IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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| FAIRTHORNE MAINTENANCE CORPORATION, | ) | |
| Plaintiff, | ) | C.A. No. 2124-VCS |
| v. | ) | |
| LOUIS and MELANIE RAMUNNO, | ) | |
| Defendants. | ) | |

# MEMORANDUM OPINION

Date Submitted: April 26, 2007
Date Decided: July 20, 2007

Peter B. Ladig, Esquire, Stephen B. Brauerman, Esquire, THE BAYARD FIRM, Wilmington, Delaware, *Attorneys for Plaintiff.*

L. Vincent Ramunno, Esquire, RAMUNNO, RAMUNNO & SCERBA, P.A., Wilmington, Delaware, *Attorney for Defendants.*

**STRINE, Vice Chancellor.**

## I. Introduction

Defendants Louis and Melanie Ramunno own and reside in the Fairthorne development of Wilmington, Delaware. To the rear of their "Home," is a portion of the 34 acres of private "Open Space" that is collectively owned and maintained by all of the homeowners in the Fairthorne development through the Delaware non-profit corporation known as Fairthorne Maintenance Corporation ("FMC"). In this action, FMC asserts that the Ramunnos have trespassed by placing on the Open Space, and refusing to remove, a playset, a park bench and other items (the "Personal Property").

The Ramunnos have never denied that their Personal Property occupies 150 square feet of the Open Space and that it has done so continuously since it was first placed there in December 2005. Instead, they initially raised nine affirmative defenses and five counterclaims in their answer, which, they claimed, excuse their conduct or require judgment in their favor.

After reviewing the Ramunnos' arguments, FMC moved for judgment on the pleadings. At argument on that motion, the court noted the apparent frivolity of the Ramunnos' arguments and indicated its intention to issue a letter under Rule 11 requiring the Ramunnos and their attorney, L. Vincent Ramunno, Esquire ("Attorney Ramunno"), Louis Ramunno's father and law partner, to show cause as to their compliance with that rule. After that exchange, the Ramunnos withdrew or waived all but two of their defenses and all but one of their counterclaims. The Ramunnos also engaged in settlement discussions in which they offered to waive

the remainder of their arguments and remove the Personal Property from the Open Space to avoid monetary sanctions. But because they were unwilling to repay FMC for the expenses it incurred in defending the action to that point, no agreement was reached. As such, the court now must address these remaining arguments. That is regrettable as none have any merit.

The simple reality of this case is that the Ramunnos have been trespassing on FMC's land since December 2005 and have been using this litigation to stall FMC's landscaping and other projects in order to continue to enjoy the fruits of their trespass. There is no dispute about the trespass itself as the Ramunnos have admitted the conduct underlying that tort. Rather, the arguments the Ramunnos press involve tangential issues and are designed solely to help them delay the legal consequences of their undisputed conduct. These arguments have unduly burdened this court, intentionally delayed resolution of the underlying dispute, and purposefully wasted FMC's resources. Thus, I grant FMC's motion for judgment on the pleadings and order the removal of the Ramunnos' Personal Property from the Open Space. I also find that the Ramunnos and their counsel, Attorney Ramunno, have acted in bad faith, and shift fees under that exception to the traditional American Rule.

Further, in this opinion, I address a troubling pattern of conduct engaged in by Attorney Ramunno that does not befit an officer of this court. That conduct began with an adolescent letter writing campaign during discovery, continued with a procedurally-improper and substantively-baseless letter seeking the court's

recusal from this action, and culminated in the filing of a host of frivolous arguments that were made without sufficient grounding in law and fact. Based on these persistent abuses of the litigation process, I find that sanctions under Rule 11 are appropriate.

## II. Factual Background

Fairthorne was developed in late 1979 and early 1980. By deeds dated January 2, 1980, Fairthorne was divided into several housing plots, which were eventually sold to individual homeowners, and a 34-acre expanse of Open Space surrounding those parcels that was conveyed to FMC to be maintained for the benefit of the homeowners residing in Fairthorne.[1] To that end, the Declarations of Fairthorne empowered FMC to levy assessments for the "improvement and maintenance" of the Open Space[2] and "charged [FMC] with the duty of improving and maintaining said [Open Space] and improvements thereon . . . in a good and useable condition."[3]

In October 2005, the Ramunnos purchased their Home in Fairthorne. At that time, they had the Home surveyed. That survey clearly shows that the majority of their land behind the Home was occupied by a patio.[4] Further, that

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[1] *See* Appendix to Plaintiff-Counterclaim Defendant's Opening Brief in Support of Its Motion for Judgment on the Pleadings ("Appendix"), Ex. A-C (publicly-recorded deeds).
[2] Appendix, Ex. I at T107-137 ¶ 1.
[3] Appendix, Ex. I at T107-138 ¶ 2.
[4] *See* Complaint for Equitable Relief ("Complaint"), Ex. A (survey of the Home).

survey plainly indicates that the grassy area behind the patio was Open Space to which the Ramunnos had no legal title.[5]

Notwithstanding their lack of ownership, in December 2005, the Ramunnos put the Personal Property — a child's playset, a park bench, and other items — on the Open Space behind the Home.[6] Shortly thereafter, FMC claims it asked the Ramunnos to remove those items. In two separate conversations that took place before April 14, 2006, Anna Hamilton, the president of FMC, spoke with the Ramunnos. First, Hamilton asked Melanie Ramunno in person to remove the Personal Property from the Open Space. When no action was taken, Hamilton spoke with Louis Ramunno by telephone at which point he stated that he would not remove the Personal Property from the Open Space until his daughter no longer needed them, a period he estimated at 10 years.[7]

On April 14, 2006, FMC sent a registered letter to the Ramunnos again addressing the alleged trespass. That letter instructed the Ramunnos to "remove the Infringing Items, and any other items [they] may have placed in the private

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[5] Although the Ramunnos say that the Open Space behind the Home had been maintained by the previous owner and that they expected to be able to use it in a similar manner, they have made no claim of prescriptive title and concede that no such claim is viable. As an attorney, defendant Louis Ramunno is presumably capable of understanding the limits of his property line, a fact that was not only documented in the survey of the Home, but also in the publicly-recorded survey of Fairthorne. *See* Complaint, Ex. B (Fairthorne survey).
[6] *See* Complaint, Ex. C (photographs of Personal Property).
[7] The Ramunnos "admitted in part and denied in part" these allegations in their answer, but did so without the specificity required by Court of Chancery Rule 8(b). I consider this improper response an admission. Answer at ¶ 8; *see also* COURT OF CHANCERY RULE 8(b) ("When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.").

open space, by no later than May 1, 2006."[8] The letter was unclaimed and returned to the sender on May 10, 2006. The Ramunnos deny ever receiving the notices. FMC claims the notices were ignored.

When no remedial action was taken by the Ramunnos, FMC filed suit in this court on May 3, 2006 seeking an injunction ordering the Ramunnos to remove the Personal Property. Before answering the complaint, Attorney Ramunno sent several letters to FMC's counsel, alleging spurious deficiencies in service of process,[9] calling FMC "petty and vindictive"[10] and "the grinches of Fairthorne,"[11] and threatening to inundate FMC with a deluge of nonsense claims and defenses.[12] In his May 22 letter, Attorney Ramunno menaced: "Before we make this suit a real 'federal case' you may want to consider mediation."[13] Then, the day before he filed his clients' answer, which included 14 claims and defenses, he again sent a draft of that pleading to FMC so it would be apparent that he meant his threat.[14]

During this period, the Ramunnos, through counsel, also made demands on FMC for books and records pursuant to 8 *Del. C.* § 220. The first demand, which

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[8] Complaint, Ex. D.
[9] Affidavit of Stephen B. Brauerman, Esquire ("Brauerman Aff."), Ex. A (Letter from L. Vincent Ramunno, Esquire to Peter B. Ladig, Esquire (May 22, 2006)).
[10] *E.g.*, *id.*; Brauerman Aff., Ex. C (Letter from L. Vincent Ramunno, Esquire to Peter B. Ladig, Esquire (May 30, 2006)).
[11] Brauerman Aff., Ex. E (Letter from L. Vincent Ramunno, Esquire to Peter B. Ladig, Esquire (June 14, 2006)).
[12] *See* Brauerman Aff., Ex. A (making threats) & Ex. D (enclosing draft answer with Letter from L. Vincent Ramunno, Esquire to Peter B. Ladig, Esquire (June 13, 2006)).
[13] Brauerman Aff., Ex. A.
[14] Brauerman Aff., Ex. D.

was filed on May 24, demanded inspection of the following litany of documents within 10 days:

> [C]opies of the corporate charter and by-laws, names, addresses and phone numbers of all members (all residents of Fairthorne), the names of the Directors and Officers and dates of their terms, copies of minutes of all member/shareholder meetings and Board of Directors meetings for the last three years, and an accounting of the corporation's income and expense[s] for the last three years.[15]

That demand letter failed to include a sworn affidavit or power of attorney, and stated no purpose for inspection. Its spiteful and litigation-driven motive was clear, however, from Attorney Ramunno's statement: "If we proceed with this absurd litigation we would ask for this and much more . . . ."[16]

The second demand, dated June 2, was sworn under oath and included a power of attorney. It sought to inspect all documents related to "determining if the maintenance fees are being properly collected from every resident and if the maintenance fees are properly expended and how they are being spent and to determine whether the corporate officers are properly fulfilling their duties and are duly authorized to do so."[17] Nowhere in the second demand was any assertion of wrongdoing, specific or general, made that justified this broad and unfocused request for essentially all documents belonging to FMC. Rather, like the first demand and the Ramunnos' other correspondence, the purpose of the second

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[15] Appendix, Ex. K.
[16] *Id.*
[17] Appendix, Ex. L.

demand was obviously to lash back at FMC for its insisting that the Ramunnos remove their Personal Property from the Open Space.

On June 14, after FMC refused to capitulate, the Ramunnos filed their answer. In stark contrast to FMC's focused two-count complaint, the Ramunnos put forth 9 affirmative defenses[18] and 5 counterclaims,[19] addressing a variety of conduct that was at best tangentially related to the trespass issue raised by FMC.

In July, FMC replied to the Ramunnos' counterclaims and moved for judgment on the pleadings and to stay discovery. On August 1, the Ramunnos moved for a temporary restraining order to halt FMC's re-development of the Open Space because it would cause the alleged "irreparable harm" of removing several Norway Maple trees. The Ramunnos also sought to compel discovery.

At a hearing on August 21, the court considered these motions. It set a briefing schedule for judgment on the pleadings motion, granted the motion to stay discovery until the resolution of that motion, and denied the TRO. The court also

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[18] The Ramunnos' affirmative defenses asserted that: (1) the complaint failed to state a claim; (2) the trespass should be excused as *de minimis*; (3) the playset was permitted on the Open Space as "active recreation" equipment required by the New Castle County Code; (4) the action should be estopped due to FMC's failure to properly maintain the Open Space; (5) FMC's lawsuit constituted "age discrimination" because it "deals with a child's playset;" (6) FMC does not own the Open Space because of defects in the deeds recorded in 1980; (7) FMC cannot bring the suit because its board was not duly elected; (8) the landscaping and development project concerning the Open Space constitutes waste and is not supported by the Fairthorne homeowners; and (9) FMC should not prevail because of its own delay and unclean hands.

[19] The Ramunnos' counterclaims sought: (1) payment of the cost of the playset because FMC did not provide active recreation equipment; (2) books and records under § 220; (3) damages for waste and mismanagement relating to FMC's planned landscaping and development of the Open Space; (4) damages for alleged "age discrimination;" and (5) an injunction invalidating the election of the FMC board.

instructed Attorney Ramunno to stop the adolescent letter-writing that he had engaged in during the prior months.[20]

A week later, Attorney Ramunno sent a letter requesting the court to recuse itself. That request was baseless and did not follow the court's rules. FMC opposed the request for recusal, and the court denied the request on August 31.[21]

On February 13, 2007, the court heard argument on FMC's motion for judgment on the pleadings. At that hearing, the court considered FMC's trespass claim and the 14 claims and defenses filed by the Ramunnos. At the conclusion of that hearing, the court expressed its opinion that the Ramunnos' position "on its face and having read the briefs and dug into the law reflects a sort of a shocking willingness to simply make assertions as retribution for something that someone doesn't like, even though the assertions have no grounding in fact or in law."[22] As a result, the court sent a detailed letter requiring the defendants to show cause as to why Rule 11 sanctions should not issue.[23] Further briefing on that issue and on a petition by FMC for attorneys' fees followed.

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[20] Letter Decision, *Fairthorne Maintenance Corp. v. Ramunno*, C.A. No. 2124-N (Del. Ch. Aug. 31, 2006).

[21] *Id.*

[22] Transcript of Oral Argument on Plaintiff's Motion for Judgment on the Pleadings (Feb. 13, 2007) ("O/A Tr.") at 101.

[23] Letter from the court to L. Vincent Ramunno, Esquire (Feb. 23, 2007); *see also* COURT OF CHANCERY RULE 11(c)(2)(B) ("Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.").

A week after the oral argument, the Ramunnos informed the court and opposing counsel that they were waiving or withdrawing the majority of their claims. In a letter dated February 20, Attorney Ramunno wrote:

> [T]he Defendants hereby withdraw or waive all of our affirmative defenses except for discrimination (uneven handed [sic] or arbitrary and capricious enforcement) or abandonment (waiver by failure to enforce) and the lack of authority by the officer[s] to bring this action because of [a] lack of a legal quorum when they were elected and the illegality of their bylaws as to that issue. We also hereby waive or withdraw all of our counterclaims except for the Section 220 counterclaim.[24]

Although Attorney Ramunno was careful to assert that "the withdraw[al] of the affirmative defenses and counterclaims . . . is not to be construed as an admission that they are without merit,"[25] the Ramunnos' willingness to abandon these arguments after FMC and the court devoted significant resources to considering these claims is telling.

Further, through a series of letters sent to the court chronicling the parties' attempts at settlement and during a telephone conference convened to address that issue on February 16, 2007, it became apparent that the Ramunnos were willing to drop all of their claims and defenses, and even to remove the playset and other Personal Property from the Open Space in order to avoid monetary sanctions. To that end, Attorney Ramunno represented, "My clients offered to enter into a

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[24] Letter from L. Vincent Ramunno to the court (Feb. 20, 2007).
[25] *Id.* at 2.

Stipulated Order requiring the removal of the play set and dismissal of their counterclaims with prejudice so as to avoid further litigation."[26] Unfortunately, despite having virtually abandoned the merits of their position, the Ramunnos refused to pay a portion of FMC's fees and expenses or even to agree to allow FMC to make application for those costs.[27] As such, this case remains unresolved, the court must address not only the fee dispute, but also the merits.

## III. Legal Analysis

### A. Motion For Judgment On The Pleadings

The standard of review for examining FMC's motion for judgment on the pleadings is well settled.[28] Judgment on the pleadings is appropriate if the court, accepting as true all well-pled facts and drawing all inferences in favor of the non-moving party, finds that no material issues of fact exist and that the moving party is entitled to judgment as a matter of law.[29] In moving for judgment on the pleadings, FMC is deemed to have admitted the truth of the Ramunnos' well-pled allegations and the falsity of its own factual claims that have been denied by the

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[26] Letter of L. Vincent Ramunno, Esquire to the court (Feb. 16, 2007); *see also* Transcript of Teleconference (Feb. 16, 2007) at 3 (confirming that the Ramunnos were "perfectly willing to stipulate to dismiss" their claims and defenses and "perfectly willing to enter into a stipulation to remove the playset").
[27] Letter of Peter B. Ladig, Esquire to the court (Feb. 16, 2007); Transcript of Teleconference (Feb. 16, 2007).
[28] *E.g.*, *Cypress Associates, LLC v. Sunnyside Cogeneration Associates Project*, 2007 WL 148754, at *2-3 (Del. Ch. 2007).
[29] *E.g.*, *BAE Sys. N. Am., Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at *3 (Del. Ch. 2004); *see also* COURT OF CHANCERY RULE 12(c) ("After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.").

Ramunnos.[30] The court, however, need not accept as true conclusory statements contained in the pleadings when they are unsupported by specific factual allegations.[31] Further, the court may consider documents incorporated into the pleadings by reference and make take judicial notice of relevant public filings.[32]

Applying this standard to the pending claims, I find that FMC has carried its burden to establish a right to relief on its trespass claim. Further, I conclude that none of the defenses or counterclaims raised by the Ramunnos has sufficient color to avoid this result. I address FMC's trespass claim first, then each of the Ramunnos' remaining defenses and counterclaims in turn.

FMC's trespass claim is straightforward and well-grounded. "Trespass is a strict liability offense, the elements of which are entry onto real property without the permission of the owner."[33] The Ramunnos admit that they entered onto the Open Space and that they placed a child's playset and other Personal Property there. They have waived their claims asserting a privilege to encroach on the Open Space,[34] and they have also withdrawn their frivolous argument that FMC

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[30] 5C CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1368 at 230 (3d ed. 2004).

[31] *E.g.*, *Interactive Corp. v. Vivendi Universal, S.A.*, 2004 WL 1572932, at *16 (Del. Ch. 2004).

[32] *See e.g.*, *Albert v. Alex. Brown Management Services, Inc.*, 2005 WL 1594085, at *12 (Del. Ch. 2005); *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 170 (Del. 2006).

[33] *Beckrich Holdings, LLC v. Bishop*, 2005 WL 1413305, at *9 (Del. Ch. 2005).

[34] The Ramunnos initially asserted that as homeowners in Fairthorne they were privileged to use the Open Space for recreational purposes and therefore were permitted to place their play set there because it occupied little space and could be removed. But unlike bases laid down for an impromptu game of baseball, the playset was large, designed to be

was not the rightful owner of the Open Space.[35] As such, FMC has proven its trespass claim as a matter of law.

One aspect of the Ramunnos' now-discarded defenses, however, is useful to discuss. Throughout this action, the Ramunnos have claimed that the presence of their playset on the Open Space is not hurting anyone and that it in fact provides a benefit to the other residents of Fairthorne, who the Ramunnos claim are free to use the equipment. Further, they attempt to claim the moral high ground by

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permanent, not easily moved, and, in fact, never removed from the Open Space once placed there. *See* Complaint, Ex. C (depicting the play set). Even if they had some license to use the Open Space along with Fairthorne's other residents, the Ramunnos impermissibly exceeded that authority. *E.g.*, *Gordon v. Nat'l R.R. Passenger Corp.*, 2002 WL 550472, at *5 (Del. Ch. 2002) (finding trespass despite "authority under [a] license to enter the property" because the actions taken exceeded the permission given). Likewise, it is no defense that the play set only occupied 150 square feet of the 34 acres of Open Space because this court has never recognized a *de minimis* exception to trespass liability. *E.g.*, *Barton v. Gillen*, 1976 WL 7940, at *1 (Del. Ch. 1976) (recognizing that even when an infringing "condition exists in a minimal fashion . . . it technically constitutes a trespass."). Facing these precedents, the Ramunnos have belatedly waived these insubstantial arguments.

[35] The Ramunnos also have waived their technical argument that there was a flaw in the recording of the deed granting the Open Space to FMC in 1980 based on the book and page numbers at which that deed was recorded. On that issue, the Ramunnos were confronted with the well-settled precedent that delivery, not recording, is controlling in determining deed validity. O/A Tr. at 58-60; *see also Doe ex dem. Littleton v. Roe*, 81 A. 47, 48 (Del. Super. 1911) (explaining that "the recording of a deed is not essential to its validity as between the parties" and noting that "a deed takes effect from its delivery not its record"). This now-abandoned argument was surreal, obviously time-wasting, and frivolous because Attorney Ramunno readily admitted that even if he were correct about the recording issue, the Open Space "would eventually wind up going to the maintenance corporation" because the prior owners would be in a "predicament where they get the land back, but they have to maintain it as open space" and would be "obligated to convey it to the maintenance corporation." O/A Tr. at 63-66.

invoking their status as parents and saying FMC must "hate children."[36] Those arguments and hurtful words miss the point.

Property rights do not vanish when children are involved. Consider, for example, the turmoil that would result if all parents in Fairthorne commandeered sections of the Open Space for their children's favorite activities, erecting soccer goals, digging swimming pools, and installing all matter of other apparatuses, with no guarantee as to their safety or maintenance. One can even imagine a loving dad parking an old jalopy on the Open Space so that he and his daughter could engage in their hobby of automobile restoration and detailing! Not only would these items clutter the Open Space, but they might also constitute attractive nuisances for which FMC as the landowner would be liable.[37] Further, the related issues of inspections and insurance might well arise even if no other residents of Fairthorne mirrored the Ramunnos' activities. Thus, while a playset may seem innocuous or even beneficial, the limited privilege the Ramunnos share with the other Fairthorne residents to use the Open Space does not extend to the placement of their playset on that land.

Put simply, it is legitimate for FMC to manage the Open Space for the benefit of all Fairthorne residents. The Ramunnos have no right to claim the Open

[36] Brauerman Aff., Ex. E (Letter from L. Vincent Ramunno, Esquire to Peter B. Ladig, Esquire (June 14, 2006)).

[37] Delaware applies the doctrine of attractive nuisance articulated in the Restatement (Second) of Torts, which makes a "possessor of land . . . subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land" under certain conditions. *See Sears, Roebuck & Co. v. Huang*, 652 A.2d 568, 573 n.5 (Del. 1995) (quoting Restatement (Second) of Torts § 339 (1965)).

Space as their own. They took title to their Home knowing they did not have a backyard and knowing that many properties at a similar price could be had with a backyard in which they could place structures for their child's enjoyment. In this regard, it is also worth noting that residents without children are not second-class citizens. If open season on the Open Space is to be declared, why shouldn't adult hobbyists join in to create a multi-generational tragedy of the commons?

Turning from the trespass issue to the Ramunnos' two remaining defenses, I first take up the Ramunnos' argument that FMC has arbitrarily and capriciously enforced its property rights by prohibiting the Ramunnos' trespass while allegedly allowing other trespasses. Although it may be that other homeowners in Fairthorne in addition to the Ramunnos have also trespassed on the Open Space, the Ramunnos do not cite a single case from any jurisdiction — much less from Delaware — standing for the proposition that a landowner may not allow some trespasses while preventing others. This is not a $14^{th}$ Amendment case against a government agency, nor is it a case about selective enforcement of a deed restriction preventing *owners* from using their *own property* in some way. As such, while FMC continues to own the Open Space, it has the discretion to enforce that ownership interest in the manner it chooses.[38]

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[38] One can conceive of how the Ramunnos might have grounds to sue the board of FMC derivatively as residents if the board refused to protect FMC's property rights as to other incursions on the Open Space. Notably, such a suit would involve an argument that the board was breaching its fiduciary duties to FMC by failing to prevent other permanent trespasses on FMC's Open Space, not a claim that the Ramunnos were entitled to trespass

Indulging for a second the Ramunnos' odd and unprecedented argument, it is apparent that the Ramunnos have not carried their pleading burden on this novel claim. No facts in the Ramunnos' answer are pled that indicate that other residents were engaging in a permanent trespass with a similar impact to that of the Ramunnos. Likewise, not one specific example of a tolerated trespass is cited. Only at oral argument did Attorney Ramunno begin offering his own recitation of supposedly similar situations, going outside the pleadings and doing so based not on affidavits, but on his personal recollection of supposed facts told to him by his son and daughter-in-law.[39] Even then, not a single concrete detail was provided that would identify by name, address, or otherwise these supposed infringements.

The Ramunnos' second defense, which asserts that the directors of FMC were not authorized to bring this lawsuit because they were not properly elected due to an insufficient quorum at the FMC election, is even less viable. That claim is immediately suspect because the mechanism of 8 *Del. C.* § 225, which is designed to allow this court to quickly hear and decide questions relating to an election's validity, was never invoked by the Ramunnos.[40] Upon examination,

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too. It would be difficult to conceive of a claim arguing that the board was required to permit any permanent trespass by a resident, and the Ramunnos cite no precedent supporting such an odd theory.

[39] *See* O/A Tr. at 68 ("[T]here are people that have patios, play sets. One person admitted his playset is in the open space, in whole or in part. People that use the land as their own completely [sic]. You would never know it was open space. If we [the Ramunnos and their attorney] saw it, so could they [FMC].").

[40] Perhaps the reason § 225 was never mentioned by the Ramunnos was because the summary nature of proceedings under that section is contrary to their efforts to delay FMC's ability to end their trespass. As the Delaware Supreme Court has stated, "The

that suspicion is borne out by the lack of factual or precedential support for the Ramunnos' position.

As an initial matter, the Ramunnos' argument relies on a misreading of the applicable section of the Delaware General Corporation Law (the "DGCL"). The relevant quorum requirement for nonstock corporations is set forth in 8 *Del. C.* § 215, which states:

> [T]he certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.[41]

Unlike § 216 of the DGCL, which provides a minimum quorum of one-third of the shares entitled to vote for the meetings of stock corporations, that requirement is relaxed for nonstock entities.[42]

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purpose of section 225 is to provide a quick method for review of the corporate election process to prevent a Delaware corporation from being immobilized by controversies about whether a given officer or director is properly holding office." *Box v. Box*, 697 A.2d 395, 398 (Del. 1997). Meanwhile, the Ramunnos have done everything in their power to draw out this dispute.

[41] 8 *Del. C.* § 215(c).

[42] *Compare* 8 *Del. C.* § 215 (non-stock corporations) *with* 8 *Del. C.* § 216 (stock corporations). Section 216 states in relevant part: "[T]he certificate of incorporation or bylaws of any corporation authorized to issue stock *may specify the number of shares* and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, *but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting*, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than one-third of the shares of such class or series or classes or series." 8 *Del. C.* § 216 (emphasis added). This distinction recognizes the

The Ramunnos agree that under § 215, as long as the bylaws so provide, even a single member can constitute a quorum. As their initial gambit, however, they argue that the FMC bylaw which states, "Voting members present in person or by proxy will constitute a quorum,"[43] does not specify a number. As such, they claim a one-third quorum requirement should be imposed pursuant to § 215(c)(1). More specifically, what the Ramunnos take umbrage with is the fact that the FMC bylaw provision does not including the numeral "1" or any other number as the quorum threshold. That reading of § 215 is overly formalistic and ignores the necessary implication of FMC's bylaw provision. It would be an untenable and odd indeed if a corporate bylaw setting a quorum requirement at only one member would be valid, but an identical bylaw saying that any members who show up constitute a quorum would be void. After all, the necessary implication of a member showing up is that at least one member is present.

Further undermining the Ramunnos' position is the fact that they did not plead how many people were present at the meeting. The truth of the matter, which was confirmed at oral argument, is that they do not know how many were present.[44] Thus, even if there was some other minimal quorum required, they have pled no facts suggesting that such a quorum was not met. In fact, they admit that

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reality that many non-profit entities would be unable to function if required to amass a certain number of their members to conduct business.

[43] Appendix, Ex. J at Article IV. The bylaws also provide: "The vote of a majority of those present or represented by a proxy will decide the question brought before each meeting, unless the question is one which by specific provision in the statutes, or in the Certificate of Incorporation, or in the By-laws, requires a different vote." *Id.*

[44] O/A Tr. at 31-34.

they were not even present at the meeting.[45] As a result, they have pled nothing other than conjecture and conclusory allegations, neither of which is sufficient to support their claim.[46] As important, the Ramunnos do not address the possibility that even if only a small number of voters were physically present, many others could have been properly present by proxy as permitted by the FMC bylaws and the DGCL. Thus, not only is Ramunnos' legal argument flawed, but even if it were not, they still have not adequately pled a defense under their own skewed interpretation of the DGCL quorum requirement.

Finally, even if the election of directors on May 6, 2006 were invalidated, that would be irrelevant to the validity of FMC's authority to initiate this lawsuit. It is readily apparent from the face of the complaint and from the docket of this case that this litigation was filed on May 3, 2006, three days *before* the challenged election on May 6. As such, the prior FMC board — whose election cannot be challenged by the Ramunnos because they did not buy into Fairthorne until after it took place — must have authorized this suit. In their brief, the Ramunnos allege that "[t]here is nothing in the pleading that supports [the] fact" that the complaint was filed on May 3.[47] But, that contention is laughable and frivolous as even Attorney Ramunno admitted at oral argument that the docketed version of the

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[45] *Id.*
[46] *See Interactive Corp. v. Vivendi Universal, S.A.*, 2004 WL 1572932, at *16 (Del. Ch. 2004) ("[C]onclusory factual allegations do not suffice . . . to survive a motion for judgment on the pleadings.").
[47] Defendants' Answering Brief in Opposition to Plaintiff's Motion for Judgment on the Pleadings (Sept. 21, 2006) at 13.

complaint plainly indicates that it was both signed and filed on May 3, 2006, before the election.[48]

Concluding that neither of the Ramunnos' defenses has merit, I turn to the lone remaining counterclaim they advance: their § 220 demand for books and records. During the time between the filings of FMC's complaint and the Ramunnos' answer, the Ramunnos sent several letters to FMC in an attempt to dissuade it from pursuing this litigation. Among those were two demand letters purportedly seeking to enforce inspection rights under 8 *Del. C.* § 220.

As homeowners in Fairthorne, the Ramunnos had standing to make such a request, but they were required to comply with § 220 in making their demand.[49] As such, the Ramunnos were required to comply with the procedural requirements of the statute, which include making "written demand under oath" and providing a power of attorney with the demand when an attorney of other agent is to conduct the inspection.[50] Further, they were required to state a proper purpose for their demand, which is defined as "a purpose reasonably related to [a] person's interest as a stockholder."[51] Finally, to be proper, their § 220 demand would have to tailor

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[48] O/A Tr. at 30.
[49] *E.g.*, *Carapico v. Philadelphia Stock Exchange, Inc.*, 791 A.2d 787, 790 (Del. Ch. 2000) ("A member of a nonstock corporation has the right to inspect books and records of the corporation under 8 *Del. C.* § 220 in the same manner as a stockholder of record has in a stock corporation. Pursuant to § 220, the member seeking inspection of books and records must comply with the 'form and manner' requirements of the statute for making the demand for inspection and must establish that the inspection sought is for a proper purpose.").
[50] 8 *Del. C.* § 220.
[51] *Id.*

its request for documents carefully so as only to seek documents proportionate to their legitimate needs.[52] Neither of the Ramunnos demand letters satisfied these criteria.

The first demand letter sent by the Ramunnos on May 24, 2006 did not comply with the requisite statutory formalities. No sworn affidavit was provided, and no power of attorney accompanied the demand. Further, no purpose, let alone a proper one, was articulated. Instead, all the May 24 demand letter did was seek access to a litany of corporate documents, which included detailed information on the membership, extensive board minutes, and a full accounting, then threaten, "If we proceed with this absurd litigation we would ask for this and much more . . . ."[53] Not only does this demand fail because it does not comply with the baseline requirements of § 220, but its vindictive purpose constitutes an abuse of the inspection rights afforded by that statute.[54]

The second demand included a sworn affidavit and a power of attorney, but it still failed to state a proper purpose or tie the vast array of the documents it sought to any legitimate interest the Ramunnos had as members of FMC. Claims

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[52] *E.g.*, *Brehm v. Eisner*, 746 A.2d 244, 266 (Del. 2000); *Security First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997).
[53] Appendix, Ex. K.
[54] Courts have long been empowered "to prevent possible abuse of the shareholder's right of inspection." *CM & M Group, Inc. v. Carroll*, 453 A.2d 788, 793-94 (Del. 1982). This included rejecting § 220 demands made in bad faith. *E.g.*, *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 164 (Del. Ch. 2006) ("[A] Section 220 plaintiff has a responsibility to make its demand in good faith, policed by the court's duty to closely examine any Section 220 demand to prevent possible abuse of the shareholder's right of inspection.") (internal quotations and citations omitted), *aff'd*, 922 A.2d 415 (Del. 2007).

of mismanagement, waste, or misappropriation of funds were entirely absent from the demand. Rather, the demand used conditional language that stated a desire to "determin[e] *if* the maintenance fees are being properly collected from every resident and *if* the maintenance fees are properly expended and how they are being spent and to determine *whether* the corporate officers are properly fulfilling their duties and are duly authorized to do so."[55] This language evinces a "mere curiosity" and a desire to undertake a "fishing expedition" — purposes deemed improper under § 220.[56] As our Supreme Court recently explained:

> Investigations of meritorious allegations of possible mismanagement, waste or wrongdoing, benefit the corporation, but investigations that are "indiscriminate fishing expeditions" do not. "At some point, the costs of generating more information fall short of the benefits of having more information. At that point, compelling production of information would be wealth-reducing, and so shareholders would not want it produced." Accordingly, this Court has held that an inspection to investigate possible wrongdoing where there is no "credible basis," is a license for "fishing expeditions" and thus adverse to the interests of the corporation[.][57]

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[55] Appendix, Ex. L (emphasis added).
[56] *Security First*, 687 A.2d at 568 ("The threshold for a plaintiff in a Section 220 case is not insubstantial. Mere curiosity or a desire for a fishing expedition will not suffice. But the threshold may be satisfied by a credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing."); *accord Seinfeld v. Verizon Communications, Inc.*, 909 A.2d 117, 122 (Del. 2006) ("A mere statement of a purpose to investigate possible general mismanagement, without more, will not entitle a shareholder to broad § 220 inspection relief. There must be some evidence of possible mismanagement as would warrant further investigation of the matter.").
[57] *Seinfeld*, 909 A.2d at 122-23.

The counterclaim the Ramunnos filed under § 220 does nothing to cure the deficiencies in these demands. It simply references the second demand. It makes no general or specific allegation of suspected wrongdoing by FMC's board. Nor does it seek a more discrete set of documents than the original demands' requests for essentially every document FMC possessed. Put simply, the counterclaim fails to state a claim, as the Ramunnos demand is facially defective.[58]

Having only expressed an obviously retributively-motivated purpose curiosity about whether the FMC board was fulfilling its duties in essentially all respects, the Ramunnos then asked for essentially *all* of FMC's books and records. That is, the Ramunnos made an overbroad request justified by no proper purpose.

Because neither demand was properly presented, the Ramunnos had no right to corporate information. For this reason, the Ramunnos' lone remaining counterclaim fails along with their two remaining affirmative defenses.

B. <u>Petition For Fees And Rule 11 Sanctions</u>

Having addressed the substance of the claims and defenses concerning the motion for judgment on the pleadings, I now turn to FMC's petition for attorneys' fees and the Ramunnos' response to the Rule 11 show cause letter. The plethora of frivolous defenses and counterclaims asserted by the Ramunnos in this matter and the shifting nature of their arguments through their pleadings, briefs and oral

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[58] *E.g.*, *West Coast Management & Capital, LLC v. Carrier Access Corp.*, 914 A.2d 636, 646-47 (Del. Ch. 2006) (dismissing a § 220 claim based on a demand that "state[d] no purpose" and explaining: "Delaware law does not permit section 220 actions based on an ephemeral purpose, nor will this court impute a purpose absent the plaintiff stating one.").

argument have imposed material, unnecessary, and heavy burdens on FMC and the court. Further, the incivility injected into these proceedings by the Ramunnos and their counsel have frustrated rather than advanced this court's ability to render swift justice.

Although Delaware follows the American Rule, which requires parties in litigation to bear their own fees and costs regardless of the outcome of their case in most circumstances, fee-shifting awards may be merited in exceptional cases in order to deter abusive litigation, avoid harassment, and protect the integrity of the judicial process.[59] Delaware courts have shifted fees and costs when defendants "unnecessarily required the institution of litigation, delayed the litigation, [and] asserted frivolous motions,"[60] or, put another way, when defendants' bad faith has "made the procession of the case unduly complicated and expensive."[61]

Fee-shifting is warranted here because of the extensive pattern of bad faith conduct exhibited by the Ramunnos and their counsel. Beginning in the spring and continuing through the summer of 2006, Attorney Ramunno was repeatedly hostile and unprofessional in his dealings with opposing counsel. The following are a few of the statements he made in various letters:

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[59] *E.g.*, *Kaung v. Cole National Corp.*, 884 A.2d 500, 506 (Del. 2005); *Johnston v. Arbitrium (Cayman Islands) Handels*, 720 A.2d 542, 545-46 (Del. 1998).
[60] *Arbitrium (Cayman Islands) Handels*, 702 A.2d at 546.
[61] *ATR-Kim Eng Financial Corp. v. Araneta*, 2006 WL 3783520, at *23 (Del. Ch. 2006), *aff'd*, 2007 WL 1704647 (Del. 2007).

- "Ordinarily I would overlook such a minor deficiency [relating to service of process] but this suit is petty and vindictive and deserves this response."[62]

- "This suit is not only petty and vindictive, but it is also discriminatory and for that I believe your clients (the officers of the Maintenance corporation) are personally liable."[63]

- "I once again want to urge your clients to mediate this case and to include in the mediation the grinch with such a small shriveled up heart that he/she would complain about a child's playset."[64]

- "Your clients apparently hate children, that they cannot deny but no one knows the reason why. I don't know whether their heads are not on just right or their shoes are too tight but something has shriveled their heart and made them bitter and tart. Hopefully someday they will see the light and sometime during the night their hearts will grow and their human feelings will flow. They remind me of the grinch. The grinches of Fairthorne."[65]

Also notable were Attorney Ramunnos' comments on May 22 and June 13, 2006 — during the weeks before he filed the Ramunnos' answer and counterclaims. In his May 22 letter, Ramunno threatened, "Before we make this suit a real 'federal case' you may want to consider mediation."[66] Then, in his June 13 letter, he enclosed a copy of the omnibus answer and counterclaims he later filed with the court, saying he would file those documents unless FMC agreed to

[62] Brauerman Aff., Ex. A (May 22, 2006 letter).
[63] Brauerman Aff., Ex. C (May 30, 2006 letter).
[64] Brauerman Aff., Ex. D (June 13, 2006 letter).
[65] Brauerman Aff., Ex. E (June 14, 2006 letter).
[66] Brauerman Aff., Ex. A.

mediate their trespass claim.[67] These thinly-veiled threats to advance a cornucopia of frivolous claims were improper and constitute bad faith.[68]

Officers of this court have a clear responsibility not to raise frivolous claims for the purpose of delaying litigation or making it more costly. Court of Chancery Rule 11 recognizes this duty, stating:

> By presenting to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.[69]

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[67] Brauerman Aff., Ex. D.

[68] *See In re Grupo Dos Chiles, LLC*, 2006 WL 2507044, at *1 (Del. Ch. 2006) (finding bad faith existed where a party took a position "so strained and wholly at odds with the operative reality that it fell outside the bounds of good faith advocacy"); *Starvrou v. Contogouris*, 2002 WL 31439765, at *1 (Del. Ch. 2002) ("[I]t constitutes bad faith for a party to . . . consciously advance frivolous defenses in order to exact a toll in time or money from a plaintiff with a clear entitlement to relief.").

[69] COURT OF CHANCERY RULE 11(b).

As this court has explained, "the attorney's duty is one of reasonableness under the circumstances; a subjective good faith belief in the legitimacy of a claim does not alone satisfy the requirements of Rule 11."[70] Where that obligation is not upheld, sanctions, including the imposition of the opponent's costs, may be imposed.[71] This is so even when frivolous claims are withdrawn:

> Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay. Even if the careless litigant quickly dismisses the action, the harm triggering Rule 11's concerns has already occurred. Therefore, a litigant who violates Rule 11 merits sanctions even after a dismissal.[72]

The baseless claims raised by the Ramunnos and presented by Attorney Ramunno pervaded this litigation. For example, in his letters to opposing counsel and in the answer and counterclaims he filed, Attorney Ramunno asserted that FMC was liable for age discrimination without consideration of *any* of the applicable statutes or case law precedent.[73] In fact, after stating explicitly, "This

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[70] *ASX Investment Corp. v. Newton*, 1994 WL 178147, at *2 (Del. Ch. 1994).
[71] *Id.*
[72] *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990).
[73] For example, Delaware's Fair Housing Act seeks to "eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, age or disability" but it specifically clarifies that "[f]or the purpose of defining what is a discriminatory housing practice, 'age' means any age 18 years or older." 6 *Del. C.* §§ 4601-02. Federal statutes relating to discrimination are similarly unhelpful to the Ramunnos claim premised on discrimination against their minor child. *See* 42 U.S.C. § 3604(b) (making it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin" as part of the federal Fair Housing Act (FHA), but notably omitting age as an independent discriminatory criteria);

action must be dismissed as constituting age discrimination in violation of applicable law" in their answer,[74] the Ramunnos' briefs cited no authority at all — none — in support of this supposed claim. The Ramunnos backed off their age discrimination claim at oral argument, saying, "We're not saying that it was age discrimination against some type of law."[75] In effect, they admitted that this was one of the claims put forth to "make this a federal case" even though it had no grounding in law or fact.

Many more examples of undeveloped, un-researched and frivolous claims exist. Remember, for example, Attorney Ramunno's argument that the date the complaint was filed was outside the pleadings, even though the front page of the publicly-available, electronically-docketed version of the complaint was time-stamped and its date of filing was recorded in the official court docket. Despite this clear evidence undercutting the entirety of the argument, the Ramunnos forced the court and FMC to expend resources considering this unsupported allegation.

The list of similar arguments goes on and on.[76] But one last example convincingly illustrates the underlying problem. It is cheap for a party to throw garbage, but it is expensive for the party who must clean up the mess.

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*see also* 29 U.S.C. § 631 (limiting the protections of the federal Age Discrimination in Employment Act (ADEA) to "individuals who are at least 40 years of age").

[74] Answer at Affirmative Defense ¶ 5.

[75] O/A Tr. at 69.

[76] *See* Letter from the court to L. Vincent Ramunno, Esquire (Feb. 23, 2007) (summarizing other frivolous claims raised in this case).

During the early stages of the case, Attorney Ramunno argued that FMC's initial effort to serve process was not effective. Attorney Ramunno wrote to counsel for FMC advising him that the "special process server served [the Ramunnos'] babysitter."[77] In that letter, Attorney Ramunno threatened to seek dismissal if service was not perfected, and sought to confirm that his clients need not answer the complaint until service was completed.[78] But, the service log is clear that service was made at the Home upon a woman who signed the name "Melanie Ramunno" and identified herself as Louis Ramunno's "wife," i.e., as defendant Melanie Ramunno.[79] There is no reason to believe that a babysitter would sign the name of her employer to accept service of process without express direction from the Ramunnos to do so as their agent and the Ramunnos advanced no facts supporting such an odd scenario. As such, regardless of whether Melanie Ramunno actually signed the log or she or her husband directed their babysitter to do so, the service requirement would have been fulfilled. In other words, if there was wrongdoing in the service of process, it was likely by one or both of the Ramunnos perpetrating a fraud by forgery on the process server. For an attorney in this State to force another party to expend resources to address a service of process issue of his clients' own making is outrageous.

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[77] Brauerman Aff., Ex. A.
[78] *Id.*
[79] Brauerman Aff., Ex. B.

Viewed in its entirety, the conduct of the Ramunnos and their counsel warrants both a fee-shifting award and a sanction under Rule 11. Counsel for FMC submitted an affidavit seeking a fee of $11,355.93.[80] As this represents only slightly more than 55% of the total billings, it is a reasonable award, particularly since the Ramunnos withdrew or waived 11 of their 14 affirmative defenses and counterclaims, or roughly 79% of their claims after full briefing and argument had taken place.[81] This remedy likely under-compensates FMC, but it is the remedy they request and as such, the one I order. An award of costs against the Ramunnos is also warranted. The award of fees and costs will run jointly and severally against Attorney Ramunno for his violation of Rule 11.

## IV. Conclusion

For the foregoing reasons, FMC's motion for judgment on the pleadings and its petition for attorneys' fees are both GRANTED. The Ramunnos are ordered to remove the Personal Property from the Open Space and are enjoined from further trespass on that land. Attorney Ramunno and his clients, the Ramunnos, are further ordered to pay FMC $11,355.93 in attorneys' fees, plus FMC's costs. Counsel for FMC will submit an implementing order with notice to the Ramunnos as to form.

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[80] Affidavit of Peter B. Ladig, Esquire (Mar. 26, 2007) at ¶ 5.
[81] *See Grupo Dos Chiles,* 2006 WL 2507044, at *1 (awarding attorneys' fees on percentage basis where time spent on legitimate issues was "not readily segregable from time spent on other issues").