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FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2007 AUG 22 PM 4: 21

IN RE CHARLESTON GAZETTE
FOIA REQUEST

AUG 27 2007

CATHY S. GATSON, CLERK
KANAWHA COUNTY
Civil Action No. 07-C-1660
Honorable James C. Stucky

ORDER

Came the City of Charleston, by counsel, Bryan R. Cokeley, Esq., and filed a Complaint For Declaratory Judgment asking this Court to issue a declaration of the City's duties under a Freedom of Information Act (FOIA) request filed by the Charleston Gazette. Upon mature review of the pleadings and pertinent legal authorities, the Court, for the following reasons, hereby Denies the City of Charleston's request for declaratory judgment and Dismisses this action.

In deciding whether a justiciable controversy exists sufficient to confer jurisdiction for purposes of the Uniform Declaratory Judgments Act, West Virginia Code §§ 55-13-1 to -16 (1994), a circuit court should consider the following four factors in ascertaining whether a declaratory judgment action should be heard: (1) whether the claim involves uncertain and contingent events that may not occur at all; (2) whether the claim is dependent upon the facts; (3) whether there is adverseness among the parties; and (4) whether the sought after declaration would be of practical assistance in setting the underlying controversy to rest.

Syl. Pt. 4, *Hustead on Behalf of Adkins v. Ashland Oil, Inc.*, 197 W.Va. 55, 475 S.E.2d 55 (1996). The fourth factor of the above test parallels West Virginia Code § 55-13-6 which states, "The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings." For the purposes of this Order, the Court assumes all the facts proffered by

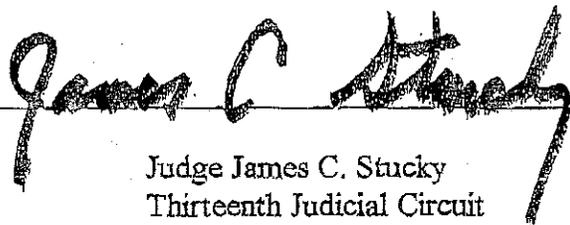
the City of Charleston's Complaint For Declaratory Judgment to be true. As such, the Court takes judicial notice of the fact that the documents at issue are currently under seal by Orders of both Judges Jennifer Bailey Walker and Tod Kaufman. Were this Court to enter the requested declaratory judgment, the documents would still remain under seal, and thus, the underlying controversy of this matter would persist. The Court finds that a declaratory judgment in this matter would not terminate the controversy and, therefore, the Court refuses to enter such a declaratory judgment.

The Court hereby Denies the City of Charleston's request for declaratory judgment and Dismisses this action.

The Court notes the objections and exceptions of all parties adversely affected by this order.

This is a Final Order. The Circuit Clerk shall remove this action from the docket and provide certified copies of this Order to all counsel of record.

Entered this 22nd day of August, 2007


Judge James C. Stucky
Thirteenth Judicial Circuit

Date: _____
Certified copies sent by:
_____ court of record
_____ parties
_____ other (please indicate)
By: _____
_____ certified/first class mail
_____ fax
_____ hand delivery
_____ internet/e-mail
Other (describe accomplishment): _____

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2007 AUG 28 AM 9:32

IN RE CHARLESTON GAZETTE
FOIA REQUEST

CATHY S. STUCKY
Civil Action No. 07-C-1660
Honorable James C. Stucky

AMENDED ORDER

Came the City of Charleston, by counsel, Bryan R. Cokeley, Esq., and filed a Complaint For Declaratory Judgment asking this Court to issue a declaration of the City's duties under a Freedom of Information Act (FOIA) request filed by the Charleston Gazette. Upon mature review of the pleadings and pertinent legal authorities, the Court, for the following reasons, hereby Denies the City of Charleston's request for declaratory judgment and Dismisses this action.

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Syl. Pt. 4, *Hustead on Behalf of Adkins v. Ashland Oil, Inc.*, 197 W.Va. 55, 475 S.E.2d 55 (1996). The fourth factor of the above test parallels West Virginia Code § 55-13-6 which states, "The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings." For the purposes of this Order, the Court assumes all the facts proffered by

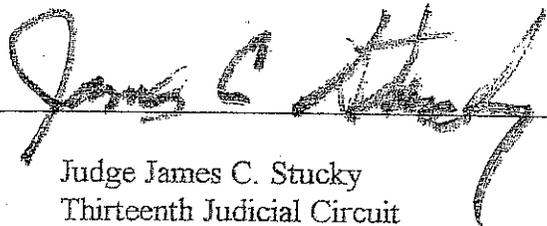
the City of Charleston's Complaint For Declaratory Judgment to be true. As such, the Court takes judicial notice of the fact that some of the documents at issue are currently under seal by Orders of both Judges Jennifer Bailey Walker and Tod Kaufman. Were this Court to enter the requested declaratory judgment, the sealed documents would still remain under seal, and thus, the underlying controversy of this matter would persist. The Court finds that a declaratory judgment in this matter would not terminate the controversy and, therefore, the Court refuses to enter such a declaratory judgment.

The Court hereby Denies the City of Charleston's request for declaratory judgment and Dismisses this action.

The Court notes the objections and exceptions of all parties adversely affected by this order.

This is a Final Order. The Circuit Clerk shall remove this action from the docket and provide certified copies of this Order to all counsel of record.

Entered this 27th day of August, 2007



Judge James C. Stucky
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF August 2007
 28th
CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA