



KAPLAN KIRSCH ROCKWELL

221060

December 18, 2007

E-Filing
Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Petition of James Riffin for Declaratory Order*
Finance Docket No. 34997

Dear Sir:

I am enclosing for filing the Reply of the Maryland Transit Administration, the Maryland Department of the Environment and County of Allegany, Maryland to Petition of James Riffin for Expedited Declaratory Order in the above referenced proceeding. This is an electronic filing in accordance with the Board's rules.

Sincerely,

Allison I. Fultz

Enclosure

cc: James Riffin
Eric S. Strohmeyer
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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Finance Docket No. 34997

**PETITION OF JAMES RIFFIN
FOR DECLARATORY ORDER**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITION FOR EXPEDITED DECLARATORY ORDER**

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Dated: December 18, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

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Finance Docket No. 34997

**Petition of James Riffin
For Declaratory Order**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITION FOR EXPEDITED DECLARATORY ORDER**

The Maryland Transit Administration ("MTA"), the Maryland Department of the Environment ("MDE") and the County of Allegany, Maryland ("County")¹ (collectively, the "MD Parties") hereby submit their reply to the Petition of James Riffin for Expedited Declaratory Order, filed on November 28, 2007, in this proceeding (the "Second Petition"). The MD Parties note that the Board's website indicated as of late afternoon on December 17, 2007, that James Riffin ("Mr. Riffin") had filed a "Petition for Stay" in this proceeding, notwithstanding his two pending requests that the Board expedite its decision in this matter. The MD Parties have not yet seen this most recent document from Mr. Riffin and therefore have not had the opportunity to review it. We will respond to Mr. Riffin's latest filing in due course.

¹ The County has not previously been a party to this proceeding. However, Mr. Riffin alleges in the Second Petition that (a) certain actions by the County and (b) Mr. Riffin's proposed activities within Allegany County are germane to the Board's determination in this case. Furthermore, an action filed by Mr. Riffin against the County with respect to those same prospective actions is pending in the Allegany County Circuit Court. Accordingly, because Mr. Riffin has alleged facts and circumstances in this proceeding that are also the subject of the pending action in Circuit Court and that would directly affect the County's interest, the County seeks the Board's leave to intervene in this proceeding and is joining in this pleading in anticipation of a favorable ruling on that request.

The Maryland Parties make particular reference to the Board's recent warning to Mr. Riffin that, in light of the Board's clearly articulated concern that Mr. Riffin persists in abusing the Board's processes and wasting the Board's administrative resources, as of November 6, 2007, the Board will closely scrutinize *any* filings he may attempt to submit in *any* proceeding.²

The Board should deny Mr. Riffin's request to issue a Declaratory Order because the statement Mr. Riffin asks this Board to make here is contrary to law.

Once again, despite Mr. Riffin's highly generalized description of various prospective and contingent activities he wishes to pursue, he has not submitted a set of facts that would support the relief he seeks. Mr. Riffin has not presented a sufficient description either of the activity he proposes to conduct at sites that may plausibly be rail facilities within the jurisdiction of this Board, or of how the enforcement of the state or local regulations prevents him from fulfilling any common carrier obligations he may have. Nor has Mr. Riffin acknowledged substantial Board precedent that confirms that the federal environmental laws he proposes to ignore are not preempted by this Board's jurisdiction. Additionally, Mr. Riffin mischaracterizes the legal effect of any common carrier obligations he may have acquired, and omits facts that

² *Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (Service Date November 6, 2007), *slip op.* at 8 (in detailing its "serious concern" that several of Mr. Riffin's actions in that proceeding were for an "improper purpose," the Board announced, "we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated") *Id* Furthermore, in their previous reply in this matter, filed on March 5, 2007, MTA and MDE summarized in detail many instances in which Mr. Riffin has inappropriately and incorrectly attempted to invoke this Board's jurisdiction to evade compliance with applicable state and local law or regulation. Since March 5, 2007, Mr. Riffin has been warned to cease his abusive and wasteful conduct or has been sanctioned for such conduct by this Board, federal and state courts in a number of proceedings. In addition to the Board's own admonition in *Norfolk Southern*, the United States District Court for the District of Maryland has adjudged Mr. Riffin a frivolous litigant subject to the leave of the Court prior to filing any further actions *Baltimore County v. Riffin*, No. RDB-07-2361 (D. Md. Oct. 4, 2007) (memorandum opinion remanding action to Baltimore County for enforcement proceedings and ordering that the District Court not accept any subsequent pleading by Mr. Riffin unless Mr. Riffin first obtains leave of the Court to file) (a copy of the U.S. District Court's memorandum opinion is attached hereto at Tab A). Additionally, on December 14, 2007, the Circuit Court for Baltimore County issued a contempt ruling against Mr. Riffin, for which an order is pending, ordering Mr. Riffin to comply with previous injunctions issued by the Court. These injunctions require Mr. Riffin to restore state lands within a reservoir watershed that he had seriously damaged by pursuing his unauthorized activities. Circuit Court for Baltimore County, Docket No. 03-C-04-008920OC, ruling by Judge Judith C. Ensor, December 14, 2007.

demonstrate that he has not yet undertaken all steps required to acquire the Georges Creek Subdivision (the "Line") in the County in his own name. Accordingly, the Board cannot provide the relief Mr. Riffin seeks, since such relief would be based on an erroneous reading of applicable law.

BACKGROUND

In the Reply of MTA and MDE filed with the Board on March 5, 2007, in this proceeding ("March 5 Reply"), MTA and MDE provided a detailed procedural history of this matter and other similar attempts Mr. Riffin has made before this Board and in the courts to ignore established Board precedent and regulation. In the March 5 Reply, MTA and MDE also provided detailed legal argument refuting all of the bases on which Mr. Riffin attempted to base the Petition for Declaratory Order, filed on February 9, 2007 ("Initial Petition"), that initiated this proceeding. Accordingly, the MD Parties will only address here those few new facts and legal issues asserted by Mr. Riffin in the Second Petition, which pertain to activities Mr. Riffin claims he would like to pursue in Allegany County, Maryland.

As Mr. Riffin recounts in the Second Petition, in STB Docket No. AB-55 (Sub.-No. 659X), *CSX Transportation Inc. – Abandonment Exemption – In Allegany Co., MD* (Service Date August 18, 2006) (the "*Allegany County Decision*"), the Board allowed Mr. Riffin to substitute himself, in his personal capacity, as the purchaser of the Line. Second Petition at ¶¶ 6-8. The Board reported that Mr. Riffin had demonstrated that he was a corporate affiliate of WMS, L.L.C., the original purchaser under an offer of financial assistance ("OFA") for the Line. *Allegany County Decision* at 2.

On October 4, 2007, Mr. Riffin filed a petition for injunctive relief in Allegany County Circuit Court seeking (a) a judicial declaration that the Interstate Commerce Commission

Termination Act ("ICCTA") preempts all state and local law and regulation with respect to transportation by rail carrier and (b) to enjoin the County from attempting to apply or enforce any of its regulations or processes with respect to activities Mr. Riffin claims to intend to pursue. At the time he filed his Circuit Court petition, Mr. Riffin had not applied for any permits or made any formal submission to Allegany County in connection with any work along the Line or anywhere else in Allegany County. Accordingly, the County has taken no approval or enforcement action with respect to Mr. Riffin whatsoever. Moreover, Mr. Riffin has produced no deed that demonstrates that he has acquired ownership of the property covered by the *Allegany County Decision*, and thus has not taken all steps required to implement the permissive authority that was granted there.³ Instead, he has produced a deed from CSX to WMS, L.L.C., a deed which has not been recorded in the land records of Allegany County.

In the face of Mr. Riffin's lack of standing and the absence of an active controversy, both of which are essential prerequisites to the evaluation of any request for a judicial determination, the Circuit Court denied Mr. Riffin's petition for injunctive relief. *Riffin v. Board of County Commissioners of Allegany County, Maryland*, Civil Action No. C-07-29061 (Allegany County Cir. Ct. Nov. 16, 2007) (memorandum and order denying petition for injunctive relief).⁴ As of the date of this Reply, Mr. Riffin has still not submitted any formal request or application to Allegany County in connection with work related to the Line, and has engaged in no activities that would trigger enforcement by the County.

For the reasons set forth below, the Board should deny the relief requested by Mr. Riffin.

³ Furthermore, although Mr. Riffin asserts that he is a Class III railroad and cites three exemption proceedings before this Board in support of that claim (Second Petition at n. 1), Mr. Riffin overstates his position, since the Board rejected Mr. Riffin's exemption as incomplete in *James Riffin d/b/a The Northern Central Railroad – Acquisition and Operation Exemption – in Baltimore City, MD*, STB Finance Docket No. 34982 (Service Date Oct. 9, 2007).

⁴ A copy of the memorandum and order is attached hereto at Tab B.

ARGUMENT

RIFFIN'S AUGMENTED PETITION FOR DECLARATORY RELIEF SHOULD BE DENIED BECAUSE IT IS NOT SUPPORTED BY LAW OR FACTS.

The Second Petition contains no new facts or argument that would enable the Board to address whether and how to consider the relief Mr. Riffin requests. Although Mr. Riffin briefly describes the proceedings before the Allegany County Circuit Court this fall, the Court found, as should the Board, that no facts exist on which Mr. Riffin may base a claim for relief. Mr. Riffin has not presented any information upon which this Board could base a decision as to whether the state statutes and regulations actually are preempted. Accordingly, the Petition for Declaratory Relief should be denied, expeditiously as Mr. Riffin requests.

A. No facts have accrued to support Mr. Riffin's contention that a controversy exists.

The heading of the section of the Second Petition labeled "The Controversy," though of no legal effect, is nevertheless misleading. There is no controversy. All of the actions Mr. Riffin describes in the Second Petition are prospective. Second Petition at ¶¶ 3-5. Mr. Riffin claims that "Allegany County permitting individuals and the Allegany County office of law" have "told" him that he must obtain a permit before engaging in any construction activity. Second Petition at ¶ 3. Mr. Riffin fails to identify which persons he spoke to at Allegany County, and in what context, and describes what appears to have been an informal, undocumented exchange between himself and anyone with whom he might have spoken. Such vague characterizations hardly support an inference that concrete actions or claims sufficient to constitute a controversy are in play in this proceeding.

As set forth in detail in the March 5 Reply, Mr. Riffin's reliance on *CSX Transp., Inc. – Petition for Declaratory Order*, STB Docket No. 34662 (March 14, 2005) is misplaced, and the

MD Parties will not burden the record with a complete restatement of those arguments here. *See Second Petition at ¶ 3.*

Mr. Riffin asserts that he must repair three washouts on Georges Creek that have occurred along the Line. Mr. Riffin also claims that he “needs” to construct 2,000 feet of passing track, a 1,000-foot siding, rail car inspection and maintenance facilities, rail yards and a transload/intermodal facility along the Line. *Second Petition at ¶ 3.* Mr. Riffin has not submitted to Allegany County any technical evaluations, engineering drawings, diagrams or other documentation to define the proposed location and scope of work generally described in the Second Petition. He has not confirmed that the construction will occur in the right-of-way that he has been authorized to acquire (but has not yet acquired). He has not explained how he proposes to ensure compliance with applicable environmental laws. Nevertheless, Mr. Riffin alleges that he is being “barred” by Allegany County from “fulfilling his common carrier obligations.” *Second Petition at ¶ 5.* However, since Allegany County has taken no enforcement or approval action regarding Mr. Riffin (because Mr. Riffin has engaged in no activities to date that would warrant a response by the County), the County is not “barring” Mr. Riffin from doing anything. In short, there is no controversy and no change in the fact-free circumstances that existed when Mr. Riffin filed the Initial Petition. Accordingly, the Board should deny the Initial Petition and Second Petition.

B. The Board’s acceptance of Mr. Riffin’s OFA has no effect on rights or interests not within the Board’s jurisdiction.

Mr. Riffin erroneously concludes that the Board’s acceptance of him as substitute purchaser under the OFA gives him an absolute right, under every circumstance, to do whatever he wants on the corridor (if he ever takes the actions required to complete this acquisition). He makes much of his insistence that all obstacles to his proceeding with work along the Line be

eliminated so that he can fulfill his common carrier obligations. Although the Board authorized Mr. Riffin to be substituted as the offeror in connection with the acquisition of the Line in the *Allegany County Decision*, such authorization is permissive rather than mandatory, and does not compel or approve any action by Mr. Riffin. When the STB authorizes the acquisition and operation of a railroad, it grants the prospective operator a license to pursue only those activities that fall under STB jurisdiction. That license does not supercede, preempt or otherwise invalidate the prospective operator's obligations to secure necessary rights outside of the STB's jurisdiction (for instance through lease or other agreement), to occupy the property over which the operator proposes to conduct its activities.

In a case with facts similar to those Mr. Riffin appears to plan to develop, the Octoraro Railway, Inc. ("OCTR") filed an application with the Interstate Commerce Commission ("I.C.C."), the Board's predecessor agency, for a Certificate of Public Convenience and Necessity to operate a freight railroad on a line owned by the Southeastern Pennsylvania Transportation Authority. The line had been heavily damaged by Hurricane Agnes, which occurred some five years before OCTR filed its application. In order to restore the line, OCTR would have to rebuild bridges and other infrastructure and to conduct construction activities in a flood plain. The I.C.C. determined, and the Third Circuit affirmed, that the Certificate of Public Convenience, if granted, would not authorize OCTR to undertake construction in a flood plain. The Third Circuit further held that the Certificate of Public Convenience and necessity "neither directs nor authorizes construction." *Concord Tp. v. U.S.*, 625 F.2d 1068, 1074 (3d Cir. 1980). The Board's authorization of Mr. Riffin's OFA is directly analogous to the grant of the Certificate of Public Convenience and Necessity sought in *Concord Tp.* Both forms of

authorization allow, but do not compel, an operator to commence actions necessary to the physical provision of rail service.

Furthermore, the I.C.C. determined that the “permissive” authority a prospective operator obtains pursuant to 49 USC §10901 does not disturb any separate rights or obligations, such as contract rights, stating: “[o]ur approval of [a] petition for exemption would merely be permissive, and not determinative of . . . contract rights.” *Arkansas and Missouri Railroad Company, et al. - Exemption from 49 U.S.C.10901, 11301, 11322, and 11343*, 1986 WL 400482 (I.C.C.) at *2 (STB Served June 30, 1986). As the Board announced in *General Railway Corporation, d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – in Osceola and Dickinson Counties, IA*, 2007 WL 1723364 (S.T.B.) (STB Served June 15, 2007):

Any dispute regarding the validity of [an] agreement, or ownership of the Line, involves questions of state contract and property law. The Board is not the proper forum to resolve such disputes. Rather, these matters are best left for state courts to decide. Allowing the notice of exemption in this proceeding to become effective will not affect the contract interpretation issues that involve state law. It is well settled that the Board’s issuance of a notice of exemption authorizing the acquisition of a line gives the petitioner permission to acquire the line, but does not *mandate* the acquisition.

Id. at *4 (emphasis added).

One of the issues pending that caused the Circuit Court to conclude that Mr. Riffin may have standing to bring the action he filed there, is the question whether Mr. Riffin has authority from the property owner to occupy the Line. Although WMS, L.L.C , Mr. Riffin’s predecessor as the offeror under the OFA for the Line, entered into a purchase and sale agreement to acquire the Line from CSX Corporation in or about 2005, no deed vesting ownership of the Line in WMS, L.L.C. or Mr. Riffin has been recorded in the land records of Allegany County. Maryland law requires that a deed concerning real property be recorded in the land records of the county

where such property is located in order for title to vest in the transferee. MD. CODE ANN., REAL PROP. §§ 3-101(a), 3-103 (2007); *see also In re Reese*, 194 B.R. 782, 789 (Bkrtcy. Md. 1996); *Kingsley v. Makay*, 253 Md. 24, 27, 251 A.2d 585, 587 (1969); *Childs v. Ragonese*, 296 Md. 130, 139 n. 8, 460 A.2d 1031, 1036 n. 8 (1983) (title to land does not pass until deed is properly executed and recorded). Mr. Riffin assertedly owns the majority of WMS, L.L.C. However, even if WMS, L.L.C. were the fee owner of record, under Maryland law an owner of an interest in a business entity is not presumed to have an ownership interest in assets owned by that entity. *See Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md.App. 479, 499, 822 A.2d 478, 490 (2003) (“a corporation's shareholders do not hold title to its real property, and therefore do not own it”). As discussed above, the issue of whether Mr. Riffin has any interest in the real property constituting the Line under Maryland law is a question for the state courts to decide. As the successful offeror designated in the *Allegany County Decision*, Mr. Riffin may properly be before the Board in a proceeding involving the Line. However, he has not presented sufficient facts to allow the MD Parties or the Board to determine whether this is the case. However, if the Circuit Court finds that Mr. Riffin lacks authority as a matter of state law to occupy the subject right-of-way, Mr. Riffin would be required to acquire a sufficient possessory interest to support the lawful conduct of his proposed activities as a prerequisite to exercising the rights granted to him by virtue of the Board’s OFA grant. The fact that the STB has authorized Mr. Riffin to substitute himself as the offeror in the OFA proceeding with respect to the Line does not convey to him a possessory interest in the real property. As the Board held in *Iowa Northwestern Railroad*, Mr. Riffin cannot use his authorization under an OFA to bootstrap any claim to an interest in the Line.

Both the Board and the courts have emphasized the limitations of permissive authority that is conferred by a notice of exemption, Certificate of Public Convenience and Necessity or OFA, and have described the effect of the Board's approval to acquire and operate a railroad under 49 USC §10901 as "only removing a regulatory impediment." *In re Chicago, M.S.P. and P. R. Co.*, 882 F.2d 1188, 1191 (7th Cir. 1989) (quoting *Northeast Wisconsin Railroad Transportation Commission*, STB Finance Docket No. 30760 at *2 (January 7, 1986)). The Board's decision "does not require [one railroad] to acquire and [the other railroad] to operate [a line], it is merely permissive. If there is a dispute in the courts over the right to acquire and operate a line, our action here will not affect either parties' (sic) rights and remedies." *Id*

Because the authority Mr. Riffin acquired when his OFA was accepted allows, but does not require, that he take certain actions, Mr. Riffin cannot employ the Board's authorization in the *Allegany County Decision* to invalidate or supersede other rights – such as fundamental state law based property rights – he must obtain in order to fulfill his common carrier obligations. The Board must accordingly deny Mr. Riffin's Initial Petition and Second Petition.

CONCLUSION

The Board should deny – expeditiously, for certain – Mr. Riffin's request in the Initial Petition and Second Petition. He presents no relevant facts that describe a live controversy. While the Board's rules permit the issuance of a declaratory order, a proceeding will be instituted only when there is an actual, concrete dispute. 5 USC §554(e); 49 CFR §1011.75. There is no showing of a dispute over the application of the law to facts since the Petition presents no facts that would permit this Board to make the necessary conclusions of law.

This Board has routinely accepted the notion that authority conferred by the STB only reaches those matters under the Board's jurisdiction. The Board has acknowledged that state law

may exclusively govern in other areas, including rights relating to a rail applicant's interest in property. Here, Mr. Riffin asks the Board to issue a declaratory order without having the legal standing that would justify his claims to the rights he alleges that he holds. As a result, this Board should deny the Petition for a Declaratory Order and close this proceeding.

WHEREFORE, and in view of the foregoing, MTA, MDE and the County respectfully request this Board to expeditiously deny the Petition for Declaratory Relief.

Respectfully submitted,

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County Attorney
County of Allegany, Maryland

Dated: December 18, 2007

Certificate of Service

I hereby certify that I have this 18th day of December, 2007, caused to be served a copy of the foregoing Reply of the Maryland Transit Administration, the Maryland Department of the Environment and the County of Allegany, Maryland, to Petition for Expedited Declaratory Order, upon the following parties of record:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



Allison I. Fultz

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TAB A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BALTIMORE COUNTY, MARYLAND

Plaintiff

v

JAMES RIFFIN

Defendant

: Civil Action No. RDB-07-2361
: Related Cases: RDB-04-1342;
: RDB-04-2789; RDB-04-2848;
: RDB-04-2964; RDB-06-2989;
: RDB-07-1229; RDB-07-1623;
: and RDB-07-2573

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ORDER

For the reasons stated in the foregoing Memorandum Opinion, IT IS this 4th day of October, 2007, by the United States District Court for the District of Maryland, hereby ORDERED that:

- 1 This case IS REMANDED to the Hearing Officer for Baltimore County Department of Permits and Development Management, Code Inspection and Enforcement for further proceedings;
- 2 The Clerk SHALL NOT ACCEPT FOR FILING any pleading filed by James Riffin unless he has first obtained leave of this Court to do so;
- 3 The Clerk SHALL MAIL a copy of the foregoing Memorandum Opinion and a copy of this Order to Defendant; and
- 4 The Clerk SHALL TRANSMIT the record to Baltimore County Department of Permits and Development Management, Code Inspection and Enforcement, County Office Building, Room 213, 111 West Chesapeake Avenue, Towson, Maryland 21204; and
- 5 The Clerk SHALL CLOSE this case.

/s/

RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BALTIMORE COUNTY, MARYLAND :

Plaintiff :

v :

JAMES RIFFIN :

Defendant :

Civil Action No. RDB-07-2361
Related Cases: RDB-04-1342;
RDB-04-2789; RDB-04-2848;
RDB-04-2964; RDB-06-2989;
RDB-07-1229; RDB-07-1623;
and RDB-07-2573

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MEMORANDUM OPINION

The above-captioned case was removed to this Court on September 4, 2007. For the reasons that follow, the matter must be remanded to the state forum from which it was removed.

The substance of the underlying case Mr. Riffin seeks to remove involves a long running dispute between the parties concerning Baltimore County, Maryland's enforcement authority over Riffin's activities as they relate to his "railroad maintenance-of-way facility" located in Cockeysville, Maryland. *See State v. Riffin*, Civil Action No. RDB-06-2989 (D. Md. 2007) (Paper No. 5). Removal of this case is improper and it will be remanded. Under 28 U.S.C. § 1441(a), only actions "brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." *See also Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here the underlying case is a civil citation proceeding over which this Court does not have original subject matter jurisdiction. Further, Mr. Riffin's attempt to insert a federal issue into the case by claiming the state's authority is preempted by federal statute does not convert the proceeding into a federal case subject to removal pursuant to 28 U.S.C. § 1441(b). *See Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation*

Trust for Southern California, 463 U.S. 1, 10 (1983).

Riffin has made numerous attempts to disrupt valid state proceedings by filing civil rights complaints seeking injunctive relief against Baltimore County and by removing proceedings to this Court, forcing state proceedings to a grinding halt.¹ Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further. "[F]ederal courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims." *McMahon v F.M. Bank-Winchester*, 45 F.3d 426, 1994 WL 719695 (4th Cir. Dec. 30, 1994) (unpublished) (per curiam), cf. *Procup v Strickland*, 792 F.2d 1069, 1070-71 (11th Cir. 1986) (en banc). Before Riffin will be permitted to file another *pro se* civil action in this Court he will be required to seek leave to do so. In so doing, Riffin will be required to state succinctly how the original complaint or removed case differs from other actions filed and dismissed or remanded by this Court. In the event the claim is accepted for filing and it is revealed that Riffin misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to sanctions.

A separate Order follows.

October 4, 2007
Date

/s/
RICHARD D BENNETT
UNITED STATES DISTRICT JUDGE

¹ Riffin has attempted to remove cases involving his dispute with Baltimore County on numerous occasions. See *State v Riffin*, Civil Action No. RDB-04-1342 (D. Md. 2004); *State v Riffin*, Civil Action No. RDB-04-2789 (D. Md. 2004); *Maryland Dept. of the Environment v Riffin*, Civil Action No. RDB-04-2848 (D. Md. 2004); *Riffin v Snyder*, Civil Action No. RDB-04-2964 (D. Md. 2004); *State v Riffin*, Civil Action No. RDB-06-2989 (D. Md. 2006); and *Baltimore County v Riffin*, Civil Action No. RDB-07-1229 (D. Md. 2007). In addition to his attempts at removal, Riffin has filed numerous civil actions seeking injunctive relief concerning the same matters. See *Riffin v Wisnom, et al*, Civil Action No. RDB-07-1623 (D. Md. 2007) and *Riffin v Baltimore County*, Civil Action No. RDB-07-2573 (D. Md. 2007). *Baltimore County v Riffin*, Civil Action No. RDB-07-1229 (D. Md. 2007) is an open case in which a Motion to Remand and for Attorney Fees is pending.

TAB B

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IN THE CIRCUIT COURT FOR ALLEGANY COUNTY, MARYLAND

JAMES RIFFIN :
Plaintiff :
v. : CIVIL ACTION NO. C-07-29061
BOARD OF COUNTY :
COMMISSIONERS OF ALLEGANY:
COUNTY, MARYLAND :
Defendant :

: : : : : :

MEMORANDUM AND ORDER

On October 4, 2007, Plaintiff, James Riffin, filed a Complaint for Declaratory Relief and for Injunctive Relief against the Board of County Commissioners of Allegany County, Defendant. The immediate question before the Court is the propriety of granting a temporary restraining order. This the Court declines to do.

A Temporary Restraining Order may be granted only if it appears that immediate, substantial and irreparable harm will result to Mr. Riffin before a full adversarial hearing can be held on the propriety of a preliminary or final injunction. Md. Rule 15-504.

Mr. Riffin asserts that as a railroad his operations are subject to the exclusive jurisdiction of the United States Surface Transportation Board. He seeks a Temporary

OCT 18 2007

Restrainin~~g~~ Order enjoinin~~g~~ the Board of County Commissioners "from attempting to subject any of Plaintiff's transportation-by-rail-carrier-related activities, or rail carrier facilities, to any of the Defendant's regulations". Motion For Preliminary Injunction and Temporary Restraining Order, paragraph two.

Because of erosion from Georges Creek into his track bed he intends to repair washouts and lay new track. He intends to construct rail related facilities along the line.

Accepting as correct Mr. Riffin's general premise that federal law preempts state and local regulation of rail carriers, the Court nonetheless views Mr. Riffin's request for a Temporary Restraining Order as inappropriate. At this point, the facts regarding the extent of the rail road right-of-way, the nature of Mr. Riffin's proposed realignment of the Georges Creek bed, and the ownership of the subject property are all rather murky. Moreover, in the arena of environmental and water pollution control laws state and local agencies are delegated major roles in implementing federal statutes.

Putting it all together, at this point the Court will not attempt to fashion an Order identifying what Mr. Riffin may do, without being bothered or burdened by Allegany County's local regulations. Should he proceed by ignoring

regulations that the County, or other entities such as the Maryland Department of the Environment, feels it needs to enforce, the Court will be in a better position to answer precisely whether the County's proposed action at such time is preempted by federal law.

For the foregoing reasons, Plaintiff's request for a Temporary Restraining Order is, this 16th day of October, 2007, DENIED.



W. TIMOTHY FINAN
Judge

cc: James Riffin
William M. Rudd, Esq.
Charles A. Spitulnik, Esq.