

Williamsburg Peking Corp. v. Kong

Virginia Supreme Court

September 16, 2005

This case involves the effect of taking a nonsuit on a pending motion for sanctions for discovery abuse.

The plaintiff was an employee of a Peking Restaurant. She was fired from her job as a waitress and brought suit for wrongful termination. The suit was apparently brought pro se. After suit was filed she filed repeated and voluminous requests for discovery, apparently with the aid of a person who was not an attorney. When Peking Corp. made a motion for sanctions for discovery abuse she hired a real lawyer who immediately made a motion for a nonsuit, which was granted by the trial judge over the objection of the defense. Once the motion had been granted the trial judge ruled that he had no further control over the case, and the motion for sanctions, which was pending and actually scheduled for a hearing, was not allowed to go forward.

On appeal the Virginia Supreme Court reversed the trial judge. First, it noted that a nonsuit is a final order, and therefore can be modified or suspended with the 21 day rule at the discretion of the trial court. Secondly, while a nonsuit concludes a case as to all claims and parties, by statute, it does not preclude the imposition of a sanction for conduct occurring before the nonsuit, because that has nothing to do with the claims of the parties or any facts of the case, but rather the conduct of the parties and their attorneys. Therefore, the Virginia Supreme Court held that when a motion for sanctions is pending when a nonsuit is requested the trial court has the power either to hear the motion before entering the nonsuit order or within 21 days thereafter. Reversed and sent back to the trial judge.