

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mare Baracco,

Plaintiff,

vs.

Charleston Area Convention and Visitors
Bureau,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

CASE NO. 2021-CP-10-02999

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

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SC Court of Appeals

This matter came before the court pursuant to Plaintiff's Motion to Compel additional discovery response from Defendant pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. A WebEx hearing was held on April 4, 2023. For the reasons set forth below, this Court denies Plaintiff's Motion to Compel additional discovery responses from Charleston Area CVB.

BACKGROUND

Charleston Area CVB is a 501-C-6 not-for-profit designation marketing organization. Charleston Area CVB's primary purpose is to market the greater Charleston areas as an overnight destination. The General Assembly enacted the A-Tax statute, which involves the administration of a state sales tax imposed on sleeping accommodations provided to overnight guests. The A-Tax statutes requires local governments to select at least one organization, known as a designated marketing organization, to manage the expenditure of funds. The local governments must ensure that the funds are only used for advertising and promotion of tourism. Charleston Area CVB represents ten different funding governments located in Charleston, Dorchester, and Berkeley Counties.

On August 10, 2020, Plaintiff submitted a request to Charleston Area CVB for “copies of all receipts and invoices for all transactions of Charleston County accommodations Tax (ATAX) expenditures by the Agency as they relate to the promotion of tourism related activities for the County of Charleston.” Plaintiff made her request pursuant to the South Carolina Freedom of Information Act (“FOIA”), South Carolina Code Section 30-4-30(c). Upon receipt of Plaintiff’s request, Charleston Area CVB responded to Plaintiff’s FOIA request. The response stated in part, “the Charleston Area Convention and Visitors Bureau does not have any records which fall within the parameters of your request. Although we are not required to, we can provide you with the documentation of the receipt of funds from Charleston County, but the CACVB’s accounting records do not itemize or allocate expenditures according to individual revenue categories.” Plaintiff did not respond to Charleston Area CVB’s response and did not state whether she would like to receive a copy of the documentation of receipt of funds that was referenced in Charleston Area CVB’s correspondence to Plaintiff.

Soon after, Plaintiff filed a complaint and subsequently filed an amended complaint on July 7, 2021, alleging Charleston Area CVB failed to provide a timely written response to her FOIA request. After Charleston Area CVB produced copies of its August 24, 2020 response to Plaintiff’s inquiry, Plaintiff filed a second amended complaint on March 14, 2022. Plaintiff’s Second Amended Complaint now alleges that Charleston Area CVB “did not provide Plaintiff with all information responsive to her FOIA request” and also alleged that Charleston Area CVB’s “failure to provide all available responsive information to Plaintiff’s request, pursuant to S.C. Code Ann. § 30-4-30(C), is a violation of FOIA.” Plaintiff seeks a declaration by this Court that Charleston Area CVB violated FOIA and injunction to provide the records and information responsive to Plaintiff’s request.

Thereafter, Plaintiff served her initial discovery requests, to which Charleston Area CVB responded to the best of its ability based on its status as a designated marketing organization. Charleston Area CVB promptly moved for summary judgment before this Court. Later, Plaintiff moved to compel discovery responses from Charleston Area Convention CVB.

STANDARD

Rule 26 of the South Carolina Rules of Civil Procedure governs the conduct of discovery and permits discovery of material “relevant to the subject matter involved in the pending action” or “reasonably calculated to lead to the discovery of admissible evidence.” A trial judge is granted broad latitude to limit the scope of discovery, and the conduct of discovery is within the sound discretion of the trial judge. *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 854 (1994).

It is well settled that a party seeking to compel discovery responses “must show the relevance and necessity for the information” sought. Flanagan, *South Carolina Civil Procedure*, 311 (2d ed. 1996). Therefore, while the scope of discovery is generally broad, “there are limits.” *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dept. of Health and Environ. Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010). “Thus, discovery requests must be reasonably tailored to include only relevant matters.” *Id.*

DISCUSSION

In Plaintiff’s initial interrogatory requests, Plaintiff requested extensive information regarding Defendant’s accounting and accounting software. Although the scope of discovery is broad, discovery must be relevant to the subject matter involved in the pending action. *See Oncology & Hematology Assocs. of S.C. LLC v. South Carolina Dep’t of Health & Envtl. Control*, 387 S.C. 380, 692 S.E.2d 920 (2010); Rule 26(b)(1), SCRPC. The South Carolina Supreme Court

has made it clear that the merits of a claim “should not be relegated to a secondary status” during discovery practice. *Id.* Discovery requests must show a reasonable expectation of obtaining information that will aid the dispute’s resolution. *Oncology & Hematology Assocs*, 692 S.E.2d at 924-25. “Discovery requests must be reasonably tailored to include only relevant matters.” *Id.*

The central issue in this matter is whether Charleston Area CVB is required to comply with FOIA. Defendant moved for summary judgment before this Court on this central issue. This Court granted Defendant’s motion for summary judgment and found that Defendant, a designated marketing organization, was not subject to FOIA. ¹ *See DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber Com.*, 423 S.C. 295, 814 S.E.2d 513 (2018) (holding that “the General Assembly did not intend [for designated marketing organizations] to be considered a public body for purposes of FOIA as a result of its receipt and expenditure of these specific funds.”). Consequently, Plaintiff’s Motion to Compel additional discovery responses from Defendant is now moot. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (stating a moot issue exists when “a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court”).

Accordingly, for the reasons set for above, this Court denies Plaintiff’s Motion to Compel additional discovery responses from Defendant Charleston Area Convention and Visitors Bureau.

AND IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

Dated: _____

¹ Plaintiff’s Motion to Compel and Defendant’s Motion for Summary Judgment were both heard on April 4, 2023.



Charleston Common Pleas

Case Caption: Mare Baracco VS Charleston Area Convention And Visitors Bureau

Case Number: 2021CP1002999

Type: Order/Compel

So Ordered

S/George M. McFaddin, Jr., #2759