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Bloor/Ruebel Amicus Brief

1 message

Carol DeCoursey <cdecoursey@gmail.com>

Wed, Mar 23, 2011 at 2:34 PM

To: "McBride, Ryan" <mcbriider@lanepowell.com>

Cc: "Gabel, Andrew J." <GabelA@lanepowell.com>, "Degginger, Grant" <DeggingerG@lanepowell.com>, Mark DeCoursey <mhdecoursey@gmail.com>

Ryan & All:

We demurely remind you that your brief was submitted as it was only because Lane Powell threatened to withdraw unless we permitted you to file it as you had written it. Under that threat -- and only because of that threat -- we conceded.

You fault Talmadge & Fitzpatrick for failing to discuss strategy with you. Clearly your objective would have been to dissuade Mr. Lohnes from serving his clients, who wanted to perform their civic duty. In contrast, we are grateful to the Bloors and the Ruebels for performing their civil duty. They acted unselfishly to alert the court to an on-going problem. Windermere is a commercial menace to the people of the Northwest, the type of menace that the CPA was designed to address. You acknowledged that fact when you argued that we were injured "in exactly the same way" as other consumers have been or were likely to be injured.

Think about this: On one hand you say you wanted to posture our case as "factually unique," and on the other hand hand say that it is (1) governed by clearly settled law, and (2) governed by public policy law (and as such not unique). Your position is not logically possible. You cannot deny any public policy issues inherent in a case that is based on public policy law. You cannot both claim this is a case of no public importance, yet claim at the same time it should fall under the auspices of the Consumer Protection Act.

Lane Powell has been urging us to be totally selfish in designing our legal strategy. According to LP, we should do only what is best "only" for us. Unfortunately, if that is the standard by which LP judges virtue, we must ask if LP is following its own advice -- i.e., is LP doing only what is best "only" for LP? That is the reasonable corollary. Thus we see the untenability of the "selfish" principle.

We do not consider selfishness is a civic virtue; it is a civil vice. We have reached out to help others injured by Windermere, and now they are reaching out to help us. That may be one of the reasons the jury sided with us in the trial, too. That is the way that a real civilization operates.

It's hard to imagine Talmadge & Fitzpatrick didn't know what they were doing. Phil Talmadge spent some six years on the Supreme Court himself, and he likely knows the territory. The points in Mr. Lohnes's brief were different from those in yours, Ryan. It would seem he studied your brief carefully; we found no "parrotting" in his.

The amicus brief speaks for itself, and we like what it says.

Now please, let us not use up more billable hours arguing about it.

Ryan, relax. How about bringing your wife and family over to our place next Friday night? We will crack open a fresh bottle of bourbon -- or whatever it is you drink (we are open-minded.) Bring your kids' favorite videos; between them and Chip and Angel, our two dogs, they will be entertained. There will be food, too.

Besides, you've never seen the "subject dwelling."

;-)

Carol & Mark

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From: **McBride, Ryan P.** <McBrideR@lanepowell.com>

Date: Tue, Mar 22, 2011 at 3:31 PM

Subject: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

To: Mark DeCoursey <mhdecoursey@gmail.com>, cdecoursey@gmail.comCc: "Degginger, Grant" <DeggingerG@lanepowell.com>, "Gabel, Andrew J." <GabelA@lanepowell.com>, "McBride, Ryan P." <McBrideR@lanepowell.com>

Mark and Carol - -

Attached is an amicus submission filed by the Bloors and Ruebels on your behalf, asking the court to deny Windermere's petition for review. We were surprised to see this, as we had no idea it was coming, and had not been contacted by anyone from the Talmadge firm before we received it today in the mail. It is unusual for amicus to file something without first reaching out to counsel to coordinate strategy or, at a minimum, as matter of professional courtesy. I called Mr. Lohnes to understand his thinking on this. During our conversation, he informed me that he had spoken with you. That was surprising to learn as well.

I asked Mr. Lohnes if he had explained the downside and risks to you regarding such an amicus submission. He said he did. Since you never asked us for our input on the issue, I will repeat those risks here: (1) Windermere has a right to file a 10 page answer to the amici memorandum (assuming leave to file the memo is granted); since the amicus brief largely parrots our legal arguments, this gives Windermere an opportunity to file a de facto substantive reply brief in support of its petition - - a right it would not otherwise have; (2) one of the grounds for review is that the case involves issues of substantial public importance; for this reason, we wanted to posture our case as factually unique with the lowest profile possible; the amicus brief -- while undoubtedly well-intended -- might have the opposite effect of lending weight to the issues. Let's hope not.

Ryan P. McBrideShareholder, [Bio](#) | [VCard](#)

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