

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4601986

York County	Cultural And Heritage Commission Of York County	Culture And Heritage Foundation Inc	Sustainable Development Group Inc
		SDG Properties LLC	CHF Property Managements LLC
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

Order Denying In part & Granting In Part Defendants' Motion For Protective Order

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball
 Circuit Court Judge

3063
 Judge Code

10/14/2013

For Clerk of Court Office Use Only

This judgment was entered on October 24, 2013, and a copy mailed first class or placed in the appropriate attorney's box on October 24, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Brian A. Autry 1230 Main Street Suite 700 Columbia, SC
29201

James W. Sheedy 11520 N. Community House Road Suite
200 Charlotte, NC 28277

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

York County and Cultural and Heritage
Commission of York County,

Plaintiffs,

vs.

Culture and Heritage Foundation, Inc.,
Sustainable Development Group, Inc.,
SDG Properties, LLC, and CHF Property
Management, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2013 OCT 20 PM 3 03

Case No. 2013-CP-46-01986

**ORDER DENYING IN PART &
GRANTING IN PART DEFENDANTS'
MOTION FOR PROTECTIVE
ORDER**

This matter came before me on September 30, 2013, on the Defendants' Motion for Protective Order. Present at the hearing were Brian A. Autry and Tracy T. Vann, attorneys for Plaintiffs, and James W. Sheedy and Susan E. Driscoll, attorneys for Defendants.

DISCUSSION

On August 26, 2013, Plaintiffs served Defendants with written discovery in the form of Interrogatories and Requests for the Production of Documents. A copy of Plaintiffs written discovery is attached to Defendants' Motion. Defendants now move for a Protective Order governing discovery in this case.

One of Plaintiffs' causes of action in this case is for an accounting. Defendants assert that Plaintiffs are not entitled to an accounting, and thus, cannot maintain an action for such relief. Defendants assert that Plaintiffs have now served them with certain Interrogatories and Requests for the Production of Documents, which, if allowed, would essentially grant Plaintiffs' request for an accounting without a prior ruling that they are entitled to such relief. I have ruled by separate order of this date on Defendants' motion to dismiss the Amended Complaint that Plaintiffs are entitled to maintain a cause of action for an accounting in this case. The findings and conclusions of that order on that issue are incorporated herein by reference.

Nevertheless, I have considered Defendants' arguments concerning the propriety of particular interrogatories and requests for production, and make the following findings and conclusions. Specifically, Defendants challenge Interrogatory Numbers 5-8, and Requests to Produce Numbers 1, 4-7, 9-15, and 17-24. Defendants also challenge a portion of Plaintiffs'

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Request to Produce Number 2 in that it requests copies of annual reports.

Rule 26(b) SCRPC defines the scope of discovery:

(b) **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

"Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters." *Oncology and Hematology Associates of S.C., LLC v. South Carolina Dept. of Health and Environmental Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 925 (2010). If the documents requested are relevant to the general subject matter, and not protected by a privilege, they are discoverable under Rule 26(b)(1), without a showing of undue hardship and substantial need. *Duplan Corp. v. Deering Milliken, Inc.*, 397 F.Supp. 1146 (D.S.C. 1974).

The working definition of the word "relevant" in Rule 26(b)(1) is not the same as that used in determining whether evidence is "relevant" for the purposes of admissibility. *Id.* The relevancy and admissibility of documents depend on the facts and circumstances of each case. *Id.*, 397 F.Supp. at 1187. However, ". . . the information must be specifically relevant to the issues involved in the litigation, not merely relevant to the subject matter of the litigation." *Hollman v. Woolfson*, 384 S.C. 571, 579, 683 S.E.2d 495, 499 (2009).

Discovery should be considered "relevant" when ". . . there is any possibility that the information sought may be relevant to the subject matter of the action." *Cox v. E.I. Du Pont de Nemours & Co.*, 38 F.R.D. 396, 398 (D.S.C. 1965). If the court is uncertain as to whether an unprivileged document is relevant to the subject matter involved, and production is opposed solely on the basis of relevancy, production should be ordered. *Duplan Corp., supra*, 397 F.Supp. at 1188. Rule 34, SCRPC, provides that the production of documents may be had within

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the scope of Rule 26(b).

Whether or not Plaintiffs are ultimately entitled to the relief sought in the Complaint has no bearing on the issue of discovery allowed pursuant to the SCRPC. Plaintiffs have asserted causes of action for injunction, imposition of a constructive trust, declaratory judgment, estoppel, breach of fiduciary duty, and an accounting. Plaintiffs have only to show that there is a *possibility* that the discovery requested *may be* relevant to the subject matter of the action in order to be permitted discovery.

Here, Plaintiffs claim that Defendants have received funds and property that were solicited for the benefit of Plaintiffs, and that those funds and that property are imposed with a constructive trust. Plaintiffs also claim that Defendants have a fiduciary duty to Plaintiffs regarding such funds and property, and have breached that duty. The majority of Plaintiffs' interrogatories and requests for production may be relevant to these claims; however, some of the requests are not relevant, at least at this time.

Applying the foregoing standard to the facts of this case, I find and conclude as follows:

1. Interrogatories.

Defendants Motion for Protective Order is granted as to Plaintiff's Interrogatory Nos. 5 through 8. However, Plaintiffs are not precluded from petitioning the Court at a later date to compel responses to those interrogatories upon a showing of relevancy. The motion is denied as to Interrogatory Numbers 1 through 4, and 9. Defendants shall produce responses to those interrogatories within thirty days from the date of this Order.

2. Requests to Produce.

Defendants' Motion for a Protective Order as to Requests to Produce Numbers 1, 4, 11, 17, and 19 through 21 is granted. However, Plaintiffs are not precluded from petitioning the Court at a later date to compel responses to those Requests upon a showing of relevancy.

Defendants Motion for a Protective Order as to Request to Produce Numbers 2 and 3, 5 and 6, 8 and 9, 12 through 16, 18, and 22 through 27, is denied, and Defendants shall produce responses to those requests within thirty days from the date of this Order.

Defendants' Motion for a Protective Order as to Request to Produce Number 7 is denied in part and granted in part. At the hearing on the motion, Plaintiffs qualified their requests, and Defendants shall produce only communications related to funds received by one or more of the Defendants and/or disbursed by one or more of the Defendants.

Defendants' Motion for a Protective Order as to Request to Produce Number 10 is denied



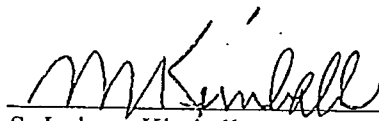
in part and granted in part. At the hearing on the motion, Plaintiffs qualified their request to limit them to corporate formation documents of Cherokee SDG, LLC, agreements with Cherokee SDG, LLC, and communications between Defendants and Cherokee SDG, LLC.

CONCLUSION

Based on the findings and conclusions of law set forth herein, Defendants Motion For Protective Order is granted, in part, and denied, in part, as more specifically set forth above. Defendants' responses to those Interrogatories and Requests to Produce as to which a response is required shall be provided within thirty days of the date of this Order.

AND IT IS SO ORDERED.

October 14, 2013



S. Jackson Kimball
Special Circuit Court Judge
York County

4