlying basis for the Citation—to the extent the Commissioner now is alleging that the violation is that House was not a competent person because he was not authorized to ensure hazards were corrected—was not stated in the Citation with particularity, as required by both Section 40.1-49.4(A)(1) of the *Code of Virginia* and Title 16, Section 25-60-260, of the *Virginia Administrative Code*. (*Id.*; KBS Suppl. Br. 1.) KBS asserts that the cited standard “merely requires ‘frequent and regular inspections of jobsites,’ not the correction of hazards,” and that the Commissioner “has failed to allege or show the absence of frequent and regular inspections.” (Dem. & Mot. to Dismiss 6.) KBS further points out that although the Citation references VOSH Standard Section 1926.32(f), which defines a competent person, “KBS was not cited for a failure to abide by this standard,” and “[t]his definition does not require the correction of hazards either.” (*Id.*)

The Commissioner's Response

The Commissioner argues that the Complaint, with the attached Citation, alleges sufficient facts to support its contention that KBS violated the cited VOSH Standard—VOSH Standard Section 1926.20(b)(2)—and that the Complaint therefore can withstand the Demurrer. (Mem. in Opp'n 7-8.)

In response to KBS's Motion to Dismiss argument that the Citation does not describe a violation of the cited VOSH Standard Section because the Section does not require correction of hazards, the Commissioner asserts that “[b]oth the regulation and citation clearly require that a

‘competent person’ conduct the described inspections. Further, such a person must be one authorized to take effective action.” (*Id.* at 6.) The Commissioner further opines that the very purpose of job site inspections “is to decrease unsafe hazards,” which purpose, it asserts, would be ineffective unless “conducted by personnel both capable and authorized to take action, [*i.e.*,] an appropriate ‘competent person,’ prepared to effect positive change.”³ (*Id.* at 6-7.)

Analysis

Legal Standard

A demurrer tests the legal sufficiency of the claims stated in the pleading challenged. *Dray v. New Mkt. Poultry Prods., Inc.*, 258 Va. 187, 189, 518 S.E.2d 312, 312 (1999). The only question for the court to decide is whether the facts pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action against the defendant. *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 126-27 (2001). On demurrer, the court must admit the truth of all material facts properly pleaded, facts that are impliedly alleged, and facts that may be fairly and justly inferred from the alleged facts. *Cox Cable Hampton Rds., Inc. v. City of Norfolk*, 242 Va. 394, 397, 410 S.E.2d 652, 653 (1991). A demurrer does not admit the correctness of any conclusions of law. *Ward’s Equip., Inc. v. New Holland N. Am., Inc.*, 254 Va. 379, 382, 493 S.E.2d 516, 518 (1997).

Even if imperfect, a complaint drafted such that a defendant cannot mistake the true nature of the claim should withstand demurrer. *Catercorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993). The court will not consider any factual assertions outside the pleadings for purposes of a demurrer. *See Va. Code Ann.* § 8.01-273 (Repl. Vol. 2015). If a court sustains a demurrer, it is within the court’s discretion to allow leave to amend the complaint, and such leave “shall be liberally granted in furtherance of the ends of justice.” Va. Sup. Ct. R. 1:8.

Certain rules in the *Rules of Supreme Court of Virginia* apply to all proceedings. *See Va. Code* § 8.01-3. Accordingly, “[e]very pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.” Va. Sup. Ct. R. 1:4(d). Moreover, “[b]revity is enjoined as the outstanding characteristic of good pleading. In any pleading a simple statement, in numbered paragraphs, of the essential facts is sufficient.” *Id.* R. 1:4(j).

A motion to dismiss is a responsive pleading to a complaint. *Id.* R. 3:8(a). Styling a pleading as a motion to dismiss is not dispositive of the actual intent of the pleading. *See Gay v. Norfolk and W. Ry.*, 253 Va. 212, 214 n.*, 483 S.E.2d 216, 218 (1997) (examining a motion to dismiss as a summary judgment motion, “regardless of the label” placed on the motion).

³ Although the Commissioner does not expressly state the context of the inspections to which he refers, it is apparent from his brief that he is referring to job site inspections conducted by an employer representative and not by a VOSH inspector.

“[T]he contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted” is properly styled as a demurrer in Virginia. *Va. Code* § 8.01-273.

“Because [Section] 40.1-49.4 [of the *Code of Virginia*] is a remedial statute, it should be construed liberally so as to suppress the mischief and advance the remedy, as the legislature intended.” *Barr v. S.W. Rodgers Co.*, 34 Va. App. 50, 58, 537 S.E.2d 620, 623 (2000) (quoting *Bd. of Supervisors v. King Land Corp.*, 238 Va. 97, 103, 380 S.E.2d 895, 897-98 (1989)).

Discussion

The Court has considered the pleadings, oral argument at the Hearing, post-hearing briefs, and applicable authorities.

A. The Complaint alleges sufficient facts to support a violation of VOSH Standard Section 1926.20(b)(2).

KBS asserts in its Demurrer that the Complaint “fails to allege sufficient facts to support a violation of VOSH Std. § 1926.20(b)(2).” (Dem. & Mot. to Dismiss 7.) VOSH Standard Section 1926.20(b)(2), which is identical to the analogous federal Occupational Safety & Health Administration (“OSHA”) regulation, requires that employers, which are required to maintain programs for the health and safety of their employees, “shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers.” A competent person, as defined by the VOSH Standard Section and referenced in the Citation, is “one who is capable of identifying existing and predictable hazards in the surrounding or working conditions which are unsanitary, hazardous, or dangerous to employees and who has authorization to take prompt corrective measures to eliminate them.” VOSH Std. § 1926.32(f).

Accepting the facts alleged in the Complaint as true, as the Court must for purposes of the Demurrer, the Commissioner states sufficient facts to support a violation of VOSH Standard Section 1926.20(b)(2). The Complaint alleges that when the VOSH inspector addressed the Safety Violations with House, House “averred that it was the responsibility of subcontractors to correct unsafe working conditions, and not the general contractor KBS.” (Compl. ¶ 11.) House’s statement to the VOSH inspector, if proven, may be sufficient for the factfinder at trial to conclude that House did not have the authority—by his own action or via his direction—to correct the Safety Violations,⁴ which could constitute a violation of VOSH Standard Section 1926.20(b)(2).⁵ Additional facts and statements alleged in the Complaint, including that

⁴ This viewpoint is buttressed by the Commissioner’s allegation that House provided the VOSH inspector a photograph of the same violations taken ten days prior to the VOSH inspector’s visit. (Compl. ¶ 11.) Even without this fact, however, the Court still would find the facts pleaded in the Complaint sufficient to withstand the Demurrer.

⁵ The Court recognizes KBS’s argument that it was not cited for failing to have a competent person. This argument is addressed in more detail in the Motion to Dismiss analysis, *infra*.

“KBS[’s] representative failed to take measures to correct and eliminate the three specific workplace hazards on the scaffolding at its worksite,” (Compl. 4), also could support a violation of VOSH Standard Section 1926.20(b)(2) if proven at trial.

As discussed in more detail below, the Court also rejects KBS’s assertion that the Commissioner is attempting to proceed under a new theory, “the factual basis [of which] has never previously been alleged and for which KBS was not cited.” (KBS Suppl. Br. 4.)

Because the Complaint states sufficient facts to support a violation of VOSH Standard Section 1926.20(b)(2), the Court OVERRULES KBS’s Demurrer.

B. The Citation describes with sufficient particularity the nature of the alleged violation and alleges a recognized violation of the cited VOSH Standard Section.

Although Virginia recognizes motions to dismiss as responsive pleadings, they typically are limited to non-evidentiary issues such as jurisdiction, defective process, and failure to join an indispensable party. *See* Va. Sup. Ct. R. 3:8; Kent Sinclair & Leigh B. Middleditch, Jr., *Virginia Civil Procedure* § 9.3 (6th ed. 2014). Further, a motion to dismiss is not the proper vehicle to address an alleged failure to state a claim upon which relief can be granted; rather, a demurrer is reserved for that purpose. *Va. Code* § 8.01-273.

The remaining basis for KBS’s Motion to Dismiss⁶—that the “VOSH Standard that forms the basis of the Citation does not require correction of hazards” and that KBS therefore did not violate the cited Standard Section—essentially is a challenge that the Complaint does not state a claim upon which relief can be granted.⁷ The Motion to Dismiss therefore is the functional equivalent of a demurrer, and the Court will treat it as such.

Both Section 40.1-49.4(A)1 of the *Code of Virginia* and Title 16, Section 25-60-260, of the *Virginia Administrative Code* require that “[e]ach [VOSH] citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard.” *Va. Code Ann.* § 40.1-49.4(A)1 (Repl. Vol. 2013); 16 *Va. Admin. Code* § 25-60-260 (2006). As the Commissioner notes, OSHA “has an identical counterpart to the VOSH particularity requirement.” (Commissioner Suppl. Br. 3.) Interpreting the federal particularity requirement in affirming an OSHA citation, the U.S. Court of Appeals for the D.C. Circuit held that “despite the awkwardness of [the Secretary of Labor’s] charges and pleadings,”

⁶ As mentioned *supra*, the Court has already overruled KBS’s Motion to Dismiss based on KBS’s allegation that the VOSH inspector failed to conduct a closing conference. (*See* Order on KBS, Inc.’s Demurrer and Motion to Dismiss (Oct. 28, 2015).)

⁷ Although the Court alternatively could treat the Motion to Dismiss as a Motion for Summary Judgment, *see, e.g., Gay*, 253 Va. at 214 n.*, 483 S.E.2d at 218, the motion was filed as a responsive pleading, and no evidence has been offered to support it.

they “were not so misleading as to foreclose the Secretary from litigating the statutory sufficiency of [the defendant’s] safety program.” *Nat’l Realty & Constr. Co. v. OSAHRC*, 489 F.2d 1257, 1264-65 (D.C. Cir. 1973).

In *National Realty*, defendant National Realty was cited “for serious breach of its general duty ‘in that an employee was *permitted* to stand as a passenger on the running board of an Allis Chalmers 645 Front end loader while the loader was in motion.’” *Id.* at 1261 (emphasis added). The court found that, despite the charge that National Realty had “permitted” the employee’s actions and that “[p]ermission usually connotes knowing consent, which is not a necessary element of a general duty violation,” here “the word ‘permitted’ could fairly have been read to suggest merely a wrongful *failure to prevent* the . . . incident, rather than a knowing authorization of his conduct.” *Id.* at 1262, 1264. Although the citation was poorly worded, the court held that “any ambiguities surrounding the Secretary’s allegations could have been cured at the hearing itself. So long as fair notice is afforded, an issue litigated at an administrative hearing may be decided by the hearing agency even though the formal pleadings did not squarely raise the issue.” *Id.* at 1264. Moreover, as the court noted, citations “are drafted by non-legal personnel acting with necessary dispatch. Enforcement of [OSHA] would be crippled if the Secretary were inflexibly held to a narrow construction of citations issued by his inspectors.” *Id.*

As in *National Realty*, the Court finds that the Citation in the instant case is poorly worded and contains information that appears to be impertinent to the violation itself. Rather than concluding its description of the violation of VOSH Standard Section 1926.20(b)(2) with a statement that “the employer’s designated individual who conducted frequent and regular inspections and documented hazards at the job site did not meet the definition of ‘competent person’ in accordance with 1926.32(f),” the Citation continued with the following statement, which arguably was unnecessary and is potentially confusing: “where this individual failed to correct the below listed, existing hazards and failed to take prompt corrective measures to eliminate them.” (Compl. Ex. A, at 8.) As the Commissioner notes, however, it cited KBS for a violation of VOSH Standard Section 1926.20(b)(2),⁸ which requires that “[s]uch programs shall provide for frequent and regular inspections of the job sites, materials, and equipment *to be made by competent persons* designated by the employers.” (Mem. in Opp’n 7-8 (emphasis added).)

KBS implies that if the Commissioner believed that House was not a competent person as defined by VOSH Standard Section 1926.32(f), the Commissioner should have cited KBS for that violation. (Br. in Supp. of Dem. & Mot. to Dismiss 6-7.) As the Commissioner emphasizes, however, because Section 1926.32(f) is merely a definitional section, “[t]he citation obviously does not allege a violation of § 1926.32(f).” (Mem. in Opp’n 6-7.) Instead, the Commissioner asserts that “the accompanying definition is inserted as a reference, useful in describing exactly what part of KBS’s inspection program did not comply.” (*Id.* at 7.)

KBS focuses solely on Section 1926.20(b)(2)’s requirement for inspections and overlooks the associated requirement that those inspections be conducted by “competent persons designated by the employers.” (See Br. in Supp. of Dem. & Mot. to Dismiss 6-7.) Although KBS

⁸ In fact, the Section number is the first word of the text of the Citation. (See Compl. Ex. A, at 8.)

asserts that House “clearly” was a competent person, (*id.* at 7), this is belied by the allegations in the Complaint, (*see* Compl. ¶¶ 10-12). Specifically, the Commissioner alleges that House “acknowledged that he had been aware of the [Safety Violations] for several days,” “provided the VOSH [inspector] copies of photographs of the same conditions, taken ten days previous,” and “averred that it was the responsibility of subcontractors to correct unsafe working conditions, and not the general contractor.”⁹ (*Id.*) In short, the gravamen of the Citation is not the failure of House or KBS to correct the hazardous conditions—as KBS asserts—but rather House’s *admission that he was not authorized* to correct or take the necessary action to correct the Safety Violations. The Commissioner’s allegations, which the Court treats as true for purposes of the Motion to Dismiss, adequately support his contention that House was not a competent person and that KBS therefore was in violation of VOSH Standard Section 1926.20(b)(2).¹⁰

The Citation expressly states that KBS’s “designated individual who conducted frequent and regular inspections and documented hazards at the job site did not meet the definition of ‘competent person’ in accordance with 1926.32(f).” The Court finds that, if proven at trial, this is sufficient to find that KBS violated VOSH Standard Section 1926.20(b)(2). The Court also finds that although the additional language in the Citation—*i.e.*, “where this individual failed to correct the below listed, existing hazards and failed to take prompt corrective measures to eliminate them”—may be confusing, the Citation as a whole was sufficient to provide KBS with “fair notice” of the alleged violation. The Court also notes that the Citation itself informed KBS of its “right to an Informal Conference with the DOLI Regional Director at which [it] may present evidence which [it] believe[s] supports amending either the citation or penalties proposed,” at which KBS should have been able to clear up any confusion. (Compl. Ex. A, at 1.)

The Court finds that, in light of the remedial nature of the statute, reference in the Citation to the VOSH Standard Section that KBS allegedly violated, along with the allegation that the individual who conducted KBS’s inspections did not meet the definition of a competent person, afforded KBS “fair notice” of the alleged violation for which it was cited. *See Nat’l Realty*, 489 F.2d at 1264. The additional language in the Citation apparently was provided by the

⁹ In its Memorandum in Opposition to KBS’s Demurrer & Motion to Dismiss, the Commissioner also alleges that when House was reminded that, as the general contractor, “KBS was also responsible for having hazardous jobsite conditions corrected,” House responded that “all he could do with the subcontractor employers was ‘get on them a bit,’” which the Commissioner characterizes as “implying [House] was not authorized to take further measures to address and correct apparent safety violations.” (Mem. in Opp’n 2.) Because the Court is treating the Motion to Dismiss as a Demurrer, however, the Court does not consider this additional allegation, as it is not included in the Complaint.

¹⁰ KBS seems to imply that if the Commissioner believed that KBS was not properly correcting hazards, the Citation should have referenced VOSH Standard Section 1926.20(b)(1)—which requires employers to maintain an accident prevention program—instead of VOSH Standard Section 1926.20(b)(2). (Br. in Supp. of Dem. & Mot. to Dismiss 6.) In light of the Court’s ruling that, for purposes of the Motion to Dismiss, the Commissioner has sufficiently alleged a violation of VOSH Standard 1926.20(b)(2), the Court need not address this issue.

Commissioner to assist KBS in understanding the alleged violation; although that language arguably is confusing, it does not invalidate the Citation.

The Court therefore DENIES KBS's Motion to Dismiss because the Citation states with sufficient particularity a violation of the cited VOSH Standard Section.

Conclusion

Because the Court finds that the Commissioner's Complaint states sufficient facts to support a violation of VOSH Standard Section 1926.20(b)(2) and because the Citation describes with particularity the nature of the violation—a violation recognized by the cited VOSH Standard—the Court OVERRULES KBS's Demurrer and DENIES KBS's Motion to Dismiss.

The Court directs counsel for Plaintiff to prepare and circulate an Order consistent with the ruling in this Opinion and submit it to the Court for entry within fourteen days.

Sincerely,



David W. Lannetti
Circuit Court Judge

DWL/bih

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
<i>Plaintiff,</i>)	
v.)	Civil Action No. CL15-7591-00
)	
KBS, INC.)	
<i>Defendant.</i>)	


DISMISSAL ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that the above captioned case is dismissed with prejudice from the Court's docket.

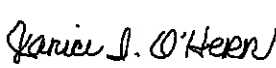
The parties have settled all outstanding issues in this case. A separate settlement agreement has been entered into by the parties.

The Clerk shall strike this matter from the docket of this Court, place it among the ended civil cases, and shall send an attested copy of this Dismissal Order to both counsel of record.

Entered this _____ day of February, 2016.

 David W. Lannetti, Judge
Feb 26 2016 4:20 PM


Judge David W. Lannetti

 Janice O'Hern, Deputy Clerk
COPY TESTE: Authorized to sign on
behalf of George E. Schaefer, Clerk
Mar 1 2016 4:05 PM

To Verify The Digital Signature, visit <https://cisweb.courts.state.va.us/CdvAct/main> (Document ID: 710-26902)

I ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry



Alfred B. Albiston (VSB No. 29851)
Special Assistant Commonwealth's Attorney
City of Norfolk
c/o Department of Labor and Industry
600 East Main Street, Ste. 200
Richmond, Virginia 23219

804.786.6760
804.786.8418 fax
albiston.alfred@dol.gov

Counsel for plaintiff, C. Ray Davenport, Commissioner of Labor and Industry

SEEN AND AGREED:

KBS, INC.


Courtney Moates Paulk (VSB No. 45523)
Kelly J. Bundy (VSB No. 86327)
HIRSCHLER FLEISCHER, A PROFESSIONAL CORPORATION
2100 East Cary Street (23218-7078)
Post Office Box 500
Richmond, Virginia 23218-0500

804-771-9500
804-644-0957 fax
cpaulk@hf-law.com
kbundy@hf-law.com

Counsel for defendant, KBS, Inc.

C. RAY DAVENPORT
Commissioner of Labor and Industry

and

KBS, INC.

VOSH Inspection Number 317309482

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the Agreement) is made and entered into this 22nd day of February, 2016, by and between the Commonwealth of Virginia, Commissioner of Labor and Industry (the “Commissioner”) and KBS, Inc. (“KBS”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Commissioner issued a citation to KBS, on or about October 3, 2013, alleging one Serious violation of the Virginia Occupational Safety and Health (VOSH) law and regulations, specifically VOSH Std. § 1926.20(b)(2), and proposing a civil penalty of \$1,925.00 (copy of VOSH Citation, attached); and

WHEREAS, KBS filed within 15 working days from the date of its receipt, a written notice contesting the violation and proposed penalty, as provided for in §40.1-49.4, of the *Code of Virginia*;

WHEREAS, the Commissioner filed a civil Complaint against KBS in the Norfolk Circuit Court captioned, *C. Ray Davenport, Commissioner of Labor and Industry v. KBS, Inc.* (Case No. CL15-7591), seeking to affirm the citation and proposed penalty (the “Case”) and to which KBS filed an Answer denying liability; and

WHEREAS, the parties desire to settle this case short of trial in a manner that will further protect and promote the safety and health of KBS’s employees, and to avoid the time and

expense of court proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. VOSH Inspection number 317309482, Citation 1, Item 1 is amended from a Serious to Other-than-Serious classification and is otherwise affirmed as amended. The original proposed penalty of \$1,925.00 is amended to \$1,000.00.

2. KBS shall pay the agreed civil penalty of \$1,000.00 within thirty (30) days of the date of execution of this Agreement. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 317309482 noted on the payment.

3. Upon execution of this Agreement, counsel for the Commissioner will submit a Motion and Order in the Norfolk Circuit Court dismissing the Case with prejudice.

4. Pursuant to *Virginia Administrative Code* §16 VAC 25-60-40(1), KBS shall post a copy of this Settlement Agreement for ten (10) consecutive days at a conspicuous place or location on all its jobsites where notices to its employees generally are posted.

5. KBS hereby withdraws its original notice of contest, and certifies that the affirmed violation as amended, and referenced in paragraph 1 above, has been corrected and abated.

SETTLEMENT OF CLAIMS

6. This Agreement is meant to settle the above contested claim, and is not to be considered an admission of liability of KBS. Pursuant to *Va. Code* §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the *Code of Virginia* shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

7. No part of the foregoing or following agreements, statements, findings and actions

taken by KBS shall be deemed an admission by KBS of a violation of the Code or any other law or an admission of the allegations contained within the citation or notification of penalty in this matter. Rather, the agreements, statements, findings, and actions taken herein are made solely for the purpose of compromising and settling this matter amicably to avoid protracted and expensive litigation, and shall not to be used in any judicial or administrative forum for any purpose whatsoever, except the Commissioner reserves its rights to issue repeat violations pursuant to Virginia law for the citation that was affirmed as amended in paragraph 1 of this Agreement. It is specifically understood by KBS and the Commissioner that the compromise and settlement of this matter is not intended to and shall not constitute an admission or finding of civil liability or responsibility of any kind in any civil personal injury or wrongful death action (or any indemnification action related to a civil personal injury or wrongful death action) and such civil liability or responsibility is specifically denied by KBS.

8. Nothing in this order shall be construed to restrict in any way the Commissioner's right to issue citations to KBS or any other employer in future VOSH inspections for *Va. Code* §40.1-51.1(a) or the *VOSH Standards for the Construction Industry*, for the same or similar fact situation that was the basis for the violation as originally issued to KBS in this case.

9. Nothing in this order shall be construed to restrict in any way KBS's right in future VOSH inspections to argue the inapplicability of *Va. Code* §40.1-51.1(a) or the *VOSH Standards for the Construction Industry* to the same or similar fact situation that was the basis for the violation as originally issued to KBS in this case.

10. As part of this Agreement, VOSH hereby represents, warrants and agrees that, with respect to the jurisdictions encompassed by the VOSH Tidewater Regional Office, KBS has no pending, unresolved, contested or otherwise open citations and/or inspections as of September 1,

2013, through February 17, 2016.

11. The Commissioner shall file a Motion and Order dismissing the Case, with prejudice. The Motion and Order will be filed immediately upon both parties executing this Agreement, and with the expectation that the Case will be dismissed from the Court's docket.

KBS, INC.

BY: 
Agent

2-22-16
Date

Commonwealth of Virginia,
COUNTY/CITY Henrico, to wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Sam Stocks, whose name is signed to the foregoing as Vice President of KBS, Inc., has acknowledged the same before me as his true and voluntary act on behalf of said corporation.

Given under my hand this 22nd day of February, 2016.


Notary Public

My commission expires: April 30, 2016
Registration No.: 353000



COMMISSIONER OF LABOR AND INDUSTRY

By: *William P. Burge*
William P. Burge
Assistant Commissioner

COMMONWEALTH OF VIRGINIA:
CITY OF RICHMOND, to wit:

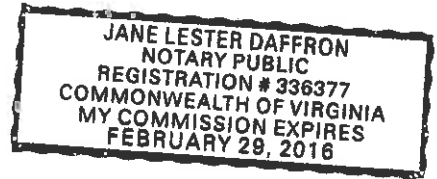
I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that William P. Burge, whose name is signed to the foregoing as Assistant Commissioner on behalf of C. Ray Davenport, Commissioner of Labor and Industry, has acknowledged the same before me as his true and voluntary act on behalf of the Commonwealth of Virginia.

Given under my hand this 23rd day of February, 2016.

Jane Lester Daffron
Notary Public

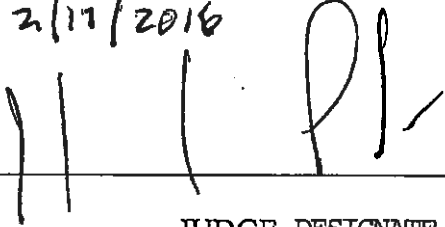
My commission expires: Feb 29, 2016

Registration No.: 336377




Whereupon, judgment is entered in favor of defendant, Summit Tower Construction, LLC. This matter is DISMISSED, with prejudice, and all citations and penalties in this matter are vacated and held for naught. It is so ORDERED.

The Clerk shall send certified copies of this Order to counsel of record.


Enter: 2/17/2016


JUDGE DESIGNATE

WE ASK FOR THIS:



Ryan L. Pry (VSB #74181)
BRUMBERG, MACKEY & WALL, P.L.C.
P. O. Box 2470
Roanoke, Virginia 24010
Telephone: (540) 731-9337
Facsimile: (540) 731-3319




Tod T. Morrow (pro hac vice)
MORROW & MEYER, LLC
4580 Stephen Circle, NW, Suite 300
Canton, Ohio 44718
Telephone: (330) 433-6000
Facsimile: (330) 433-6993
Counsel for Summit Tower Construction, LLC

SEEN AND OBJECTED TO FOR THE REASONS STATED IN PLEADINGS, MEMORANDA, AT ORAL ARGUMENT, AND SUMMARIZED AS FOLLOWS:


1. In the interests of justice and to provide mature consideration of pertinent factual issues and evidence, and absent severe prejudice to the defendant, the plaintiff's prior motion for continuance should be granted, and this matter reset for complete argument on the merits; and

2. In the interests of justice and to provide mature consideration of pertinent factual issues and evidence, and absent either surprise or prejudice to the defendant,, the plaintiff's request to permit his single witness to testify should be granted , and this matter reset for complete argument on the merits . .


Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
City of Waynesboro
c/o Department of Labor and Industry
600 East Main Street, Suite 207
Richmond, Virginia 23219
Telephone: (804) 786-6760
Facsimile: (804) 786-8418
albiston.alfred@dol.gov
Counsel for C. Ray Davenport, Commissioner of Labor and Industry

A TRUE AND CORRECT COPY

TESTE:

 Deputy
CLERK

CIRCUIT COURT
CITY OF WAYNESBORO

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

C. RAY DAVENPORT, Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
v.)	CASE NO. CL2015-10408
)	
TYSONS SERVICE CORPORATION. OF VIRGINIA)	
)	
Defendant.)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED,
ADJUDGED, and DECREED as follows:

1. That the citation attached to the Complaint is hereby amended as follows:
 - a) Serious Citation 1, Items 1 and 2 are regrouped as Items 1(a) and 1(b) and affirmed with a penalty of \$2,520.00;
 - b) Serious Citation 1, Item 3 is vacated;
 - c) Serious Citation 1, Item 4 is affirmed with a penalty of \$7,000.00;
2. That the Defendant will pay the total penalty of \$9,520.00 within twenty-one (21) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 317226579 noted on the payment;
3. That the Defendant will withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;
4. The Defendant will obtain the services of an outside contractor to provide all employees exposed to trench and excavation hazards with training to include the nature of trench and excavation hazards, trench and excavation access and egress, soil testing and classification,

requirements for protective systems, and competent person inspection requirements. Employees will obtain this training and the employer will provide documentation of a written certification record that includes the identity of the employee(s) trained, the date of the training, the curriculum covered during the training, and the signature of the person who conducted the training. This documentation must be provided within 60 days of the date of this agreement. Upon completion of the training, documentation of the training shall be sent to:

Regional Safety Director
VA Department of Labor and Industry
10515 Battleview Parkway
Manassas, Virginia 20109

5. The Defendant will post a copy of this Order for ten consecutive days, beginning from the date of entry of this Order, in a conspicuous location where notices to its employees are generally posted;
6. This Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
7. The Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority;
8. That each party shall bear its own costs in this matter. The Clerk shall send an attested copy of this Order to all counsel of record.

It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

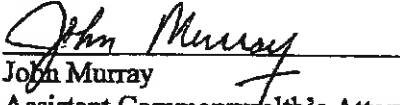
Entered this 19th day of May 2016.



Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry



John Murray

Assistant Commonwealth's Attorney

County of Fairfax

4110 Chain Bridge Road

Fairfax, Virginia 22030

Telephone: (703) 246-2776

Facsimile: (703) 691-4004

Counsel for Commissioner Davenport

SEEN AND AGREED:

TYSON SERVICE CORPORATION OF VIRGINIA.



Stephen J. Ammino, Esq. (VSB#20551)

Matthew D. Baker, Esq. (VSB#83619)

REES BROOME, PC

1602 Village Market Blvd., S.E., Suite 270

Leesburg, VA 20175

Telephone: 703-443-6605

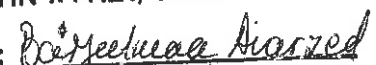
Facsimile: 703-779-2804

sannino@reesbroome.com

mbaker@reesbroome.com

Counsel for Tyson Service Corporation of Virginia.

A COPY TESTE:
JOHN T. FREY, CLERK

BY: 
Deputy Clerk

Date: 7/2/17

Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia