

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-07-0945

ORDER
 (Declaratory Judgment Action)

Date of Original Hearing : **December 19, 2011**
Presiding Judge : **Judge Marvin H. Dukes, III**
Court Reporter : **Joanne McDonald**
Plaintiff's Attorney : **Brian McDaniel, Esquire**
Defendant's Attorney : **Ehrick K. Haight Jr., Esquire**

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 CLERK OF COURT
 JUDICIAL CIRCUIT
 BEAUFORT COUNTY
 SOUTH CAROLINA

THIS MATTER comes before this Court by way of Declaratory Judgments filed by the Plaintiff seeking the release of information from the Defendant Callawassie Island Members Club, Inc., In attendance at the hearing of December 19, 2011 was the Plaintiff, William Hobson, and his attorney Brian McDaniel, the attorney for the Defendant, Ehrick K. Haight Jr.. Also present were attorney Stephen P. Hughes, attorney O. Edworth Liipfert, III, Harman Switzer, Phil Kilian, Sandy Aulton and Michael Aulton.

TESTIMONY AND EVIDENCE PRESENTED

The above captioned matter was filed by the Plaintiff February 25, 2011 pursuant to the S.C. Uniform Declaratory Judgment Act seeking the Defendant Callawassie Island Members Club, Inc ("the Club") release information requested as well as to recover the costs and attorney's fees associated. At the hearing the Plaintiff and

Harman Switzer testified. The Defendant also presented Defendant's Memorandum of Law, filed December 19, 2011.

On direct testimony the Plaintiff gave a history of his ownership of equity memberships in the Defendant Club, stating he first became a member in 1988 and then acquired a second membership in 1996 which was subsequently put on the Club Resale list in 1998.

The Plaintiff testified as to his efforts, through counsel, to obtain information prior to filing the current action. Plaintiff discussed the request made to the Defendant via letter from Plaintiff's counsel of June 29, 2010, (also an exhibit to the Complaint), and as subsequently narrowed by letter from Plaintiff's attorney of January 25, 2011. By letter (also attached to the pleadings) the Club responded February 7, 2011 refusing the request and contending that the items requested in the letter of January 25, 2011 were outside the purview of S.C. Ann § 33-31-1602(b). Upon cross examination and questioning by the court, the Plaintiff affirmed that the current action sought the records requested in the January 25, 2011 letter, specifically, the itemized accounting records of CIMC since December 2001 of all multiple membership holders with the Club including those names listed in the June 29, 2010 letter and an accounting of the Resale list as well as those memberships sold, resigned or terminated for any reason since December 1, 2001.

In direct testimony the Plaintiff recounted several instances he alleged evidenced disparate treatment of CIMC members by the Club which would further support his request for information. The Plaintiff testified as to his knowledge of members that were believed to pay differing amounts for similarly held memberships, including

differing payments with regard to resident and nonresident dues. The Plaintiff introduced a letter from September 2010 from the Defendant indicating a settlement with the developer, Callawassie Island Company, ("CIC) in which the Club acknowledged a \$300,000 hole in budgeted dues revenues due to a settlement with CIC and the acceptance back by the Club of memberships owned by CIC. The Plaintiff also introduce as evidence an email of August 26, 2010 purporting to be from Phil Kilian on behalf of the Defendant indicating that the settlement with CIC included the return of 67 Equity Golf memberships, 122 Equity Social Memberships to be joined with the 52 Equity Gold memberships and 1 Equity Social membership already owned by the Defendant. In support of his request for the information sought, the Plaintiff also introduced as evidence, over objection from the Defendant, property deeds and membership directory listings in support of his suspicion that some members appear to have been allowed to resign or terminate their memberships without going through the resale list and evidencing disparate treatment by the Club.

On cross examination the Defendant presented, and questioned the Plaintiff regarding an email dated May 2, 2011 from the Plaintiff alleged to be to other property owners in the Callawassie area seeking to determine interest in pursuing legal challenges to the Callawassie Island Property Owners Association's mandatory club membership provisions, which the Defendant, Callawassie Island Members Club, Inc. contended at the hearing evidenced the Plaintiff's ill intentions against the Defendant. The Plaintiff testified that the email presented discussed legitimate concerns he had with the Callawassie Island Property Owners Association governing rules and was not directed to his dealings with the Defendant.

Harman Switzer was called by the Plaintiff and testified as to his position as an officer with the Board of Directors of the Club. Mr. Switzer further testified as to his knowledge of a letter of April 12, 2010 sent to the Plaintiff with regard to a confidential offer made to the Plaintiff to concede a membership to the Club. The April 12, 2010 letter was also made part of the record. The Defendant did not cross examine Mr. Switzer.

At the conclusion of the Plaintiff's case the Defendant did not offer any witnesses or other evidence and also rested.

In argument the Defendant contended that it had fully complied with S.C. Code § 33-31-1601 and 1602 and that the Plaintiff's intentions in seeking the information were to harm the Club, were not in good faith and that the Defendant should therefore not be compelled to produce the requested matters to the Plaintiff.

The Plaintiff asserted in argument that the Plaintiff had numerous reasons to be suspicious of unfair and disparate treatment by the Defendant amongst the members, and that as an equity member he was entitled to the requested accounting information from the Club.

After orally ruling in favor of the Plaintiff at trial discussion was also had as to the mechanism for compliance with the ruling in which the Defendant was unable to provide information as to the nature and location of the requested information nor the cost to produce so that the court deemed it necessary to schedule a follow up hearing to address those matters dealing with compliance and the assignment of costs of production.

At the Conclusion of the December 19, 2012 hearing the issue of the costs of production remained open and Judge Dukes requested a teleconference for the beginning of January 2012 for the Defendant to provide the Plaintiff and the court with additional information regarding the form and costs of production.

A telephone conference hearing was held January 12, 2012 in which the Defendant provided the Affidavit of Craig Simonson, identified as the acting Chief Financial Officer of the Defendant Club, indicating an estimated cost of \$20,100.00 for compliance with the Ordered disclosures. Mr. Simonson's affidavit also indicated that prior to 2005 the Developer of Callawassie Island (CIC) maintained the records related to the Resale list and that Mr. Simonson was, after a diligent search of the records available, "unable to ascertain whether the records in his possession are complete for the period of time prior to said transfer." When the counsel for Defendant was not able to provide additional information with regard to the nature and form of the claimed \$20,100.00 worth of compliance costs, the Court requested the Defendant determine the nature and form of such compliance and reconvene for an additional hearing in the near future.

On January 30, 2012, upon request of the Plaintiff, the Court reconvened via teleconference. At that telephone conference the Defendant submitted a Supplemental memorandum of Craig Simonson and a Supplemental Memorandum of Law opposing the Plaintiff's request for Attorney's fees. Due to the costs alleged in compliance by the Defendant, Judge Dukes questioned Defendant's counsel regarding the format, accessibility and storage of the information in the ordered disclosures, but the attorney

for Defendant was not able to answer the questions presented. Therefore, an additional hearing was set for February 2, 2012 to follow up on this information.

On February 2, 2012 an in-person hearing was held before Judge Dukes and the Plaintiff, Bill Hobson, his attorney Brian McDaniel, Defendants' attorney Ehrick Haight and Craig Simonson attended. The court reviewed the submitted affidavits and questioned the parties and Mr. Simonson regarding the current resale list referenced in the affidavit and how the other items being ordered to be disclosed were maintained by the Defendant. The Defendant acknowledged using a software system for member billing known as 'Jonas' but was unable to provide the information about the specific version being used at that time. The Court requested that the counsel for the Defendant contact the Defendant's membership director to determine how the membership and resale list were maintained. The Defendant stated that the referenced Resale List and Membership list were dynamic and in an Excel form but that the Defendant did not otherwise maintain any records documenting or recording transactions to or from the Resale List. The Court directed the Defendant to produce the membership and resale documents they acknowledged having in their possession and to further determine the ability to provide billing history under its software as well as providing the information of the version of such software to the Plaintiff so that the Plaintiff might investigate whether he can make arrangements to view the ordered disclosures. The Defendant on February 15, 2012 provided the Jonas software version number (12.2.0965) to the Plaintiff's counsel via email.

Based upon the pleadings and exhibits thereto, testimony, the evidence submitted, review of all submitted memorandum and after hearing arguments, I make the

following findings of fact and conclusions of law, each to be considered the other to the extent necessary.

FINDINGS OF FACT

1. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code § 15-53-10 et seq. to declare the rights, status and other legal relations of the parties with respect to the Plaintiff's request for information from the Defendant.
2. The Plaintiff is a resident of Beaufort County South Carolina.
3. The Defendant is a nonprofit corporation operating in South Carolina claiming the Plaintiff as a dues owing equity member.
4. The Plaintiff requested the matters set forth in the letter from his attorney of January 25, 2011, referencing the previous letter of June 29, 2010, specifically requesting: the itemized accounting records of CIMC since December 2001 of all multiple membership holders with the Club including those names listed in the June 29, 2010 letter and an accounting of the Resale list as well as those memberships sold, resigned or terminated for any reason since December 1, 2001.
5. That the Plaintiff's request gave proper notice and was made in good faith and for a proper purpose.
6. The Plaintiff's request for records was made with reasonable particularity.
7. That the requesting letters sent by the Plaintiff's attorney were properly made on behalf of the Plaintiff.

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. Pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code § 15-53-10 et seq. this Court has the power to declare the rights, status and other legal relations of the parties before it and with respect to the Plaintiff's right to the information requested from the Defendant and further as allowed by S.C. Code §33-31-1604.

4. That the information and records sought by the Plaintiff has been properly requested by the Plaintiff giving proper notice and being made in good faith and for a proper purpose in compliance with S.C. Code § 33-31-1601, 1602 and 1603.

5. The Plaintiff's request for records was made with reasonable particularity and complied with both sections (b) and (c) of § 33-31-1602 S.C. Code.

6. That the requesting letters sent by the Plaintiff's attorney were properly made requests pursuant to S.C. Code § 33-31-1603.

7. That the records requested by the Plaintiff are part of the accounting records of the corporation as identified in S.C. Code § 33-31-1602(b)(2) and the Plaintiff, as a member, is entitled to inspect and copy the materials he seeks in this action.

8. That the issues of payment of costs of compliance shall be held in abeyance until further determination of those costs is made by the parties.

9. That the issue of attorney's fees and costs sought in this matter by the Plaintiff shall also be held in abeyance.

10. The Defendant is Ordered to turn over, to the Plaintiff, the information and materials in its possession custody or control which falls within the scope of the materials requested by the Plaintiff in his January 25, 2011 letter attached to the

Complaint, specifically the itemized accounting records of CIMC since December 2001 of all multiple membership holders with the Club including those names listed in the June 29, 2010 letter and an accounting of the Resale list as well as those memberships sold, resigned or terminated for any reason since December 1, 2001.

IT IS, THEREFORE, ORDERED:

a. To the extent the Defendant is in possession, custody or control of the information and materials requested, the Defendants shall turn over to the Plaintiff the information and materials requested by the Plaintiff in his January 25, 2011 letter attached to the Complaint, specifically the itemized accounting records of CIMC since December 2001 of all multiple membership holders with the Club including those names listed in the June 29, 2010 letter and an accounting of the Resale list as well as those memberships sold, resigned or terminated for any reason since December 1, 2001. ;

b. The issues of payment for costs of production and the Plaintiff's request for attorney's fees and costs of the action are held in abeyance.

c. The Defendant shall within 10 days provide the Plaintiff with a complete copy of the membership accounts currently maintained by way of their Jonas software in the regular and normal customary electronic data format so that it is available for review in conjunction with the Jonas software.

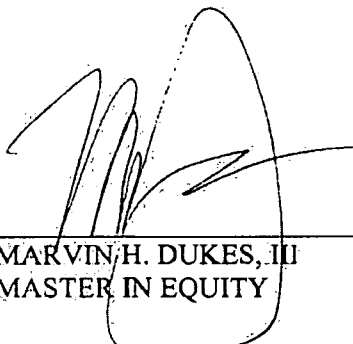
d. That the Resale List and membership list shall be turned over by the Defendant to the Plaintiff within 10 days of this Order.

e. That the Defendant shall immediately provide the Plaintiff with the information concerning in what format and on what medium or storage device(s) the

ordered records of multiple membership holders and the ordered records of those memberships sold resigned or terminated are kept so that arrangement for disclosure might be made;

f. With regard to the specific documents and materials discussed in complying with this Order, the court will monitor and follow the disclosures at the request of either party to resolve any compliance issues;

AND IT IS SO ORDERED.



MARVIN H. DUKES, III
MASTER IN EQUITY

This 21 day of March, 2012
Beaufort, South Carolina