

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

KIRK A. JACKSON	)	
	)	
v.	)	Case No: CL 10-1533
	)	
CARL E. TANNER	)	
	)	
Defendant	)	

DEFENDANT'S PLEA IN BAR

COMES NOW DEFENDANT, CARL E. TANNER ("Tanner"), by counsel, Law Office of Calvin Steinmetz and Law Office of Thomas Lester, and as his Plea in Bar to the Complaint of plaintiff Kirk A. Jackson ("Jackson"), states that the Complaint is time barred by the applicable statute of limitations, and must be dismissed with prejudice.

Jackson commenced this action for Battery, Intentional Infliction of Emotional Distress, and Negligence on October 14, 2010. In his Complaint, Jackson alleged that twenty-three years ago, when Jackson was a minor, Tanner engaged in sexual activity with Jackson. Although not stated in the Complaint, in the second half of 1987, Jackson was seventeen years of age.

The statute of limitations in Virginia for these three causes of action is two years. See Va. Code §8.01-243(A) (2001 Ed. as amended). If a person is a minor at the time of the injury, the two year time period begins to run once that person comes of age. See Va. Code §8.01-229 (2001 Ed. as amended). Jackson would have turned eighteen during 1988. Therefore, the statute of limitations ran on all of these causes of action in 1990, and the Complaint is time barred.

Nowhere in his Complaint does Jackson indicate why he is suing Tanner twenty-three years after the alleged incident. In addition, Jackson does not mention in the Complaint that he

filed a Complaint with the police in 1987 regarding the alleged incident and that he and his father were well aware of the alleged occurrence and any alleged impact on Jackson.

Finally, Jackson does not state anywhere in the Complaint that 1) any alleged injury to him, and its causal connection to the sexual activity, was not known by him until two years ago; and 2) that any alleged injury and its causal connection to the sexual activity, was communicated to him for the first time by a licensed physician, psychologist or clinical psychologist within two years of the filing of the Complaint. See Va. Code §8.01-249(6). Without any such allegations, the causes of action in the Complaint are barred by the statute of limitations.

The purpose of a Plea in Bar is to reduce litigation to a distinct issue of fact, which, if proven, creates a bar to the plaintiff's right of recovery. Schmidt v. Household Finance Corp., 276 Va. 108, 661 S.E. 2d 834 (2008); Tomlin v. McKenzie, 251 Va. 478, 468 S.E.2d 882, 884 (1996). The Court may granted a Plea in Bar based upon the running of the statute of limitations. See Schmidt, 661 S.E. 2d 839.

It is clear from the Complaint that the statute of limitations ran twenty years prior to the filing of the Complaint, when Jackson was twenty years of age. Therefore, Tanner has met his burden in proving that the applicable statutes of limitation have run.

The burden shifts to Jackson to prove that 1) any alleged injury to him, and its causal connection to the sexual activity, was not known by him until less than two years prior to the filing of the Complaint; and 2) that any alleged injury and its causal connection to the sexual activity was communicated to him for the first time by a licensed physician, psychologist or clinical psychologist within two years of the filing of the Complaint. Va. Code §8.01-249(6). Jackson is unable to do this.

Jackson, with the assistance of his father, filed a criminal complaint with the police in 1987 regarding the alleged sexual activity. There was no further contact between the parties until approximately four years ago, when Jackson contacted Tanner from California and sought assistance with Jackson's own music career. Jackson again contacted Tanner one year ago and demanded ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to assist him Jackson in his music career. Now Jackson seeks THIRTY MILLION DOLLARS (\$30,000,000.00) from Tanner, without any explanation as to why he failed to bring this lawsuit twenty years ago.

WHEREFORE, for all of the reasons set forth above, Tanner prays that the Plea in Bar be granted, and that the Complaint be dismissed, with costs and reasonable attorney's fees to Tanner.

CARL E. TANNER  
By Counsel

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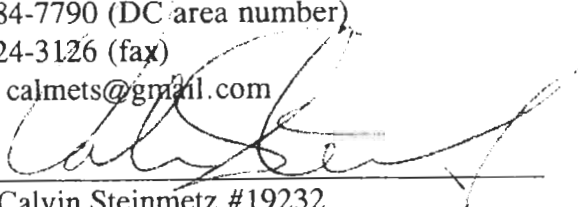
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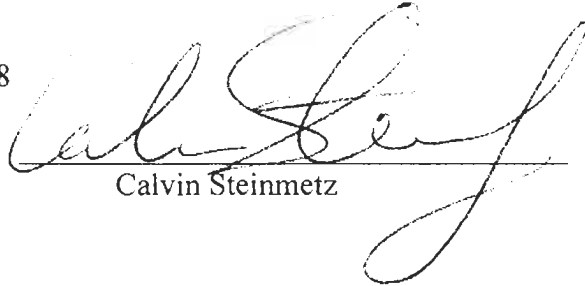
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Thomas E. Lester # 47092

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via facsimile and first class mail, postage prepaid, to the following, this 4<sup>th</sup> day of Nov., 2010:

Christopher M. Day, Esq.  
Jonathan A. Nelson, Esq.  
10560 Main Street, Suite 218  
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Calvin Steinmetz

VIRGINIA:

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KIRK A. JACKSON

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CARL E. TANNER

Defendant

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Case No: CL 10-1533

ORDER

This matter having come before the Court upon the Plea in Bar of defendant Carl E. Tanner to the Complaint of plaintiff Kirk A. Jackson, based upon the running of the applicable statute of limitations, and having found that the three causes of action set forth in the Complaint are barred by the applicable statutes of limitation, it is hereby, this \_\_\_\_\_ day of \_\_\_\_\_, 2010

ORDERED that the Plea in Bar be and hereby is granted; and it is further

ORDERED that the Complaint be and hereby is dismissed with prejudice, with costs awarded to defendant.

\_\_\_\_\_  
Judge

I ASK FOR THIS:

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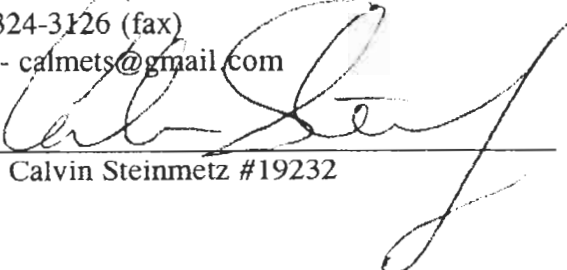
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