IN THE

Supreme Court of Virginia

RECORD NO. 101837

HOME PARAMOUNT PEST CONTROL COMPANIES, INC.,

Appellant,

v.

JUSTIN SHAFFER
and
CONNOR'S TERMITE AND PEST CONTROL, INC.,

Appellees.

BRIEF OF APPELLEES

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STATEMENT OF THE CASE AND PROCEEDINGS BELOW

This matter involves the validity of a non-compete agreement that Appellee, Justin Shaffer (Mr. Shaffer) signed in connection with his employment with Appellant, Home Paramount Pest Control Companies, Inc. (Home Paramount). After working for Paramount for approximately a year, Mr. Shaffer left that company and went to work for Appellee, Connor's Termite and Pest Control, Inc. (Connor's).

On September 3, 2009, Home Paramount brought a seven count action against Mr. Shaffer and Connor's, which included allegations of breach of contract against Mr. Shaffer (Count I) and tortious interference with contract against Connor's (Count II). The other counts were for statutory and common law conspiracy against both defendants, violation of the Virginia Trade Secrets Act against Mr. Shaffer, Tortious Interference with Contract against Mr. Shaffer, and Temporary Injunction against both defendants. After the request for a temporary injunction was briefed and argued, the Court denied the request for injunction, finding plaintiff failed to prove violation of the non-solicitation clause and irreparable injury, and failed to establish a likelihood of success on the merits because of the breadth of the non-compete provisions. [JA 52-53; 58; 119:19 to 120:2].

Mr. Shaffer and Connor's filed their Plea in Bar, and the parties briefed the issues.[1] On February 12, 2010, the trial court deferred ruling on the Plea in Bar to allow Home Paramount time for additional discovery and an evidentiary hearing. The Order specifically details that no ruling was reached as to the merits of the Plea in Bar. [JA 55].

On May 26, 2010, after holding an evidentiary hearing on the Plea in Bar, the court entered an Order granting the Plea in Bar as to Counts I and II, finding the Covenant not to Compete was unenforceable because it was overly broad and the restrictions were not tailored to protect the employer's legitimate interest. [JA 148-149, 174]. On June 28, 2010, the Court entered an Order nonsuiting the remaining counts.

ASSIGNMENT OF ERROR

The trial court correctly determined that under the facts of the case and the facial expression in the contract, the non-compete covenant was overly broad, the restrictions were in excess of those needed to protect Home Paramount's legitimate interests, the contract was unenforceable, and void; and accordingly the court properly granted the Plea in Bar on the breach of contract and tortious interference counts.

AMPLICATION AND CORRECTION OF STATEMENT OF FACTS

The underlying facts are not in dispute. Mr. Shaffer went to work for Home Paramount in June of 2008. He was required to and signed an

[1] Home Paramount inaccurately references a first and second Plea in Bar. [Brief, pp.1, 2]. While a number of memoranda were filed in connection with the Plea in Bar, only one Plea in Bar was filed.

Employment Agreement and did so again on January 13, 2009. Paragraph Five of the Employment Agreement provides:

> The Employee will not **engage** directly or **indirectly** or concern himself/herself **in any manner whatsoever** in the carrying on or conducting the business of exterminating, pest control, termite control and/or fumigation services as an owner, agent, servant, representative, or employee, and/or as a member of a partnership and/or as an officer, director or stockholder of any corporation, **or in any manner whatsoever**, in any city, cities, county or counties in the state(s) in which the Employee works and/or in which the Employee was assigned during the two (2) years next preceding the termination of the Employment Agreement and for a period of two (2) years from and after the date upon which he/she shall cease for any reason whatsoever to be an employee of Employer."

[JA17] [Emphasis supplied].

The gravamen of Home Paramount's claim is that Mr. Shaffer worked in its Falls Church office which encompassed Vienna, Oakton, Great Falls, Falls Church, Arlington, Alexandria, and McLean. [JA 100:1-2]. Mr. Shaffer worked as an inspector for Home Paramount's and he was responsible for bringing in new business. [JA 101:16-18].

Upon leaving his position at Home Paramount, Mr. Shaffer was employed by Connor's as a canine handler in the bed bug division working in a multi-state territory that covers all of Virginia, including the Falls Church area. [JA 84:2-6; 85:4-5]. He performs services everywhere except the former territories he worked at Home Paramount. [JA 115:15-21].

Connor's sent him to Florida for training with the dog he would handle. [JA 85:8-16]. Trained dogs directed by their handlers are used by Connor's to identify the location of bed bugs. [JA 84:18-20]. Home Paramount's factual recitation omits any reference to the facts that it did not use dogs and that Mr. Shaffer did not handle dogs while employed at Home Paramount. [JA 85:13-16].

At the Plea in Bar hearing, the trial court determined that the covenant was overbroad, the manner in which it was fashioned provided restraints that were in excess of those needed to protect Home Paramount's business interest, and many of the restraints had nothing to do with protecting legitimate business interests. [JA 148:6 to 149:8]. The Court entered its Order granting the Plea in Bar. [JA 174]. Home Paramount's brief challenges the trial court's decision granting the Plea in Bar as to Counts I and II.

Home Paramount's statement of facts includes contentions relating to whether Mr. Shaffer actually violated the terms of the agreement and recites testimony in an attempt to show the terms were violated. [Brief, pp. 4, 5]. Those contentions are not relevant to the legal enforceability of the covenant. As Judge White noted, the plea in bar did not concern "whether or not there's a violation of the terms of the agreement." [JA 79:14-15].

Home Paramount erroneously states that after Mr. Shaffer went to work for Connor's, Mr. Connors and Shaffer submitted a proposal to Landmark Terrance [sic]. [Brief, p.5]. Mr. Connors testified that he submitted a proposal to Landmark Terrace after Mr. Shaffer joined Connor's. [JA 93:16- 94:9]. He did not testify that Mr. Shaffer submitted the proposal or that he joined in the submission. [JA 93:12 to 96:2]. Mr. Shaffer testified that he did not solicit work from Landmark Terrace. [JA 116:19]. No proposal submitted by Connor's to Landmark Terrace has Mr. Shaffer's name and no proposal has been included in the Appendix, not even the proposal submitted by Mr. Connor.

Mr. Shaffer and Connor's disagree with portions of Home Paramount's Statement of Facts that are essentially argument. Contrary to Home Paramount's contentions in its Brief on page 5: 1) the trial court did not accept Home Paramount's evidence that Mr. Shaffer's ability to make a living was unimpaired by the non-compete agreement; and 2) the functional restrictions are not reasonable simply because the geographic restriction is narrow.

Further, Home Paramount recites testimony of its employee Mr. Hoffman, that Mr. Shaffer would not have been precluded from working in western Fairfax County. [JA 100:3-1]. Mr. Hoffman's testimony amounts to

an interpretation of the contract which is not substantiated by the contract language. As Home Paramount's counsel conceded, the non-compete agreement does not include language referencing only part of a county. [JA 80:6-10]. It references "any city, cities, county or counties in the state(s) in which" Mr. Shaffer worked. [JA 17].

SUMMARY OF ARGUMENT

The non-compete agreement unreasonably prevents Mr. Shaffer from directly or indirectly working in any capacity for a competitor of Home Paramount or working or being associated in any capacity whatsoever with pest control businesses. As the trial court correctly found, Home Paramount failed to show any legitimate business interest served by preventing Mr. Shaffer from being employed in *any* capacity by a competitor. [JA 148:10-14]. The covenant is facially overly broad, unenforceable, and void. *Modern Environments v. Stinnett*, 263 Va. 491, 494-496, 561 S.E.2d 694, 695-696 (2002).

STANDARD OF REVIEW

Whether a covenant not to compete is enforceable is a question of law that the Court reviews *de novo*. *Parikh v. Family Care Center, Inc.*, 273 Va. 284, 288-289, 641 S.E.2d 98, 100 (2007); *Motion Control Systems, Inc. v. East*, 262 Va. 33, 37, 546 S.E.2d 424, 426 (2001).

Home Paramount correctly notes that a plea in bar presents a single issue which, when proved, bars recovery. *Hawthrone v. VanMarter*, 279 Va. 566, 577, 692 S.E.2d 226, 233 (2010). Home Paramount states the facts were undisputed. It is true that there was no dispute as to the fact that Mr. Shaffer signed the non-compete agreement at issue. However, even though the issue was limited to whether the employment agreement was void, Home Paramount offered evidence in an attempt to persuade the court that the non-solicitation provision had been breached, and those facts were disputed.

ARGUMENT

The offending language of the Employment Agreement is located in Paragraph Five. It seeks to prevent Mr. Shaffer from "**directly or indirectly**" engaging or concerning himself "**in any manner whatsoever**" in the specified businesses as "an owner, agent, servant, representative, or employee, and/or as a member of a partnership and/or as an officer, director or stockholder of any corporation, **or in any manner whatsoever**." [JA 17] [Emphasis added].

Covenants restricting employment are restraints on trade, disfavored in the law, and, if ambiguous, will be construed against the employer. *Modern Environments v. Stinnett*, 263 Va. at 493, 561 S.E.2d at 695. The

employer bears the burden of proof that the post employment restriction does not unduly restrict the employee's ability to make a living, is narrowly drawn to protect the legitimate business interests of the employer, and is not against public policy. *Omniplex World Services Corporation v. U.S. Investigations Services, Inc.*, 270 Va. 246, 249, 618 S.E.2d 340, 342 (2005); *Stinnett*, at 493, 561 S.E.2d at 694; *Simmons v. Miller*, 261 Va. 561, 580, 544 S. E. 2d 666, 678 (2001). In analyzing the reasonableness of covenants not to compete, courts look to the function, geographic scope, and duration of the covenant. *Simmons*, 261 Va. at 581, 544 S.E.2 at 678. Here, as in *Motion Control Systems, Inc.*, the time period and geographic scope are not at issue. 262 Va. at 37, 546 S.E.2d at 426.

Home Paramount relies on the language of a federal district court in support of its position that "[t]he considerations of function, geographic scope, and duration are not separate and distinct issues: a single consideration that is unreasonable may be reasonable as construed in light of the other two." *Cantol, Inc. v. McDanie*l, 2006 U.S. Dist. Lexis 24648 (E.D. Va. April 28, 2006) at *11. In support the federal court cited *Advanced Marine Enters. v. PRC, Inc.*, 256 Va. 106, 119, 501 S.E.2d 148, 155 (1998) where the Court upheld a non-competition provision that did "not contain a blanket prohibition against working for a competitor." *Cantol*,

2006 U.S. Dist. Lexis 24648 at *11. While the *Cantol* Court found the geographic scope and duration reasonable, it found the function component, which was not limited to the functions the employee performed for its former employer, was not narrowly draw to support a legitimate business interest, was unduly burdensome, and was unenforceable. *Cantol*, 2006 U.S. Dist. Lexis 24648 at *16-17. Similarly here, although the time and geographic restraints are reasonable, the function restriction contains a blanket prohibition against working for a competitor, with no showing of any legitimate interest served by the restriction.

I. The Non-Compete Agreement is Unenforceable and Void

A. The Agreement is Unreasonable in Function

Home Paramount cannot carry its burden because the covenant is functionally too broad. It prohibits Mr. Shaffer from engaging directly or indirectly or concerning himself "in any manner whatsoever" in the carrying on or conducting pest control business or services in the geographic areas in which he worked for Home Paramount, "in any manner whatsoever." A covenant that restricts employment in any capacity and does not serve to protect the employer's legitimate business interest is not reasonable.

This Court upheld an order striking a non-compete agreement with restrictions that had similar effect. *Stinnett,* 263 Va. 491, 561 S.E.2d 694.

The *Stinnett* non-compete agreement, which prevented the employee from working for a competitor in any role was facially over-broad and unenforceable as a matter of law. *Stinnett,* 263 Va. at 493-495, 561 S.E.2d at 695-696.

> Employee will not (i) *directly or indirectly, own, manage, operate, control, be employed by, participate in or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business* conducted by the company or any of its affiliates (a "competing business"), which competing business is within a fifty (50) mile radius of the home office or any business location or locations of the Company or any of its affiliates at which Employee worked.

Stinnett, 263 Va. at 493-494, 493, 561 S.E.2d at 695. [Emphasis in original].

The trial court correctly noted that the functional limitations in the Home Paramount covenant are even greater than in the Stinnett covenant. [JA 148:8-9]. Consistent with *Stinnett*, the trial court determined that Home Paramount failed to establish that its legitimate business interests were served by prohibiting Mr. Shaffer "from being employed in *any capacity* by a competing company." *Stinnett*, 263 Va. at 495, 561 S.E.2d at 696. [Emphasis in original].

The covenant, as written, would restrict Mr. Shaffer from being employed as a receptionist, bookkeeper, accountant, vehicle repairman, or

janitor at Connor's for two years. It would prevent him from receiving any training from a Home Paramount competitor or owning stock in a competitor or even in a company that manufactures or distributes the pesticides used by Home Paramount. Under the language which prevents him from indirectly engaging in or concerning himself in any manner whatsoever with the exterminating, pest control, termite control and fumigation business, it would prevent him from employment by a chemical company as a truck driver delivering pesticides to Connor's.

As in *Omniplex*, "the restriction in this case is not limited to positions competitive with" Home Paramount. *Omniplex*, 270 Va. at 250, 618 S.E.2d at 342. The plain language of the restriction impermissibly seeks to prevent Mr. Shaffer from any association, whether direct or indirect, with any pest control business in any capacity whatsoever, including providing services which Home Paramount does not even provide. While at Home Paramount, Mr. Shaffer worked as a salesman - selling products to existing customers and contacting potential new customers. On the other hand, at Connor's Mr. Shaffer was trained as a dog handler to identify bed bugs in hotels, apartment and condominium complexes. The covenant at hand would prevent Mr. Shaffer from providing canine inspections for bed bugs,

a service which he did not perform at Home Paramount and which it does not offer, although it does provide heat treatment for bed bugs.

Home Paramount argues that the covenant was narrowly drawn to protect its legitimate business interest and in support discusses evidence it offered at the Plea in Bar Hearing. [Brief, pp. 9-10]. Its evidence related primarily to the narrow geographical limitation. [JA 138:3; JA 139:8 to 140:9]. It also attempted to show a decline in the amount of work that some clients sent to Home Paramount, but, in spite of extensive discovery, it failed to establish that there was any competition. It also attempted to show that the restriction precluding Mr. Shaffer's employment in any capacity by a competitor did not affect his ability to earn a living because he had never worked as a janitor, bookkeeper or receptionist, but never established he would not have done so.

Importantly, as in *Stinnett*, neither Home Paramount's argument nor its evidence addresses how its legitimate business interests were served by preventing Mr. Shaffer's employment by a competitor in *any* capacity. *Stinnett,* 263 Va. at 495, 561 S.E.2d at 696. Rather, Home Paramount simply treats as irrelevant the fact that the language of the covenant prohibits employment with a competitor in any capacity. [Brief, p. 14]. Consequently, as the trial court found, Home Paramount did not carry "its

burden of showing that the restrictive covenant at issue is reasonable and no greater than necessary to protect a legitimate business interest." *Id.* at 495-496, 561 S.E.2d at 696. [JA 148:8 to 149:8].

The *Stinnett* Court acknowledged a prior decision upholding a covenant that precluded *any type* of employment with a competitor. *Id.* (citing *Blue Ridge Anesthesia & Critical Care, Inc. v. Gidick*, 239 Va. 369, 389 S.E.2d 467 (1990)). The Court noted, however, it had done so because another part of the agreement specifically allowed the former employee to work for a competitor in a non-competing role. *Stinnett*, 263 Va. at 495, 561 S.E.2d at 696 (citing *Blue Ridge*, 239 Va. at 270-271; 389 S.E.2d at 468). The *Stinnett* agreement did not contain a similar provision. *Stinnett*, 263 Va. at 495, 561 S.E.2d at 696. Likewise here there is no such saving provision.

Similarly, in *Omniplex* the Court upheld the trial court's determination that a covenant was unreasonable because it precluded the former employee from working for any business that provided any kind of support to Omniplex's customer, not just security staffing businesses that were in competition with the former employer. *Omniplex*, 270 Va. 248, 618 S.E.2d 342-343.

> Employee hereby covenants and agrees that . . . Employee shall not for the remainder of the Term (i) accept employment,

> become employed by, or perform any services for OMNIPLEX's Customer for whom Employee provided services or for any other employer in a position supporting OMNIPLEX's Customer, if the employment or engagement requires Employee to possess the same level of security clearance Employee relied on during his employment with OMNIPLEX . . . .

Omniplex, 270 Va. at 248, 618 S.E.2d at 341.

The Omniplex employee had a security clearance and worked in general administrative security support. The prohibition was so broad that it would have prevented the employee from working as a delivery person for a vendor that delivered material to the customer, where a security clearance was necessary for entry onto the customer's site. Because the non-competition provision was not limited to employment that was in competition with the former employer, the covenant was overly broad and unenforceable. *Omniplex*, 270 Va. at 250, 618 S.E.2d at 343.

In the same vein, here, the language of the covenant, prohibiting Mr. Shaffer from "indirectly" engaging in or concerning "himself . . . in any manner whatsoever in the carrying on or conducting the business of exterminating, pest control . . ." in any capacity "whatsoever," is so broad as to preclude Mr. Shaffer from working as a delivery driver for a company that supplies pesticide to Connor's or any other competitor of Home Paramount.

Contrary to Home Paramount's characterization, the trial court did not examine the restrictive covenant in a vacuum. [Brief, p. 11]. As is apparent from the trial court's questions to Home Paramount's counsel, the trial court recognized the overly broad reach of the covenant. The court queried whether the language of the covenant, which prohibits Mr. Shaffer from "concerning himself in any manner whatsoever with the carrying on or conducting business," prohibited Mr. Shaffer from selling dog food to Connor's to feed the dogs used in the bed bug detection. [JA 142:3-11]. Home Paramount responded that if Mr. Shaffer were selling dog food he would be in the dog food business and not be carrying on or conducting pest control business. [JA 142:9-19; Brief of Appellant, pp. 18-19]. That argument simply ignores the unenforceable broad language that Home Paramount included in the contract it authored.

The trial court also viewed the agreement as prohibiting Mr. Shaffer from being a stockholder in a company that manufactured pesticides and inquired of Home Paramount's counsel as to what legitimate business interest was being protected by the prohibition. [JA 144:2-11]. The court found the restriction on Mr. Shaffer's owing stock in any corporation as too broad. [JA 148:20 to JA 149:1].

It must be remembered that the agreement is a contract. The language is plain on its face; consequently the covenant must be construed as written. *Dowling v. Rowan*, 270 Va. 510, 516, 621 Va. 397, 339 (2005). The court properly considered the language Home Paramount chose to use in the agreement in framing the very broad restriction. If there is any ambiguity it must be construed against Home Paramount. *Stinnett*, 263 Va. at 493, 561 S.E.2d at 695. Where ambiguity exists, so that the employee is left to try to figure out if "it is prudent, from a standpoint of possible legal liability, to accept a particular job "the agreement subjects an employee to "such uncertainty" that it "offends 'sound public policy.'" *Power Distribution, Inc. v. Emergency Power Engineering, Inc.*, 596 F. Supp. 54, 58 (E.D.VA. 1983)(citing *Meissel v. Finley*, 198 Va. 577, 580, 95 S.E.2d 186, 188 (1956)

Home Paramount suggests that holding the non-compete agreement invalid would be tantamount to a determination that non-compete agreements are not enforceable under any circumstances, and would be against public policy. [Brief, p. 12]. Contrary to Home Paramount's position, non-compete agreements that are tailored to protect legitimate business interest and are reasonable in function, geographical scope and consistent with sound public policy are enforced. Home Paramount could have authored a compliant one, which would have permitted post-

employment in a noncompetitive capacity. *Blue Ridge*, 239 Va. at 370-371, 389 S.E.2d at 468. Home Paramount chose not to do so.

Home Paramount's first Assignments of Error overlooks the fact that the trial court actually agreed with Home Paramount's counsel that the geographical limitation was small. [JA 149:1-2]. All three Assignments of Error and the arguments made in their support ignore the fact that the burden was on Home Paramount to establish that it had a legitimate business interest in prohibiting Mr. Shaffer from being employed in any capacity by a competitor. Home Paramount never met its burden. Its brief does not reference any evidence which it presented or any argument it made as to what legitimate business interest was served by prohibiting employment in *any* capacity by a competitor.

In connection with its second and third Assignments of Error, Home Paramount argues that although the function factor was "very over-broad," the geographical factor was small, so Mr. Shaffer's background in pest control somehow offsets the overly broad restrictions, because a competitor would not hire Mr. Shaffer for any reason other than his pest control background. [Brief, p.14]. Firstly, the case law does not support that approach. As in *Stinnett*, Home Paramount has cited no case in which this Court upheld a restrictive covenant precluding the former employee

from working for a competitor in *any type* of employment. 263 Va. at 495, 561 S.E.2d at 695. Where the restriction bars any type of employment, the test is not the application of the restrictive covenant, but whether it is void on its face for lack of a legitimate business interest. An employer does not have a legitimate business interest in restricting a former employee's activity that is not in competition with the former employer. *Omniplex*, 270 Va. at 250, 618 S.E.2d at 343.

Home Paramount argues it is not using the non-compete agreement to prevent Mr. Shaffer "from performing hypothetical job duties as referenced in the trial court's rational." [Brief, p.14]. That argument flies in the face of the very language of the covenant, which is so broad as to preclude Mr. Shaffer from engaging directly or indirectly or concerning himself in any manner whatsoever in the carrying on or conducting the business of exterminating, etc. in any capacity whatsoever. Enforceable language would be limited to restricting Mr. Shaffer from engaging in competition with Home Paramount. *Omniplex*, 270 Va. at 250, 618 S.E.2d at 342. Paragraph 5 is invalid and not narrowly drawn to protect Home Paramount's legitimate business interest, and it does not have a legitimate interest in restricting Mr. Shaffer's activities that are not in competition with Home Paramount. *Cantol, Inc. v. McDaniel*, 2006 U.S. Dist. Lexis 24648 at

*17 (citing *Omniplex*, 270 Va. at 249-250, 618 S.E.2d at 342; *Stinnett*, 263 Va. at 495, 561 S.E.2d at 696).

Home Paramount's reliance on *Paramount Termite Control Co. v. Rector*, 238 Va. 171, 380 S.E.2d 922 (1989) is misplaced. While the Court upheld the restriction, the restriction did not prevent the former employees from engaging "in any other work but that of pest control in the counties in which they formerly work for Paramount." *Id.* at 175, 380 S.E.2d at 925.

Secondly, a competitor might well hire someone with Mr. Shaffer's background to perform services other than pest control in order to keep him available for pest control services after the expiration of the two year limitation period. Thirdly, such functionally broad non-compete agreements violate public policy as they restrict a person's right to obtain employment, albeit in a lesser paying job, in difficult economic times when customers might have to forego obtaining professional bed bug treatment, thus reducing the demand for a professional with Mr. Shaffer's training.

Finally, Home Paramount argues the trial court failed to consider the evidence and attempts to dismiss the fatal defect in the covenant, which prohibits employment of any type, by dubbing the employee's challenge to its enforceability as a "well-know technique." [Brief, p.17, 19]. Contrary to Home Paramount's position, the trial court considered the evidence,

briefing, and arguments. [JA 148]. The trial court it did not ignore the geographic factor, which was considered reasonable, [JA 148-149]. The time factor was not challenged.

Paragraph 5 of the Agreement cannot be enforced, as it restricts Shaffer from any employment within the industry. Since the covenant not to compete cannot be enforced and the contract is void, the Counts (I and II) seeking recovery based on the contract were properly dismissed by the trial court.

II. Connor's Cannot be Liable for Tortious Interference with the Void Contract

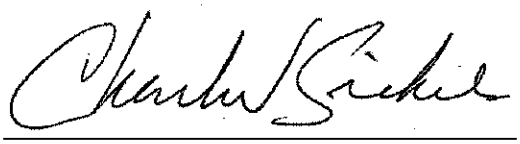
Count II of the Complaint alleges Connor's tortiously interfered with Mr. Shaffer's employment agreement with Home Paramount when Connor's hired Shaffer. [JA 6-7]. As discussed above, the functional restrictions in the non-compete provision of the contract are overly broad, unenforceable, and void. It is impossible for Connor's to interfere with a contract that is void. Because the contract is void due to its overly broad nature, Connor's could not be held liable for interfering with that unenforceable contract, and the court properly granted the Plea in Bar as to Count II.

CONCLUSION

The trial court correctly determined that the non-compete covenant is overly broad and not tailored to protect a legitimate business interest. Because the agreement would prevent Mr. Shaffer from directly or indirectly working in any capacity, or even owning stock in a pest control business or service, the contract is void. As there was no error, the decision of the trial court should be affirmed.

Respectfully submitted,

Justin Shaffer and
Connor's Termite and Pest Control, Inc.
By Counsel



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CERTIFICATE OF SERVICE

Pursuant to Rule 26 (h) and of the Supreme Court of Virginia, Counsel for Appellees, Justin Shaffer and Connor's Termite and Pest Control, Inc., certifies that on the 11th Day of March 2011, one electronic version and 15 copies of the Brief of Appellee were hand delivered to the Clerk of the Supreme Court of Virginia and one electronic version and three copies were sent postage prepaid, first class mail to:

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