

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
WILLIAM R. HOBSON.)	CIVIL ACTION NO.: 2011-CP-07-0945
)	
Plaintiff,)	
V.)	
)	INTERIM ORDER
CALLAWASSIE ISLAND)	
MEMBERS CLUB, INC.)	
)	
Defendant.)	
_____)	

2012 JUN 29 PM 3:22
 COURT REPORTER
 J. S. C.

THIS MATTER comes before this Court by way of continuing jurisdiction to address the requirements of, and compliance with, the March 29, 2012 Order of this Court. This Interim Order is not to be construed as a full and complete order with regard to the Defendant's Motion for Reconsideration and is without prejudice to both parties. A more full and complete order with regard to the Defendant's Motion for Reconsideration will follow.

The Court and the attorneys for the parties have held hearings regarding how the Defendant maintains the ordered disclosures and the costs of production to comply with the March 29, 2012 Order. The Defendant claims that the cost of producing all of the materials under the March 29, 2012 Order is substantial. It appearing to this Court however that production of portions of the materials, as set forth below, would not be a substantial burden to the Defendant. Without waiving the rights of either party with regard to challenging or enforcement of the March 29, 2012 Order, and due to the complex nature of the current litigation, the court issues the following Interim Order for production:

The Defendant, **within 15 days**, shall produce to the Plaintiff the following:

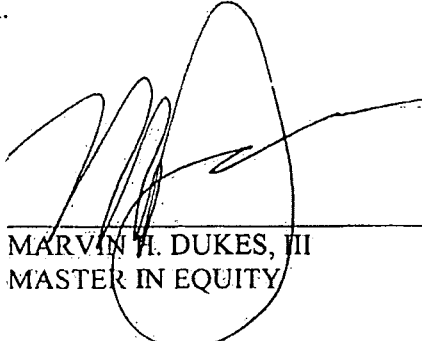
- A) Copies of the Resale list documents in their possession or control
- B) The Jonas held billing & payment records for the persons/entities indicated in part 'C' below
- C) the complete file(s) of the persons/entities listed below: this includes the records in CIMC's possession or control which relate to any of the listed person(s)' membership(s) with the Club, including the documents they maintain concerning their sell, resignation or termination from membership. The Defendant shall provide a privilege log for any materials redacted or removed from such production

1. Anderson, Milburn M (Mike) & Julie
2. Bailey, Paul
3. Brouse, John S & Barbara B
4. D&S Tilton LLC
5. Dunn, Thomas F
6. Evans, Hollace Ann
7. George, Philip M.
8. Gillespie, Geraldine
9. Hawkins, William
10. Henley, David & Ann
11. Ingram, Russell
12. Kirkwood, David & Victoria
13. Mellen & Tilton LLC
14. Norwood, Robert & Karen
15. Oelkers, Jeffrey & Jane
16. Reid, John & Patricia
17. Rice, Willie Joe
18. Roessing, Charles & Lesley
19. Stignatto, Lori Ann
20. Terwilliger, Ronald & Patricia
21. Tilton Builders
22. Toburen, William & Margaret
23. Weis, Barbara
24. Wurtzbacher, Terry & Patti
25. Andrew Poczik
26. Jim/James Chaffin and/or (Chaffin Light) and/or Chaffin Light Associates
27. Callawassie Island Company (CIC) Callawassie Island Company L.P.
28. Stevan Smith
29. Harmon Switzer
30. Robert DeLuca
31. Dianne Sullivan

32. Donald Barrett
33. Brian Wallace
34. Jackie Leffers

This is an interim Order and either party can request a hearing after the time set for production herein for the court to revisit any issues of production, costs, or any other issues or open motions pertaining to the March 29, 2012 Order. This Interim Order does not modify the scope of the previous March 29, 2012 Order of this Court, but due to the nature of difficulties and costs claimed by the Defendant in compliance with the March 29, 2012 Order, the current Order is intended to facilitate the production of materials with the option for either party to further litigate the matter, if needed, upon the expiration of the 15 day terms set forth herein.

IT IS SO ORDERED.



MARVIN H. DUKES, III
MASTER IN EQUITY

This 26 day of June, 2012
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
WILLIAM R. HOBSON.)
Plaintiff,)
V.)
CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2011-CP-07-0015

FINAL ORDER

entry case

2013 JAN 15 PM 5:26
CASE CANCELLED
JAN 9 AM 11:20

Date of Hearing : August 29, 2013
Presiding Judge : Judge Marvin H. Dukes, III
Plaintiff's Attorney : Brian McDaniel, Esquire
Defendant's Attorney : Ehrick K. Haight Jr., Esquire

This hearing was before the Court by way of request of the Plaintiff for costs and attorney's fees in his Declaratory Judgment Action. The Defendant has also submitted a request for attorney's fees and seeks a ruling as to its pending motion to reconsider.

Background

The Plaintiff filed this Declaratory Judgment action February 25, 2011 seeking release of information from the Defendant Callawassie Island Members Club, Inc.. The matter was tried on December 19, 2011 and an Order of Judge Marvin H. Dukes, III, was signed and filed March 29, 2012. The Order of March 29, 2012 made findings of fact and conclusions of law that the Plaintiff's request for documents was done with proper notice to the Defendant and in good faith, and that the request was proper under S.C. Code §33-31-1602. The March 29, 2012 Order granted the Plaintiff's requested relief and Ordered that the Defendant turn over all the materials requested in the January 25, 2011 letter from Plaintiff's counsel which was attached to the Complaint. The Court held in abeyance the issues of payment of costs of production and the

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Plaintiff's request for attorney's fees and costs of the action. Thereafter the Defendant filed a Motion for Reconsideration of the March 29, 2012 Order pursuant to SCRCF Rule 59. The Defendant set forth three grounds for its motion, 1) that the Order requires it to turn over "accounting records" beyond the scope of SC Code §33-31-1601 and is therefore overly broad in scope 2) that the Order fails to address costs of production and is therefore incomplete and 3) that the Order fails to address confidentiality of the billing records and is therefore incomplete.

Following the trial hearing in December 2011 the Defendant submitted the January 11, 2012 Affidavit of Craig Simonson claiming that the costs of production would be \$20,100.00, comprised of \$600.00 in copy costs and \$19,500 in labor costs. Plaintiff's counsel contested the validity of these costs and sought the Court's assistance in either allowing the Plaintiff to do the labor himself or to provide an explanation of the basis for the costs claimed. The Court conducted hearings with Judge Dukes, both in person and by telephone, regarding how the Defendant maintains the ordered disclosures and the costs of production to comply. In those hearings Plaintiff's counsel sought explanation from the Defendant as to why it would be so costly and as to how such records were maintained, with the Court also questioning the Defendant for answers as to how the materials were kept and as to why it would be as costly as was being claimed by the Defendant. The court (as part of its continuing jurisdiction set forth in the March 29, 2012 Order) issued an "Interim Order" in the case on June 26, 2012. The Interim Order indicates that it did "not modify the scope of the previous March 29, 2012 Order of this Court, but due to the nature of the difficulties and costs claimed by the Defendant in compliance with the March 29, 2012

298 2

Order , the current Order is intended to facilitate the production of materials.” The Interim Order compelled the Defendant to, within 15 days of the Order, submit the specific documents listed, which included the “Resale list documents in their possession or control” and billing and file information for the persons suspected by the Plaintiff of having sold resigned or terminated their membership. The Interim Order also required the Defendant produce a privilege log for any materials redacted or removed from such production. The June 26, 2012 Order also states that “[I]t appearing to this Court however that production of the materials, as set forth below, would not be a substantial burden to the Defendant.”

That on August 29, 2013 a hearing was held at the request of the Plaintiff seeking a determination of the costs and attorney’s fees he claimed. The Defendant likewise asserted a claim for costs of production and sought a hearing on the issues remaining from its Motion to Reconsider. Prior to the hearing the Plaintiff submitted an affidavit of attorney’s fees and costs of \$4,133.39. At the hearing the Defendant submitted an affidavit of attorney’s fees in the amount of \$3,855.00. At the hearing the parties stipulated that of the issues raised in the Defendant’s Motion to Reconsider, the only issue pending was to address the costs of production in as much as the Defendant was not contesting the scope of the materials produced pursuant to the Interim Order and that the Plaintiff was willing to forego any additional information to which he may be entitled. Likewise, having also agreed to a Confidentiality Order and having not marked any of the submitted documents as “confidential” the issue of confidentiality raised by the Defendant in its Motion to Reconsider was also moot. Therefore, the only issue remaining for a final order is on the issue of costs and attorney’s fees of the

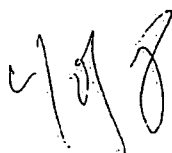
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Plaintiff and the costs of production and request for attorney's fees set forth by the Defendant.

Findings of Fact

In his Complaint in this matter the Plaintiff brought an action pursuant to the S.C. Uniform Declaratory Judgment Act, S.C. Code § 15-53-10 et seq. and requesting the Court award costs pursuant to S.C. Code §15-53-100. That section allows for "In any proceeding under this chapter the court may make such award of costs as may seem equitable and just." The Plaintiff alleged his right to the information sought in the Complaint arose under South Carolina Code §33-31-1602 et. seq. (lit: *and as follows*). SC Code § 33-31-1602 is found at Article 16 "Records and Reports" and is in Sub-article A. "Records". Also in that Sub-article is SC Code §33-31-1604 which provides at subpart (c) that "If the Court orders inspection and copying of the records demanded, it also *shall order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it has a reasonable basis for doubt about the right of the member to inspect the records demanded.*" (Emphasis Added).

The Court finds that the Defendant in this case was apprised that the Plaintiff would seek attorney's fees if successful. The Court also finds that there exists an appropriate basis for an award of costs and attorney's fees to the Plaintiff within the code sections referenced in the pleadings. South Carolina Electric & Gas Co., v. Hartough, 375 S.C. 541, 654 S.E.2d 87 (S.C.App. 2007). Furthermore, although it was not necessary for the Plaintiff to specify the exact statute by which costs could be



assessed in this case, the Complaint in fact did provide notice of the Chapter, Article and Sub-article from which such costs could rightly be ordered.

SC Code § 33-31-1604(c) states that the Defendant may not have to pay such fees and costs if the basis for Defendant's refusal is proven to be based upon a reasonable basis of doubt about the right of the member to inspect the records demanded. I find that although the Defendant in its pleadings contends that the Plaintiff does not have a right to the materials requested, it has failed to provide a reasonable basis supporting its position. Following the hearing conducted December 2011 finding that the Plaintiff is entitled to the materials requested the Defendant has since argued that the costs of production are substantial, however this, even if it were relevant to whether the Plaintiff has a right to inspect, which this court doubts, has not been evidenced in the record in this case. Further the Defendant has only produced those materials set forth in the June 26, 2012 Interim Order. With agreement of counsel, this Court found in its June 26, 2012 Interim Order (from which the Defendant has not appealed) that compliance with portions of the March 29, 2012 Order would not be a substantial burden to the Defendant. Even so, prior to the June 26, 2012 Interim Order this Court, over the course of several hearings, the Plaintiff made direct requests for information from the Defendant seeking to determine how the information sought was kept and to determine the basis for the costs claimed by the Defendant. It is the opinion of this court that the Defendant failed to provide a reasonable basis which would support the costs of production claimed by the Defendant for disclosure under the March 29, 2012 Order. At the August 28, 2013 hearing the Defendant did not present an affidavit of the costs of production actually incurred in production but instead asserted a claim for

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attorney's fees of \$3,855.00 incurred in compliance with statutory request for documents and the subsequent Orders for the production of documents. While S.C. Code § 33-31-1603 does in some circumstances allow a corporation to charge a reasonable charge to cover the labor and costs to make the copies requested, I find no basis in the statute for an award of attorney's fees such as is being requested by the Defendant. Further, given the Interim Order findings that compliance was not a substantial burden on the Defendant, and due to the conduct of the Defendant in this matter, I decline to award fees or costs of production to the Defendant.

As to the Plaintiff's request for fees and costs I find that the Defendant has failed to meet its burden of proving any good faith basis to believe that the Plaintiff did not have a right to inspect the requested records. This Court can find no reasonable basis for the Defendant's refusal, prior to the June 2012 Interim Order of the Court, to provide the Plaintiff with documents such as the Club membership Resale Lists. The Plaintiff testified that he had placed his membership on this Resale List during the years requested and it is the opinion of the Court that the Plaintiff as a Club member, in this case, has a clear right to those these records.

Specifically, the Court finds that each membership is intended as a source of payments. This anticipated revenue means that each membership must be treated as an asset. Further, the resale list, which dictates when a member may divest themselves of the aforementioned obligation, is vital to the fair and orderly transfer and replacement of these assets and is a component of a proper accounting.

Further, the Defendant's conduct both before and during this litigation has evidenced a resistance to investigate or participate in the proceedings in good faith. As a result, the Plaintiff has had to incur legal fees to seek assistance from the court such that this

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Court has had to conduct hearings or telephone conferences on five separate occasions. In several of the hearings it is the belief of the Court that the Defendant was not properly investigating nor making reasonably diligent efforts to respond to the Court's attempts to determine how the requested documents and information were retained by the Defendant, being unable often unable to even provide the court information as to the format as to how the records were stored. The Defendant's actions required the Plaintiff to take unnecessary and expensive steps to force the participation of the Defendant in compliance with the Order of this Court.

CONCLUSIONS OF LAW

1. Any finding of fact which is actually a conclusion of law is hereby so adopted.
2. Jurisdiction and venue in this matter are properly before this Court, and all parties are properly before this court
3. This Court adopts and affirms the findings of Fact and Conclusions of Law as set forth in the Order of March 29, 2012 and the Interim Order of June 26, 2012.
4. The Defendant has failed to prove that it refused the Plaintiff's request for inspection in good faith upon a reasonable basis for doubt about the right of the Plaintiff (member) to inspect the records demanded.
5. That the Plaintiff is entitled to an award of attorney's fees and costs pursuant to S.C. Code Ann § 33-31-1604(c) in the amount of \$4,133.39 payable to the Plaintiff within 15 days of this Order.
6. That the issues of confidentiality (Issue 3 in Defendant's April 11, 2012 Motion to Reconsider) and the issue about what documents Defendant is required to maintain

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(Issue 1 in Defendant's April 11, 2012 motion to Reconsider) were made moot by agreement of the parties since the Plaintiff has agreed to forego any additional information to which he may be entitled as set forth in the interim order of June 26, 2012 and the Defendant consented to the production of those materials set forth in the Interim Order. Therefore, the only issues outstanding are the parties' requests for costs and attorney's fees in this matter.

7. The Defendant's request for costs of production and for attorney's fees in the amount of \$3,855.00 is denied.
8. Any remaining issues from the Defendant's pending motion to reconsider, which have not been resolved by agreement, or otherwise ruled upon, are hereby denied.

IT IS, THEREFORE, ORDERED:

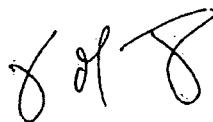
PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES AND COSTS IN THE AMOUNT OF \$4,133.39 IS GRANTED, TO BE PAID BY THE DEFENDANT WITHIN 15 DAYS OF THIS ORDER;

**DEFENDANT'S MOTION FOR COSTS AND FEES IS DENIED; and
DEFENDANT'S MOTION TO RECONSIDER IS DENIED.**

IT IS SO ORDERED.

This 7th day of January, 2014
Beaufort, South Carolina


MARVIN H. DUKES, III
MASTER IN EQUITY



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