

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
14<sup>th</sup> Judicial Circuit

Marvin H. Dukes, III, Master In Equity

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Case No. 2011-CP-07-0945

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William R. Hobson,

Respondent,

v.

Callawassie Island Members  
Club, Inc.

Appellant.

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RECORD ON APPEAL

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Ehrick K. Haight, Jr., Esq. #2446  
Stacey S. Collins, Esq. #73360  
MINOR, HAIGHT & ARUNDELL, P.C.  
Post Office Drawer 6067  
Hilton Head Island, South Carolina 29938  
(843) 785-8040  
Attorneys for Appellant

Brian D. McDaniel, Esq. #68618  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, South Carolina 29901  
(843) 379-5117  
Attorney for Respondent

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**SC Court of Appeals**

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## ORDER OF MARCH 28, 2012

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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  
S.C.

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.

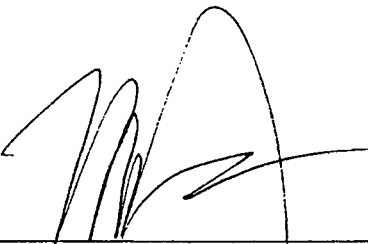
e. That the Defendant shall immediately provide the Plaintiff with the information concerning in what format and on what medium or storage device(s) the

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.**

This 28 day of March, 2012  
Beaufort, South Carolina

  
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MARVIN H. DUKES, III  
MASTER IN EQUITY

INTERIM ORDER OF JUNE 26, 2012

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IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

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CLERK OF COURT

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

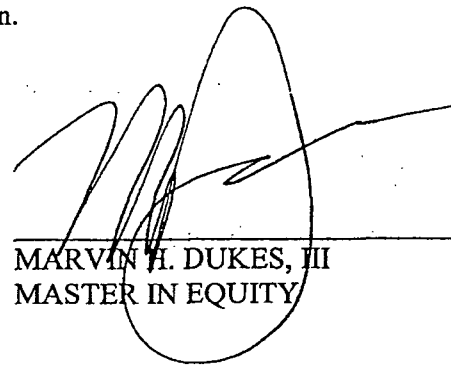
- A) Copies of the Resale list documents in their possession or control
- B) The Jonas held billing & payment records for the persons/entities indicated in part 'C' below
- C) the complete file(s) of the persons/entities listed below: this includes the records in CIMC's possession or control which relate 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

## FINAL ORDER

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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-07-45

FINAL ORDER

*early case*

DATE CANCELLED  
JAN 15 9 AM 11:20  
CLERK OF COURT  
JUDICIAL CIRCUIT

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 the 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

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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

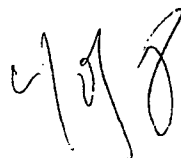
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Plaintiff and the costs of production and request for attorney's fees set forth by the Defendant.

### **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

(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.

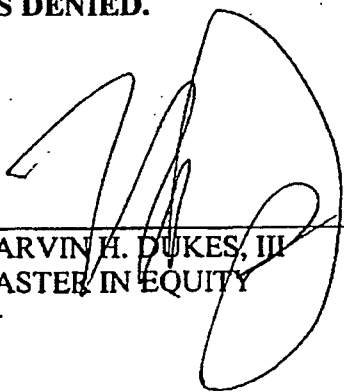
8. Any remaining issues from the Defendant's pending motion to reconsider, which have not been resolved by agreement, or otherwise ruled upon, are hereby denied.

**IT IS, THEREFORE, ORDERED:**

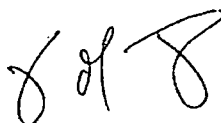
**PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES AND COSTS IN THE AMOUNT OF \$4,133.39 IS GRANTED, TO BE PAID BY THE DEFENDANT WITHIN 15 DAYS OF THIS ORDER;**

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

**IT IS SO ORDERED.**

  
MARVIN H. DUKES, III  
MASTER IN EQUITY

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



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## COMPLAINT

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STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
)  
)

IN THE COURT OF COMMON PLEAS  
C.A. NO. 11-CP-07- 0945

William R. Hobson, (member) )  
)

Plaintiff, )  
)

vs. )  
)

Callawassie Island Members )  
Club Inc. )

Defendant, )  
)

**COMPLAINT**

Declaratory Judgment Action

(Non-Jury)

2011 FEB 25 PM 3:29  
JEREMY A. HARRIS  
CLERK OF COURT  
BEAUFORT COUNTY

Plaintiff William R. Hobson, by and through his undersigned counsel, complaining of the above-named Defendant would respectfully show to this Honorable Court:

**JURISDICTION AND VENUE**

1. Plaintiff is a resident and citizen of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Callawassie Island Members Club, Inc (hereinafter CIMC) is a nonprofit corporation organized under the laws of the state of South Carolina and operating in Beaufort County.
3. That the Plaintiff herein is a resident of Beaufort county, South Carolina and a member of the Defendant CIMC.
4. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.* for declaration of the rights, status and other legal relations of the parties and other remedies as equitably reasonable and necessary.

**GENERAL ALLEGATIONS**

5. All other allegations, to the extent that they are not inconsistent herewith, are hereby incorporated by reference.

6. That the Plaintiff herein has been a member of the Defendant nonprofit since 1988 having purchased a membership with his property in 1988 and a second membership in 1996.
7. That in June 29, 2010 Plaintiff's counsel sent a request for information to the Defendant (attached as Exhibit A hereto) in which information was requested from the Defendant, such information being believed to be needed by said member for legitimate and appropriate reasons as set forth in Exhibit A.
8. That by letter dated July 14, 2010 (attached hereto as Exhibit B) Defendant's counsel responded to the letter of the Plaintiff indicating that the Defendant would provide portions of the records but not others and that they would provide a proposed date for inspection as soon as possible.
9. That by letter dated August 4, 2010 (attached hereto as Exhibit C) the Defendant provided limited records in response to the Plaintiff's request.
10. That the counsel for the Plaintiff made additional attempts and requests for the information, and that several phone calls and correspondence were exchanged between the counsel for the parties including a January 25, 2011 letter from the Plaintiff in which the information sought was further narrowed (attached hereto as Exhibit D).
11. The Plaintiff has received no additional records from the Defendant since the August 4, 2010 response, and the additional communications between the parties indicates an unwillingness by the Defendant to provide the records requested (See Letter of Defendant of February 7, 2011 attached as Exhibit E).
12. The Plaintiff believes that as a member of the nonprofit he has a right to the information requested pursuant to South Carolina Code 33-31-1602 et. seq., §33-31-720 as well as other case law and equitable requirements.

13. That upon information and belief, the information which has been requested is needed for the Plaintiff to investigate and evaluate claims that have arisen which are believed to have a substantial impact upon the rights, duties and obligations of both CIMC and the member Plaintiff.
14. An actual and justiciable controversy exists among the parties; therefore, a declaratory judgment is appropriate to assist the parties in understanding their rights and the responsibilities of the nonprofit to its member to respond to requests for information.
15. Plaintiff is entitled to the information requested and prays for an Order of this court requiring the information be produced to the Plaintiff and requiring the Defendant to pay for the costs and attorney's fees for this action pursuant to South Carolina Code § 33-31-720 and/or 15-53-100.

WHEREFORE, Plaintiff seeks judgment from this Court as follows:

- A. An Order requiring the Defendant to produce to the Plaintiff the information requested in his letter of June 29, 2010.
- B. For the Plaintiff to be awarded the costs, expenses and attorney's fees to get this order pursuant to S.C. Code §33-31-720(d).
- C. For the costs and expenses of this action, pursuant to S.C. Code §15-53-100.
- D. For other such relief as this Court may deem just and equitable.

Respectfully submitted,

  
A handwritten signature in dark ink, appearing to read "Brian McDaniel", is written over a horizontal line.

BRIAN McDANIEL  
Attorney for the Defendants  
2015 Boundary Street, Suite 216  
P. O. Box 2085  
Beaufort, South Carolina 29901  
Phone: 843-379-5117  
Fax: 843-379-5118

Feb.  
January 25, 2011  
Beaufort, South Carolina

Attorney for Plaintiff



Law Office of  
BRIAN McDANIEL, LLC

bmcDaniel@attorneymcdaniel.com

VIA CERTIFIED US MAIL  
June 29, 2010

The Callawassie Island Members Club, Inc.  
General Manager: Brian Lasota  
22 Callawassie Club Drive,  
Callawassie Island, South Carolina 29909

Re: Club Membership/ accounting and review/ SC Code §33-31-1602 et seq.

Dear Mr. Lasota or other Managing Agent:

I have been retained to represent the following CIMC members and households, and others (who, for fear of potential social reprisals, prefer to remain anonymous at this time) in regards to their request for information related to their memberships in the Callawassie Island Members Club, Inc. (CIMC):

*Applegate, Aulton, Carpenter, Elias, Hobson, and Lambert*

As you are aware, certain members, including some of my clients hold, or have held, two or more memberships in the Callawassie Island Members Club.

Due to the significant financial burden these memberships impose upon my clients under the current enforcement, CIMC's decision to file suit against selected members, and what appears to be some difference in member treatment, my clients have raised several questions regarding Club management and have retained me to help get these questions resolved. The specific requests follow, but in general the concerns are relative to the basis on which members are to be charged monthly dues, how memberships terminate and/or transfer and what policies are being followed with regard to similarly situated members and the collection of delinquent dues and fees.

As members of this nonprofit corporation, my clients are entitled to access to many of the records and accounting of CIMC under South Carolina law. Furthermore, in this particular case, my clients and other multiple membership owners have need of the requested information in order to evaluate the actions being taken against them with regard to dues being charged to them, their rights as equity members, and to investigate concerns they have of disparate treatment of members, specifically concerns that multiple membership holders are not being treated uniformly and not in compliance with the Bylaws, Membership Plan and Articles of the Club. Therefore, I am hereby demanding

Page 2

June 29, 2010

Re: Callawassie Island Members Club

inspection and a copy of, and/or opportunity to copy, the following records and I request a response to the three questions listed thereafter:

I. Documents and Records Requested:

1. A list of all past and current CIMC members (names and last known addresses) that have held multiple memberships at any time and the detailed monthly accounting records related to said memberships.
2. Copies of all monthly billing statements and/or records of payments to and/or from the following member entities:  
  
Anderson, Milburn M (Mike) & Julie  
Bailey, Paul  
Brouse, John S & Barbara B  
D&S Tilton LLC  
Dunn, Thomas F  
Evans, Hollace Ann  
George, Philip M.  
Gillespie, Geraldine  
Hawkins, William  
Henley, David & Ann  
Ingram, Russell  
Kirkwood, David & Victoria  
Mellen & Tilton LLC  
Norwood, Robert & Karen  
Oelkers, Jeffrey & Jane  
Reid, John & Patricia  
Rice, Willie Joe  
Roessing, Charles & Lesley  
Stignatto, Lori Ann  
Terwilliger, Ronald & Patricia  
Tilton Builders  
Toburen, William & Margaret  
Weis, Barbara  
Wurtzbacher, Terry & Patti
3. A copy of the articles or restated articles and all amendments to them currently in effect; or direction as to where these can be found online, if so available online

June 29, 2010

Re: Callawassie Island Members Club

4. The Club bylaws or restated bylaws and all amendments to them currently in effect or direction as to where these can be found online, if so available online
5. All resolutions adopted by the Board of directors relating to the characteristics, qualifications, rights, limitations, and obligations, of members and whether those relate to Golf memberships or Social memberships or direction as to where these can be found online, if so available online;
6. The minutes of all meetings of members and records of all actions approved by the members for the past three years or direction as to where these can be found online, if so available online;
7. All written communications to members generally within the last three years including financial statements furnished for the past three years under SC Code § 33-31-1620;
8. A list of the names and business or home address of its current directors and officers of CIMC;
9. CIMC's most recent report of each type required to be filed by it with the Secretary of State under Chapter 31 of Title 33 of the SC Code of Laws;
10. Accounting records of CIMC: To include accounting of membership dues received as itemized by member since December 1, 2001;
11. The membership list indicating the number and type of memberships owned by each member for each year since formation of the Club;
12. A complete accounting of the Resale List from formation of CIMC to the current date, including but not limited to, an itemization by year, of all memberships sold, to whom those membership were sold and amount of all such sales or transfers;
13. A copy of all settlement documents or resale documents for all memberships sold, resigned or terminated for any reason since December 1, 2001;

Page 4

June 29, 2010

Re: Callawassie Island Members Club

14. All communications with any member(s) that deal with resignation, termination, or settlement of their membership for the past 10 years.
15. A list of all persons known to the CIMC that own property on Callawassie Island that do not own a membership to the CIMC club.
16. A copy of all communication, whether electronic or hard-copy, to all members classified as "Delinquent" during the period such member was classified as Delinquent by Club management.

II. Questions Submitted:

- A. Is CIMC aware of any property owners on Callawassie Island, who do NOT currently hold a membership with CIMC? If so, please list each and explain why such person(s) are not current membership holders and whether CIMC is taking any action to require said person to obtain a membership.
- B. Does CIMC allow any members to own membership for which they permit reduced or no monthly charges other than as specified by the current (9/1/07) and published CIMC Membership Plan? If so, please specify the name(s) of those members and the reasons for such exception.
- C. Has CIMC management ever permitted members to resign their memberships in contravention to the procedures and processes described in the current (9/1/07) and published Membership Plan or by some method not specified therein? If so, please furnish a list of those members so released, the dates of the termination of the membership and the circumstances associated with such release.

If you believe any of the above records requested are not subject to disclosure for any reason, including but not limited to, if the documents were provided subject to a confidentiality agreement, please provide a log of all documents not provided with a description sufficient to advise my office of the basic subject and parties involved in said communications.

These above demanded records and copies are to be provided by July 13, 2010 or, if access to the records is going to be provided in lieu of copies, please notify my office within 7 days of receipt of this letter as to when and where said records will be made available for copying.

Page 5

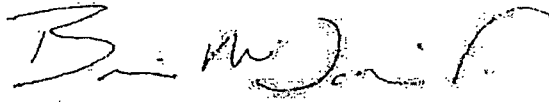
June 29, 2010

Re: Callawassie Island Members Club

I look forward to receiving your response.

Sincerely,

Law Office of Brian McDaniel, LLC

A handwritten signature in black ink, appearing to read "Brian McDaniel". The signature is fluid and cursive, with the first name "Brian" and last name "McDaniel" clearly distinguishable.

Brian McDaniel

BDM/tm

cc:



MINOR, HAIGHT & ARUNDELL, P.C.

ATTORNEYS and COUNSELORS AT LAW

THE CLARENDON BUILDING

VILLAGE AT WEXFORD

POST OFFICE DRAWER 6067

HILTON HEAD ISLAND, SOUTH CAROLINA 29938

JOHN W. MINOR, JR. (1840-2003)

EHRIK K. HAIGHT, JR.

ROBERT J. ARUNDELL

PHILIP J. RIOS

\* ALSO A MEMBER OF THE NORTH CAROLINA BAR  
MEMBER, HILTON HEAD ISLAND BAR ASSOCIATION

TELEPHONE (843) 785-8040

FACSIMILE (843) 785-3506

MHALAWFIRM.COM

MEMBER, AMERICAN BAR ASSOCIATION  
MEMBER, HHI CHAMBER OF COMMERCE

July 14, 2010

Brian McDaniel, Esquire  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, SC 29901

Re: S.C. Code Section 33-31-1602 *et. seq.* (inspection of records  
requested by members)

Dear Mr. McDaniel:

We have been provided with a copy of your correspondence to Brian Lasota dated June 29, 2010 in connection with the above-stated matter. Mr. Lasota provided a copy of your correspondence to us on July 6, 2010. I have reviewed your request for the inspection of documents under S.C. Code Ann. §33-31-1602 on behalf of the members identified in your correspondence as Applegate, Aulton, Carpenter, Elias, Hobson and Lambert. As a preliminary matter, please understand that Callawassie Island Members Club, Inc. (hereinafter "Callawassie") is merely attempting to enforce the members' obligations pursuant to the authority granted in the membership documents. Further, and as you are aware, please be reminded that this firm represents Callawassie in several pending lawsuits against some of the members named in your correspondence (e.g., Applegate, Aulton, and Carpenter) as well as lawsuits against other members. Based on the Order of Substitution, your office now represents Michael and Sandra Aulton in Callawassie's lawsuit against them. Please be advised that I am particularly concerned with your direct communication with my client in connection with the Aulton matter. I am also concerned with your direct communication with Callawassie in connection with Applegate and Carpenter. As you know, all communication involving these parties must be made to this firm and not communicated directly to my client. In addition, I am not aware of any other Order of Substitution evidencing your representation of Mr. Applegate, who I believe is still represented by George O'Kelley. Further, I am not aware of a Notice of Appearance indicating your representation of the Carpenters in Callawassie's lawsuit against them.

Upon review of the above-stated statute and the related statutes, please be informed that the members are not entitled to many of the requested records as they fall outside the purview of the relevant statutes. The records requested pursuant to S.C. Code Ann. §33-31-1602 (a) will be made available for your inspection and copying. These are records that are described in S.C. Code Ann. §33-31-1601 (e) and

Brian McDaniel, Esquire

Page 2

July 14, 2010

in #3 through #9 of your correspondence. As for records described in #3 and #4, please be reminded that you already have these documents that are made part of the lawsuit against the Aultons (Civil Action No. 2009-CP-07-4648); however, Callawassie will make them available pursuant to this request. As for the request in #7, please be informed that S.C. Code Ann. §33-31-1620 only requires that the latest annual financial statement be furnished to a member.

You also requested records pursuant to S.C. Code Ann. §33-31-1602(b); records which involve the accounting records of the corporation and the membership list. With regard to the accounting records, please be reminded of the limitations of this request under S.C. Code Ann. § 33-31-1620. Callawassie will make available its most recent accounting pursuant to the statute. Similarly, Callawassie will make available its current membership list.

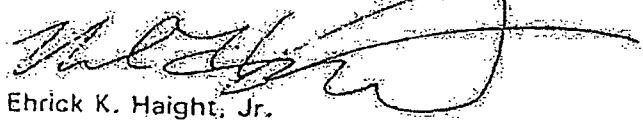
With regard to the records requested in #1, #2, #12 through #16, and to a certain extent (itemized accounting) #10, please be advised that the members are not entitled to the records described in these numbered requests. Similarly, there is no requirement pursuant to the relevant statutes to respond to "questions submitted".

We will provide you with a proposed date for the inspection of records in compliance with the statute as soon as possible.

I remain,

Yours very truly,

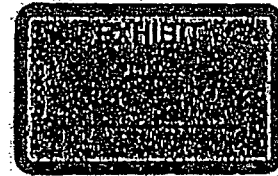
MINOR, HAIGHT & ARUNDELL, P.C.



Ehrick K. Haight, Jr.

EKHJr:pjr

cc: Brian Lasota



MINOR, HAIGHT & ARUNDELL, P.C.

ATTORNEYS and COUNSELORS AT LAW

THE CLARENDON BUILDING

VILLAGE AT WEXFORD

POST OFFICE DRAWER 8067

HILTON HEAD ISLAND, SOUTH CAROLINA 29938

JOHN W. MINOR, JR. (1940-2003)

THOMAS K. HAIGHT, JR.

ROBERT J. ARUNDELL

PHILIP J. RIOS

TELEPHONE (843) 785-8040

FACSIMILE (843) 785-3506

MHALAWFIRM.COM

\* ALSO A MEMBER OF THE NORTH CAROLINA BAR  
MEMBER, HILTON HEAD ISLAND BAR ASSOCIATION

MEMBER, AMERICAN BAR ASSOCIATION  
MEMBER, HHI CHAMBER OF COMMERCE

August 4, 2010

Brian McDaniel, Esquire  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, SC 29901

Re: S.C. Code Section 33-31-1602 *et. seq.* (inspection of records  
requested by members)

Dear Mr. McDaniel:

This letter serves as a follow up to my correspondence to you dated July 14, 2010 and in connection with the above-stated subject and your letter to Mr. Lasota dated June 29, 2010. For the convenience of everyone, my client went ahead and compiled the records in compliance with the statute, which are enclosed herein. Please find enclosed copies of the following documents:

1. South Carolina Secretary of State Corporation Details
2. Articles of Incorporation
3. Notice of Change of Registered Agent (2)
4. Board of Directors Minutes (4) 2010 (January through April 2010)
5. Board of Directors Minutes (12) 2009 (January through December 2009)
6. Board of Directors Minutes (12) 2008 (January through December 2008)
7. Board of Directors Minutes (12) 2007 (January through December 2007)
8. Cherry, Bekaert & Holland, L.L.P. correspondence (6/21/10) to the Club
9. Club correspondence (3) noticing the annual meeting of Equity Members
10. Financial Statements and Accompanying Information For the Years Ended December 31, 2009 and 2008

You will also find enclosed a 2009 Callawassie Island Directory. Other records that were requested are found in the Directory. For example, the Directory contains a list of Board Members and contact information and a readily accessible list of the Club members. In addition, please be informed that additional information important to the members can be found at [callawassieislandclub.com](http://callawassieislandclub.com) using a member password to login.

I remain,

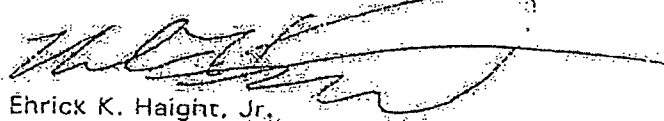
Brian McDaniel, Esquire

Page 2

August 4, 2010

Yours very truly,

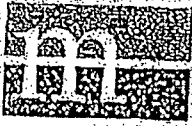
MINOR, HAIGHT & ARUNDELL, P.C.

A handwritten signature in dark ink, appearing to read "Ehrick K. Haight, Jr.", with a long horizontal flourish extending to the right.

Ehrick K. Haight, Jr.

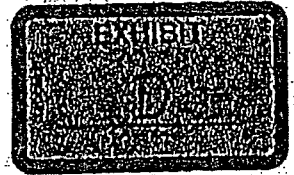
EKHJr:pjr

cc: Brian Lasota



Law Office of  
BRIAN McDANIEL, LLC

bmcDaniel



VIA US MAIL

January 25, 2011

Ehrick K. Haight, Jr. Esquire  
Minor, Haight & Arundell, P.C.  
P.O. Drawer 6067  
Hilton Head Island, SC 29938

RE: Request to Callawassie Island Members Club Inc. for member information

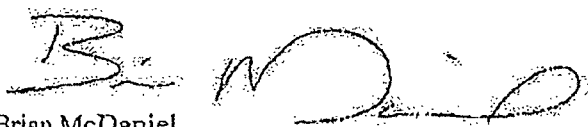
Dear Ehrick:

I am in receipt of your letter of January 17, 2011 in response to my voicemail. The records we are requesting are the accounting and membership records not responded to from our request in June 2010. As you mentioned, certain records were sent, but many of the items requested were not produced. Specifically, we are seeking the itemized accounting records of CIMC since December 1, 2001 of all multiple membership holders with the Club including those names listed in Item # 2 of the June 29, 2010 letter. We are also seeking an accounting of the "Resale list" as well as those memberships sold, resigned or terminated for any reason since December 1, 2001. Please let me know if the Club is willing to voluntarily provide any of this information.

As to the mention in your letter that arrangements were not made to inspect the requested records, please recall that your letter indicated that you would provide a proposed date for that inspection, but did not do so. If the Club is interested in allowing inspection of the accounting records at this time please let me know. It would seem to be in all parties' interest to avoid the expenses of litigation so please let me know if there may be some way to resolve these requests from these Club members with their Club.

Most sincerely,

Law Office of Brian McDaniel, LLC

  
Brian McDaniel

BDM/tm

---

843.379.5117 telephone • 843.379.5118 facsimile • [www.attorneymcdaniel.com](http://www.attorneymcdaniel.com)  
2015 Boundary Street Beaufort, South Carolina 29902 • Post Office Box 2085 Beaufort, South Carolina 29901

**MINOR, HAIGHT & ARUNDELL, P.C.**

ATTORNEYS and COUNSELORS AT LAW

THE CLARENDON BUILDING

VILLAGE AT WEXFORD

POST OFFICE DRAWER 6067

HILTON HEAD ISLAND, SOUTH CAROLINA 29938

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EHRIK K. HAIGHT, JR.

ROBERT J. ARUNDELL\*

PHILIP J. RIOS

\* ALSO A MEMBER OF THE NORTH CAROLINA BAR  
MEMBER, HILTON HEAD ISLAND BAR ASSOCIATION



TELEPHONE (843) 786-8040

FACSIMILE (843) 786-3506

MHALAWFIRM.COM

MEMBER, AMERICAN BAR ASSOCIATION  
MEMBER, HHI CHAMBER OF COMMERCE

February 7, 2011

Brian McDaniel, Esquire  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, SC 29901

Re: S.C. Code Section 33-31-1602 *et. seq.* (inspection of records  
requested by members)

Dear Brian:

I am responding to your correspondence dated January 25, 2011. You are correct that we did not provide a date for inspection. Instead, for the convenience of all the parties, we sent you all records in compliance with the statute on August 4, 2010. We did not receive any communication from you taking issue with this approach. I have enclosed a copy of the August 4, 2010 enclosure letter for your convenience. It appears that you are again asking for additional accounting records outside the purview of S.C. Code Ann. §33-31-1602(b). With regard to the accounting records, again please be reminded of the limitations of this request under S.C. Code Ann. § 33-31-1620. Callawassie has already made available its most recent accounting pursuant to the statute by enclosing all records in the letter to you dated August 4, 2010.

I remain,

Yours very truly,

MINOR, HAIGHT & ARUNDELL, P.C.

Ehrick K. Haight, Jr.

Enclosure

EKHJr:pjr

cc: Brian Lasota (w/encl.)

ANSWER

---

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) FOR THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2011-CP-07-945

WILLIAM R. HOBSON,

Plaintiff,

v.

CALLAWASSIE ISLAND  
MEMBERS CLUB, INC.,

Defendant.

JENNIFER ROJANEAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

ANSWER

The Defendant, Callawassie Island Members Club, Inc., responds to the allegations of the Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegations of the Complaint not specifically admitted, qualified or explained is denied and strict proof thereof is demanded.

2. The Defendant admits the allegations contained in Paragraphs 1 and 2 of the Complaint.

3. The Defendant admits the allegations contained in Paragraph 3 of the Complaint. The Defendant would further allege that the Plaintiff has claimed that he is no longer a member of the Defendant, a position inconsistent with his allegations in the Complaint.

4. As to the allegations contained in Paragraph 4 of the Complaint, the Defendant admits only that the action has been brought pursuant to S.C. Code Ann. §15-53-10, et seq. (2005). The Defendant denies that the Plaintiff is entitled to any relief.

5. As to the allegations contained in Paragraph 5 of the Complaint, the Defendant realleges the allegations of Paragraphs 1 through 4, above, as fully as if repeated verbatim herein.

6. As to the allegations of Paragraph 6 of the Complaint, the Defendant admits only that the Plaintiff has been a member since 1988.

7. As to the allegations of Paragraph 7 of the Complaint, the Defendant admits only that the letter dated June 29, 2010 was sent. The Defendant denies that all of the information requested was for legitimate and appropriate reasons or in compliance with S.C. Code Ann. §33-31-1601, et seq. (2006).

8. As to the allegations of Paragraph 8 of the Complaint, the Defendant admits only that the letter dated July 14, 2010 was sent, the terms of which speak for themselves and reference to which is craved.

9. As to the allegations of Paragraph 9 of the Complaint, the Defendant admits only that the letter of August 4, 2010 was sent (along with enclosures), the terms of which speak for themselves and reference to which is craved.

10. As to the allegations of Paragraph 10 of the Complaint, the Defendant admits only that the letter dated January 25, 2011 was sent. Again, the Defendant denies that all of the information requested was for legitimate and appropriate reasons or in compliance with S.C. Code Ann. §33-31-1601, et seq. (2006).

11. As to the allegations of Paragraph 11 of the Complaint, the Defendant admits having provided no additional records, as the records it was required to provide had already been provided and no new request had been made. The Defendant would further allege that the letters between counsel speak for themselves, including the letter dated January 17, 2011, which was not attached to the Complaint and a copy of which is attached hereto as Exhibit "A".

12. As to the allegations of Paragraph 12 of the Complaint, the Defendant admits only that the Plaintiff, as a member, is entitled to the information required by S.C. Code Ann. §33-

31-1601, et seq. The Defendant denies that any request was made pursuant to S.C. Code Ann. §33-31-720 (2006) or that it would be applicable since there had been no applicable notice of a meeting. The Defendant would further allege that the Plaintiff was provided with the information required to be provided under Section 33-31-1601, et seq.

13. The Defendant denies the allegations contained in Paragraphs 13, 14 and 15 of the Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

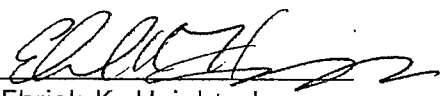
14. The Defendant realleges the allegations of Paragraphs 1 through 13, above, as fully as if repeated verbatim herein.

15. If the court finds that additional information must be disclosed (which the Defendant denies), the Defendant exercised good faith under S.C. Code Ann. §33-31-1604 (2006) by refusing some of the requests made by the Plaintiff because it had a reasonable basis to believe that they fell outside the purview of the relevant statutes.

16. The Plaintiff is not entitled to an award of attorney's fees because the Defendant exercised good faith.

WHEREFORE, having fully responded to the Complaint, the Defendant prays that the same be dismissed, with costs and attorney's fees awarded to the Defendant, and for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.

By:   
Ehrick K. Haight, Jr.  
P. O. Drawer 6067  
Hilton Head Island, SC 29938  
(843) 785-8040  
Attorneys for Plaintiff

Hilton Head Island, South Carolina  
This 20<sup>th</sup> day of May, 2011

MINOR, HAIGHT & ARUNDELL, P.C.

ATTORNEYS and COUNSELORS AT LAW

JOHN W. MINOR, JR. (1940-2003)  
EHRICK K. HAIGHT, JR.  
ROBERT J. ARUNDELL\*

THE CLARENDON BUILDING  
VILLAGE AT WEXFORD  
POST OFFICE DRAWER 6067

HILTON HEAD ISLAND, SOUTH CAROLINA 29938

TELEPHONE (843) 785-8040  
FACSIMILE (843) 785-3506  
MHALAWFIRM.COM

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\* ALSO A MEMBER OF THE NORTH CAROLINA BAR  
MEMBER, HILTON HEAD ISLAND BAR ASSOCIATION

MEMBER, AMERICAN BAR ASSOCIATION  
MEMBER, HHI CHAMBER OF COMMERCE

January 17, 2011

Brian McDaniel, Esquire  
Law Office of Brian McDaniel, LLC  
Post Office Box 2085  
Beaufort, SC 29901

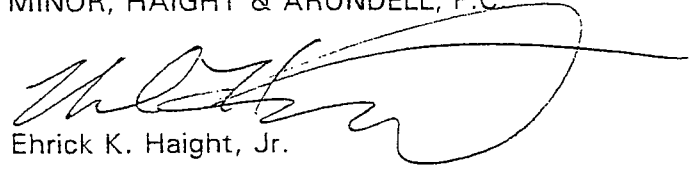
Re: S.C. Code Section 33-31-1602 *et. seq.* (inspection of records  
requested by members)

Dear Mr. McDaniel:

I received your voicemail message in connection with the above-referenced matter; however, the purpose of your message is unclear since you were not specific and my client sent you the records in compliance with the statute in a letter from me on August 4, 2010. You will note that additional information was provided in this same letter, a copy of which is enclosed for your convenience. Also, in response to the initial request made to Brian Lasota in your correspondence dated June 29, 2010, I sent you correspondence on July 14, 2010, a copy of which is also enclosed, where I indicated that the records would be made available for your inspection and copying at a proposed date. Arrangements to inspect were never made so for the convenience of all of the parties, my client compiled the records which were enclosed in the letter sent to you on August 4, 2010. If you have a new request, please let me know the specifics of that request.

I remain,

Yours very truly,  
MINOR, HAIGHT & ARUNDELL, P.C.

  
Ehrick K. Haight, Jr.

Enclosures  
EKHJr:pjr  
cc: Brian Lasota (w/encl.)

DEFENDANT'S MOTION FOR  
RECONSIDERATION PURSUANT  
TO RULE 59 SCRPC

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STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

WILLIAM R. HOBSON, )  
Plaintiff, )

v. )

CALLAWASSIE ISLAND )  
MEMBERS CLUB, INC., )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2011-CP-07-945

DEFENDANT'S NOTICE OF MOTION AND  
MOTION FOR RECONSIDERATION  
PURSUANT TO RULE 59, S.C.R.C.

2012 APR 13 PM 1:20  
BRIAN ROSENEAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

TO: BRIAN MCDANIEL, ESQUIRE, ATTORNEY FOR PLAINTIFF, WILLIAM R. HOBSON:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, on the tenth (10<sup>th</sup>) day after the date of the service of this motion or as soon thereafter as the parties may agree or the Court may provide, will move before the Honorable Marvin H. Dukes, III, Beaufort County Master-In-Equity, for an Order altering or amending the prior Order signed by him, on or about March 29, 2012, and received by the undersigned on April 2, 2012 (hereinafter referred to as the "Order") pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. A copy of the Order is attached hereto as Exhibit "A."

As grounds for requesting that the Order be altered or amended, CIMC respectfully submits the following:

- 1) The Order requires the production of information not maintained in the ordinary course of CIMC's business and said information does not constitute "accounting records" of the corporation as that term is defined in S.C. Code Ann. §33-31-1601, et seq.

In the Conclusions of Law set forth in Paragraph 7 of the Order, this Court determined "(t)hat the records requested by the Plaintiff are part of the accounting records of the corporation as identified in S.C. Code Ann. §33-31-1602(b)(2). A discussion of what accounting records a corporation must keep is found in the Official Comments to Section 16.01, Paragraph 2, entitled "Accounting Records". Specifically, accounting records are the "current accounting records" (emphasis added) of the corporation. The section does not require that the records be kept permanently or address the question of how long accounting records should be kept.

The Order apparently disregards the foregoing statutory language and specifically finds Plaintiff is entitled to receive extensive historical data including the itemized accounting records of CIMC since 2001; together with the accounting of its' "Resale List" from that date forward. CIMC continues to assert it is not required to maintain or produce any itemized accounting records other than its current accounting records under S.C. Code Ann. §33-31-1602(b)(2). Furthermore, CIMC maintains that the "Resale List" is not an accounting record as that term is contemplated in the Official Comments to S.C. Code Ann. §33-31-1601. CIMC produced significant testimony by affidavit (copies of which are attached hereto as Exhibit "B" and "C"), that it does not maintain such records in the ordinary course of its business and that to reconstruct such records for the entirety of the period requested would require resort to files and information not necessarily in its possession or control. Said testimony remains uncontroverted in the record.

The Official Comments intend to confine “current accounting records” to such records as may be required to produce “financial statements”. The Official Comments even go so far as to limit the scope of such records by not requiring them to be so complete as to conform with generally accepted accounting principles. Given the plain intention of the legislature, to define “current accounting records” as those records necessary for the compilation of a financial statement, the Order is overly broad in both scope and subject matter and should be amended accordingly.

2. The Order is incomplete in that it fails to address the costs of producing the information despite the fact that the only testimony presented on this issue indicated such costs would be substantial.

The Order specifically holds in abeyance the issue of payment for costs of production and the Plaintiff’s request for attorney’s fees, despite the provisions of S.C. Code Ann. §33-31-1603(c) that allow CIMC to “impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided...”. As CIMC has direct statutory authority for charging to produce its records, the Order’s failure to address the cost of compliance places an undue burden on CIMC. The only testimony presented on this issue indicated that CIMC would incur substantial expenses compiling and producing the records as requested. Therefore, the Order should direct the Plaintiff to pay all expenses incurred in complying with its terms.

As for the issue of attorney’s fees, CIMC incorporates the arguments previously made in Defendant’s Supplemental Memorandum of Law in Opposition to Plaintiff’s Request for Attorney’s Fees filed with this Court on January 30, 2012. Attorney’s fees are not appropriate when (a) they are

not authorized by the relevant statutory authority relied upon; (b) the Plaintiff failed to cite any other statutory or common law authority in support of his claim that he is entitled to the materials beyond those mandated by S.C. Code Ann. §33-31-1602; (c) CIMC timely, in good faith, and at no charge, provided all the records required thereby; and (d) the additional materials requested are clearly outside the scope of those required to be maintained by a corporation under S.C. Code Ann. §33-31-1601 and will require extensive time and expense to compile.

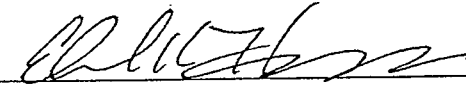
3. The Order is incomplete in that it fails to address the confidentiality of the billing records, which records contain the sensitive third party financial data of other members who are not parties and who have not consented to the disclosure thereof.

A Confidentiality Order, in a form approved by Plaintiff's counsel, protecting, among other things, the sensitive accounting information of CIMC's members to be delivered to the Plaintiff, was tendered to this Court contemporaneously with the submission of the Order. Of necessity, it contained a blank space for the insertion of the date of the signing of the Order. The Confidentiality Order has yet to be signed, however records must be produced within ten (10) days under the Order.

Based on the foregoing, CIMC respectfully requests that the Order be altered or amended to a) stipulate that information not maintained in the ordinary course of CIMC's business and/or maintained in the form requested by the Plaintiff is excluded from the Order; b) require Plaintiff to pay the cost of compiling the records deemed "accounting records" of CIMC; and c) include the execution of the Confidentiality Order previously submitted to this Court and consented to by counsel for Plaintiff.

Counsel certifies that, pursuant to Rule 11(a), SCRPC, consultation with Plaintiff's counsel could not be timely held prior to the filing of this Motion or is not required.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

Ehrick K. Haight, Jr.

Stacey S. Collins

P.O. Drawer 6067

Hilton Head Island, SC 29938

(843) 785-8040

Attorneys for Defendant

Hilton Head Island, South Carolina

This 11<sup>th</sup> day of April, 2012.

## DEFENDANT'S MEMORANDUM

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|                         |   |                                     |
|-------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS        |
|                         | ) | FOR THE FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BEAUFORT      | ) | CIVIL ACTION NO. 2011-CP-07-945     |
|                         | ) |                                     |
| WILLIAM R. HOBSON,      | ) |                                     |
|                         | ) |                                     |
| Plaintiff,              | ) |                                     |
|                         | ) | DEFENDANT'S MEMORANDUM OF LAW       |
| v.                      | ) |                                     |
|                         | ) |                                     |
| CALLAWASSIE ISLAND      | ) |                                     |
| MEMBERS CLUB, INC.,     | ) |                                     |
|                         | ) |                                     |
| Defendant.              | ) |                                     |
|                         | ) |                                     |

2011 DEC 19 PM 1:26  
 JERRI ANN ROSS  
 BEAUFORT COUNTY, S.C.  
 CLERK OF COURT

THIS MEMORANDUM is offered by Defendant, Callawassie Island Members Club, Inc. (hereinafter referred to as "CIMC"), in opposition to the Declaratory Judgment Action filed by the Plaintiff, William R. Hobson (hereinafter "Plaintiff"), in the above-styled action.

STATEMENT OF THE CASE

On June 29, 2010, the Plaintiff, by and through his counsel, made written demand for certain records of CIMC, a complete list of which is attached hereto as Exhibit "A" (hereinafter referred to as the "Requested Records"). As CIMC was already in litigation with other members represented by Plaintiff's counsel, it forwarded the demand letter to the undersigned for reply. The letter was received on July 6, 2010 and responded to by letter dated July 14, 2010. On August 4, 2010, the undersigned delivered to Plaintiff's counsel all documentation CIMC, in good faith, determined was required under S.C. Code Ann. §33-31-1601 et seq. (hereinafter, referred to as the "Delivered Documents").

Plaintiff filed its Complaint on February 25, 2011, asserting that CIMC's response to his request was deficient and requesting an order directing it to produce all of the Requested Records.

Plaintiff also alleged that he is entitled to reimbursement for his costs and attorney's fees pursuant to S.C. Code Ann. §33-31-720 and/or §15-53-100. CIMC timely filed its Answer on May 23, 2011 claiming that it had fully complied with the relevant statutory provisions by tendering the Delivered Documents. CIMC further claimed that it should not be required to reimburse the Plaintiff for its costs and attorney's fees, as it had acted in good faith by providing those items it reasonably believed were mandated by law.

### STANDARD OF REVIEW

This Court is asked to determine whether CIMC has complied with the provisions of S. C. Code Ann. §33-31-1601 et seq. As the question is one of law, the authority for such review is found in the Declaratory Judgment Act at S.C. Code Ann. §15-53-30. For a cause of action to exist under the Declaratory Judgment Act, there must be a justiciable controversy where there is a concrete issue and a definite assertion of legal rights and a legal duty which is denied by the adverse party. Dantzler v. Callison, 227 S.C. 317, 88 S.E.2d 64 (S.C. 1955). A trial court may award costs in declaratory judgment actions as may seem equitable and just. South Carolina Elec. & Gas Co. v. Hartough, 375 S.C. 541, 654 S.E.2d 87 (Ct.App. 2007).

### ARGUMENT

CAN AN INDIVIDUAL, WHO CLAIMS TO HAVE "RESIGNED" HIS MEMBERSHIP IN A PRIVATE, NOT-FOR-PROFIT, CLUB, UTILIZE CERTAIN STATUTORY PROVISIONS INTENDED FOR THE BENEFIT AND PROTECTION OF ITS' MEMBERS TO DEMAND DISCLOSURE OF RECORDS, OVER AND ABOVE

THOSE MANDATED BY LAW, FOR THE PURPOSE OF INCITING OTHERS TO JOIN  
IN LITIGATION AND/OR RESIGN THEIR MEMBERSHIPS WITH THE INTENT OF  
DESTROYING THE CLUB?

The Plaintiff alleges (1) that he has a statutory right to inspect and copy certain records of CIMC, (2) that CIMC has a legal duty to supply such records; and (3) that CIMC has failed to do so. CIMC's response to the foregoing is that the Plaintiff, by his own admission has "resigned" his membership (see Exhibit "B") and has no right to inspect and copy its records. CIMC, however, denies the "resignation" is proper and has provided all of the documentation required by the relevant statutory authority relied upon by the Plaintiff.

For many months, the Plaintiff has individually, and through his counsel, pursued what can only be construed as a campaign for the termination of CIMC. He has, as evidenced by various email transmissions (an example of which is attached hereto as Exhibit "C"), solicited the membership of CIMC to join him in filing suit against the organization in an attempt to do away with the mandatory membership requirements that sustain the amenities and services that make CIMC unique.

Nevertheless, CIMC has, promptly and in good faith, delivered all of the documentation mandated by S.C. Code Ann. §33-31-1602. That provision establishes that a member has a right to inspect, without the showing of good faith or proper purpose, the following documents: articles of incorporation; bylaws; resolutions; minutes of meetings of members for the past three (3) years; written communications to members generally for the past three (3) years; a list of directors and

officers; and the most recent reports to the Secretary of State.<sup>1</sup> Copies of these documents have, undisputedly, been provided to the Plaintiff, free of charge.<sup>2</sup>

The statute makes provision for additional inspection rights in S.C. Code Ann. §33-31-1602(b) 1-3, to wit: excerpts from records required to be maintained, accounting records and the membership list. Plaintiff's contention that CIMC has failed to comply with S.C. Code Ann. §33-31-1602(b) 1-3 and S.C. Code Ann. §33-31-720 is a non sequitur, since CIMC has provided, free of charge, a membership list in the form of its Membership Directory and its accounting records for 2008 and 2009 (the most recent two years available at the time of the request). There are no other records CIMC is bound by law to maintain which have not been provided to the Plaintiff.

CIMC's willingness to provide these supplemental materials is exemplary of its good faith compliance with the statute, given its position that the Plaintiff has not acted in good faith or for a proper purpose in demanding the Requested Documents, the bulk of which go well beyond those statutorily required. In fact, the Plaintiff has gone so far as to seek the personal accounting records for a host of members that opposing counsel has yet to even identify as his clients.

S.C. Code Ann. §33-31-1605 specifically imposes limitations on the use of the membership list, which arguably have been violated by the Plaintiff. The Official Comment to this section states: "A membership list therefore cannot be used by members who in good faith (*emphasis added*) believes the organization has strayed from its purposes and want to solicit the members to contribute to a competitive organization..." Here, the Plaintiff has used the membership list to solicit members

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<sup>1</sup>See S.C. Code Ann. §33-31-1601(e)1-7 for a more detailed description of the foregoing.

<sup>2</sup>See S.C. Code Ann. §33-31-1603(c)-granting right to charge a reasonable charge for copies

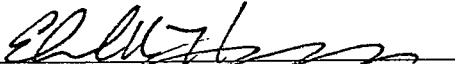
to join him in funding litigation, the objective of which can only be to force the termination, or substantive dissolution and reorganization of CIMC.

That the Plaintiff feels he is entitled to recoup his attorney's fees and costs for his gross overreaching and misapplication of the law is absurd. Given that CIMC has willingly, timely, and completely provided the mandatory documentation, free of charge, even in the face of legitimate concerns regarding the good faith and proper purpose of the Plaintiff, his request must be denied. Further, equity demands that CIMC should be reimbursed for its costs and attorney's fees in responding to these allegations, the authority for which can be found at S.C. Code Ann. §15-53-100, which provides: "In any proceeding under this chapter the court may make such award of costs as may seem equitable and just." Additionally, this Court has historically determined that when a statute provides for attorney's fees for the Plaintiff, as is the case with S.C. Code Ann. §33-31-1604, the same courtesy is extended to the Defendant in the event it is determined no violation occurred.

#### CONCLUSION

Based upon the foregoing discussion, the Defendant, CIMC, respectfully requests that this Court enter an order declaring that CIMC has fully complied with the disclosure requirements of S.C. Ann. §33-31-1601 et seq. and further directing Plaintiff to reimburse CIMC for its costs and attorney's fees in defending this action.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

Ehrick K. Haight, Jr.

Stacey S. Collins

P.O. Drawer 6067

Hilton Head Island, SC 29938

(843) 785-8040

Attorneys for Defendant

Hilton Head Island, South Carolina

This 16<sup>th</sup> day of December, 2011.



Law Office of  
BRIAN McDANIEL, LLC

bmcDaniel@attorneymcdaniel.com

VIA CERTIFIED US MAIL

June 29, 2010

The Callawassie Island Members Club, Inc.  
General Manager: Brian Lasota  
22 Callawassie Club Drive,  
Callawassie Island, South Carolina 29909

Re: Club Membership/ accounting and review/ SC Code §33-31-1602 et seq.

Dear Mr. Lasota or other Managing Agent:

I have been retained to represent the following CIMC members and households, and others (who, for fear of potential social reprisals, prefer to remain anonymous at this time) in regards to their request for information related to their memberships in the Callawassie Island Members Club, Inc. (CIMC):

*Applegate, Aulton, Carpenter, Elias, Hobson, and Lambert*

As you are aware, certain members, including some of my clients hold, or have held, two or more memberships in the Callawassie Island Members Club.

Due to the significant financial burden these memberships impose upon my clients under the current enforcement, CIMC's decision to file suit against selected members, and what appears to be some difference in member treatment, my clients have raised several questions regarding Club management and have retained me to help get these questions resolved. The specific requests follow, but in general the concerns are relative to the basis on which members are to be charged monthly dues, how memberships terminate and/or transfer and what policies are being followed with regard to similarly situated members and the collection of delinquent dues and fees.

As members of this nonprofit corporation, my clients are entitled to access to many of the records and accounting of CIMC under South Carolina law. Furthermore, in this particular case, my clients and other multiple membership owners have need of the requested information in order to evaluate the actions being taken against them with regard to dues being charged to them, their rights as equity members, and to investigate concerns they have of disparate treatment of members, specifically concerns that multiple membership holders are not being treated uniformly and not in compliance with the Bylaws, Membership Plan and Articles of the Club. Therefore, I am hereby demanding

June 29, 2010

Re: Callawassie Island Members Club

inspection and a copy of, and/or opportunity to copy, the following records and I request a response to the three questions listed thereafter:

I. Documents and Records Requested:

1. A list of all past and current CIMC members (names and last known addresses) that have held multiple memberships at any time and the detailed monthly accounting records related to said memberships.
2. Copies of all monthly billing statements and/or records of payments to and/or from the following member entities:

Anderson, Milburn M (Mike) & Julie  
Bailey, Paul  
Brouse, John S & Barbara B  
D&S Tilton LLC  
Dunn, Thomas F  
Evans, Hollace Ann  
George, Philip M.  
Gillespie, Geraldine  
Hawkins, William  
Henley, David & Ann  
Ingram, Russell  
Kirkwood, David & Victoria  
Mellen & Tilton LLC  
Norwood, Robert & Karen  
Oelkers, Jeffrey & Jane  
Reid, John & Patricia  
Rice, Willie Joe  
Roessing, Charles & Lesley  
Stignatto, Lori Ann  
Terwilliger, Ronald & Patricia  
Tilton Builders  
Toburen, William & Margaret  
Weis, Barbara  
Wurtzbacher, Terry & Patti

3. A copy of the articles or restated articles and all amendments to them currently in effect; or direction as to where these can be found online, if so available online

June 29, 2010

Re: Callawassie Island Members Club

4. The Club bylaws or restated bylaws and all amendments to them currently in effect or direction as to where these can be found online, if so available online
5. All resolutions adopted by the Board of directors relating to the characteristics, qualifications, rights, limitations, and obligations, of members and whether those relate to Golf memberships or Social memberships or direction as to where these can be found online, if so available online;
6. The minutes of all meetings of members and records of all actions approved by the members for the past three years or direction as to where these can be found online, if so available online;
7. All written communications to members generally within the last three years including financial statements furnished for the past three years under SC Code § 33-31-1620;
8. A list of the names and business or home address of its current directors and officers of CIMC;
9. CIMC's most recent report of each type required to be filed by it with the Secretary of State under Chapter 31 of Title 33 of the SC Code of Laws;
10. Accounting records of CIMC: To include accounting of membership dues received as itemized by member since December 1, 2001;
11. The membership list indicating the number and type of memberships owned by each member for each year since formation of the Club;
12. A complete accounting of the Resale List from formation of CIMC to the current date, including but not limited to, an itemization by year, of all memberships sold, to whom those membership were sold and amount of all such sales or transfers;
13. A copy of all settlement documents or resale documents for all memberships sold, resigned or terminated for any reason since December 1, 2001;

June 29, 2010

Re: Callawassie Island Members Club

14. All communications with any member(s) that deal with resignation, termination, or settlement of their membership for the past 10 years.
15. A list of all persons known to the CIMC that own property on Callawassie Island that do not own a membership to the CIMC club.
16. A copy of all communication, whether electronic or hard-copy, to all members classified as "Delinquent" during the period such member was classified as Delinquent by Club management.

II. Questions Submitted:

- A. Is CIMC aware of any property owners on Callawassie Island, who do NOT currently hold a membership with CIMC? If so, please list each and explain why such person(s) are not current membership holders and whether CIMC is taking any action to require said person to obtain a membership.
- B. Does CIMC allow any members to own membership for which they permit reduced or no monthly charges other than as specified by the current (9/1/07) and published CIMC Membership Plan? If so, please specify the name(s) of those members and the reasons for such exception.
- C. Has CIMC management ever permitted members to resign their memberships in contravention to the procedures and processes described in the current (9/1/07) and published Membership Plan or by some method not specified therein? If so, please furnish a list of those members so released, the dates of the termination of the membership and the circumstances associated with such release.

If you believe any of the above records requested are not subject to disclosure for any reason, including but not limited to, if the documents were provided subject to a confidentiality agreement, please provide a log of all documents not provided with a description sufficient to advise my office of the basic subject and parties involved in said communications.

These above demanded records and copies are to be provided by July 13, 2010 or, if access to the records is going to be provided in lieu of copies, please notify my office within 7 days of receipt of this letter as to when and where said records will be made available for copying.

Page 5  
June 29, 2010  
Re: Callawassie Island Members Club

I look forward to receiving your response.

Sincerely,

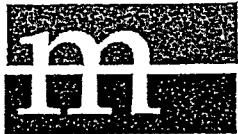
Law Office of Brian McDaniel, LLC

A handwritten signature in cursive script, appearing to read "Brian McDaniel".

Brian McDaniel

BDM/tm

cc:



Law Office of  
BRIAN McDANIEL, LLC

bmcddaniel@attorneymcdaniel.com

VIA US MAIL

January 26, 2011

Ehrick K. Haight, Jr. Esquire  
Minor, Haight & Arundell, P.C.  
P.O. Drawer 6067  
Hilton Head Island, SC 29938

**RE: CIMC Membership # 2582**

Dear Ehrick:

As you may recall, I have been retained to represent Mr. And Mrs. William Hobson (hereinafter the "Hobsons"), in certain matters pertaining to their ownership of equity shares in the Callawassie Island Members Club, Inc. (hereinafter "CIMC" or the "Club"). The Hobsons purchased the equity membership that is the subject of this letter, reference number 2582, in the Club in 1988 in reliance on the terms and conditions offered to them at the time and as an inducement to proceed with their purchase. Subsequently, the Hobsons resigned said membership in 2003 when it was placed on the Club's "Resale List". Although not required to do so under the Club's Plan of Membership, the Hobsons continued to pay monthly and special fees on that membership, voluntarily, as they continued to utilize Club facilities, with the full knowledge and acceptance of Club management. In compliance with those terms and conditions, as well as section 5.3 of the current published CIMC Plan of Membership, the Hobsons hereby serve notice to the Club that they are terminating that period of voluntary payments. They will no longer utilize Club facilities, effective 1/31/11 and will not be held responsible for any future charges related to their continued ownership of the referenced membership.

Monthly Club charges have been paid by the Hobsons through 1/31/11. Payment for all incidental charges incurred in the month of January, if any, by the Hobsons will be rendered to the Club upon receipt of an accounting from the Club for those items.

As previously noted, it is a matter of record that the Hobsons placed the subject membership on the Club-controlled and managed "Resale List" in 2003. Accordingly, it is our understanding and expectation that, upon the eventual sale of their membership from said list, the Hobsons will receive from CIMC the greater sum of either 80% of whatever the membership should eventually sell for, or \$12,000.00 (the amount the Hobsons paid for their membership in 1988). Please forward to my office information regarding the current position of the Hobson's membership on the referenced "Resale List" as well as the names of all other members whose memberships are on said list.

Any and all future correspondence, in whatever fashion, and/or communications regarding the Hobson's membership in the CIMC should be directed to my office. Thank you for your cooperation in this matter.

Most sincerely,

**Law Office of Brian McDaniel, LLC**

A handwritten signature in black ink, appearing to read "Brian McDaniel". The signature is fluid and cursive, with the first name "Brian" and last name "McDaniel" clearly distinguishable.

Brian McDaniel

BDM/tm

EXHIBIT C

— Original Message —

From: Melinda Welker  
To: [deluca41@embarqmail.com](mailto:deluca41@embarqmail.com) ; Phil Kilian ; [ghswitzer@embarqmail.com](mailto:ghswitzer@embarqmail.com) ; [hano2@charter.net](mailto:hano2@charter.net) ;  
[captainjack@coda5.com](mailto:captainjack@coda5.com) ; [brian.lasota](mailto:brian.lasota) ; Marian Parrotta ; [rlbcab@embarqmail.com](mailto:rlbcab@embarqmail.com) ; [auburn5186@aol.com](mailto:auburn5186@aol.com)  
Sent: Monday, May 02, 2011 4:27 PM  
Subject: from Melinda Welker

Dear CIMC Board Members and CIMC GM,

I just received this e-mail (see below), which is part of a mass e-mail sent to all Callawassie residents. I am forwarding it to you, in the event you were not included on the mailing list. It upsets me to receive something like this, as I don't believe all the information is accurate, he isn't using the channels provided to pursue his concerns, and, if spread around, this very e-mail, right or wrong, puts Callawassie in a bad light.

Last year, a letter was put in all mail tubes (by an anonymous person) making a comparison of houses sold on Callawassie and like communities. What it didn't show was the percentage of homes those figures represented in each locale, so it appeared some communities were selling better than Callawassie, when in fact, they were not. This letter was never challenged.

Can the Board please review this current e-mail and address what is fact and/or fiction?

Thank you and best regards,  
Melinda Welker

---

From: [wrhobson@aol.com](mailto:wrhobson@aol.com)  
To: [wrhobson@aol.com](mailto:wrhobson@aol.com)  
Subject: Callawassie Property Values, a Disturbing Trend  
Date: Mon, 2 May 2011 14:14:43 -0400

To: All Callawassie Island Property Owners

I am reaching out to you and providing this information because you (or your heirs) will, in all likelihood, want to sell your Callawassie property at some point in the future. You, like my wife and I, may have even fantasized about selling it for more than you paid for it. Sadly, after 7 years of trying, we have discovered that doesn't seem to be even remotely possible for reasons that may surprise you and that don't seem to be related to the national real estate market disruption. If you have no interest in the amount you might eventually receive, or how long your Callawassie property might linger on the market when you do attempt to sell, or just feel that crossing your fingers and hoping for the best is a more effective way to enhance your property value, please just stop reading and let me know (without discussing my parentage please). Your name will promptly be removed from my distribution list. There is, however, perhaps something that can be done about this problem for those willing to put forth some effort. While other local communities seem to be participating in the real estate recovery, Callawassie listings are stagnating.

Through 4/24/11 66 homes have sold so far this year in similar area communities, only two (foreclosure sales) were on Callawassie (out of 63 currently on the market). There is over \$39 million dollars of Callawassie property listed for sale as of 4/24/2011. Lot values have completely tanked and only foreclosure homes seem to be attractive to buyers. Many people have just simply abandoned hope of ever selling their Callawassie property, let alone at a profit. The two foreclosure homes sold for a total of 48% of their county-assessed value. Several Callawassie homes are available for well under \$200,000 and even they are, tragically, not selling. If, as we've always been told, future values are affected by recent "comparable" sales, these facts (easily confirmed by studying [www.Realtor.com](http://www.Realtor.com) web pages) will, in all likelihood, continue to drag down our values at an alarming pace, if left unchecked.

A study of lot sales in the surrounding area for 2010 showed that the average improved lot in similar communities without mandatory membership restrictions sold for \$50,200. In 2010 the average lot sale (there were 4) on Callawassie was \$12k. A Callawassie lot sold for \$1 earlier this year and more are available for the same price (and not selling). I am at my wits end on how to "unload" what has become the only bad real estate investment I have made in my 64 years on this planet. Our lot was purchased for \$30k 23 years ago, is valued by the county at \$71k and is currently listed for \$2,500. During the January 2011 CIPOA board meeting (where I encouraged the Board to consider re-examining the mandatory membership provision, to no avail), I even attempted to give my lot away, free, to our POA (they refused it). In 2008 a professional economist study was commissioned by the law firm of Nelson Mullins of Charleston SC on behalf of the Dataw Island property owners. The study analyzed thirteen years of property sales (1995-2008) and concluded that communities imposing a mandatory club membership provision on property acquisitions (like Dataw and Callawassie) experienced a **22% reduction** in like-to-like property yields. The study also showed the devaluation began with the 2001 inception of the mandatory membership provisions enacted by both communities.

I may not be the sharpest pencil in the bunch, but even I can see that we are being forced to fall on our swords (financially) to help subsidize the survival of a business that apparently cannot exist on its own merits. It just couldn't be any clearer that the mandatory membership provision we approved back in 2001, and that was promoted as a means of enhancing our property values, has instead back-fired and created a sales deterrent.

Something has to be done about this problem and CIPOA (who is supposed to represent the interests of the property owners, not the Club) seems unwilling to even consider a voluntary modification of the covenants to reverse this experiment-gone-bad. Rather, they seem to believe that changing the firm name on the business cards of the real estate sales staff will stop this slow-motion train wreck. It seems to me that approach simply represents delusional thinking and even more of our money will be departing as we are asked to fund "marketing" efforts that ultimately benefit the Club in the form of membership transfer fees and not the majority of the contributing property owners.

I have recently learned that some Dataw property owners are attempting to have their covenant's 2001 mandatory membership amendment rescinded by the Beaufort County court. Three separate lawsuits challenging the validity of the amendment process and the actions of the Dataw POA directors were filed in December of last year. After meeting recently with the firm representing the Dataw property owners, and apparently faced with no other viable alternative, I am encouraged that such a process might be possible here at Callawassie.

There is often strength in numbers. As of 4/24/11 there are over 150 Callawassie properties being offered for sale with more waiting in the wings. If enough Callawassie property owners pool their resources, it may be possible to capitalize somewhat on the time and money already invested by the Dataw Island property owners and their attorneys and file our own action to have our amendment rescinded for those participating.

Accurate costs to fund this challenge are unknown at this time, but could be considerably less than the Dataw action since so much of their complaint is a carbon copy of our own. The potential gains from reverting to historic or "normalized" property valuations are likely to be many multiples of any investment in this legal action. In the interest of fairness, a cost-sharing formula is being considered based on assessed value of each participant's property, as maintained by county records. Depending on how many choose to participate in the funding, the cost per owner could be relatively small. A method will be developed to ensure that only the property owners contributing to the funding will benefit directly from the action, if successful. Naturally, those property owners desiring to retain the mandatory membership anchor with their property will be able to do so simply by not signing up. It is important to understand it has always been, and will continue to be (irrespective of any future court action), the seller's option to list a membership purchase as a prerequisite to the sale of their particular property, or to price the two components as a "bundle", if they so choose. We are simply suggesting that the requirement to also purchase a membership in the CIMC should be a decision solely in the hands of the selling property owner.

While a small core group of property owners has already expressed interest in further discussing this initiative, the primary purpose of this communication is to inform you of these facts and to determine if you would be willing to receive additional information about the process as it develops. If enough property owners seem to be interested in hearing more about this issue, a meeting of interested parties is anticipated some time in the next 90 days. Unlike our Board-conducted presentations, equal podium time will be offered to those interested in presenting an opposing view of the subject. Ample notice will be provided once a local venue and date have been selected.

Obviously, I am tired of being a voiceless victim, but I realize everybody doesn't arrive at their tipping point at the same time. However, rights deemed not worth fighting for are often lost to indifference.

Please consider this matter carefully and respond with your comments as you see fit. Thank you.

Bill Hobson, wrhobson@aol.com, (843)987-0802 (Callawassie Island Property Owner for 22+ years)

PS: Apparently several Florida courts have already struck down mandatory membership provisions in communities in that state. A Seabrook Island property owner has developed a rather extensive compilation of information concerning this issue and it may be viewed at <http://seabrookisland.proboards.com/index.cgi?board=sicnews&action=display&thread=1543> and <http://www.ccfj.net/HOAartFLgolfcourses.htm>. The economist study referenced above is available for viewing at the PACER web site under case number 9:07-CV-03361-CWH.

MEMO IN OPPOSITION TO THE  
DEFENDANT'S MOTION FOR  
RECONSIDERATION

---

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

MEMO IN OPPOSITION  
TO THE DEFENDANT'S MOTION  
FOR RECONSIDERATION

COMES NOW THE PLAINTIFF William R. Hobson presents the following  
memorandum in opposition to the Defendant's Motion for Reconsideration of the  
Order of Judge Marvin Dukes, III, dated March 29, 2012.

DEFENDANT'S FIRST ARGUMENT:

I. RECORDS ORDERED ARE NOT ACCOUNTING RECORDS

In its motion the Defendant contends that the Order of this Court should be modified or narrowed on 3 separate grounds. First, the Defendant contends that the Order is overly broad and claims that the Official Comments to §33-31-1601 define "accounting records" in a manner to exclude the type required to be turned over under the current Order in that they are not "current accounting records". However, §1601 refers to the records which "A corporation *shall* maintain" (emphasis added) and § 1602 is not necessarily restrictive to only the §1601 accounting records, nor does it refer to § 1601. It is in fact perfectly reasonable that a corporation may maintain accounting records in addition to those required by §1601 and that a member of that corporation would be allowed to inspect them. Regardless, even under the terms set

forth in §1601 for “current accounting records”, as stated in Defendant’s motion, Official Comments at Section 16.01 reveals that “Section 16.01(b) does not ... address the question of how long accounting records should be kept.” Therefore, Defendant’s assertion that the Order disregards the statutory language is unpersuasive in as much there is no time frame set forth in the statute.

Defendant also contends that the Official Comment would limit “current accounting records” to records as may be required to produce “financial statements”. This misstates the Comments to §1601 and pulls language from one section of the act regarding the records that “shall” be maintained and misapplies it to another section regarding the members rights to inspection. The Comment in fact states that “appropriate records “should allow the financial statement to be prepared...”(emphasis added) but does not confine the records to those only, as argued by the Defendant.

Defendant’s argument is also refuted by the Official Comments of §1602 which in discussing the proper purposes for members to make such inspections specifically states “a request to examine records to determine whether improper transactions have occurred or a charitable trust breached states a proper purpose.” It makes no sense for this to be a proper purpose but that the Corporation would not have to turn over the records related to such transactions.

Finally, the Comments at §1601 indicate that for relatively small nonprofits with a volunteer staff the “appropriate accounting records” may be composed of checkbooks, cancelled checks and receipts. In the case of entities with significant funds, “more detailed accounting records are appropriate.” The Defendant can not deny that it is a

significantly funded corporation that would therefore be subject to the “more detailed accounting records” standard.

#### DEFENDANT’S SECOND ARGUMENT:

#### II. THE ORDER FAILS TO ADDRESS THE COSTS OF PRODUCTION

The Defendant next contends that the Order of this court should be modified to address the issue of costs. As the Court is aware this issue has been brought before the Court on several occasions. However, the primary hindrance to a full analysis of costs is that at each of the many hearings on this matter following the original trial, the Defendant has been unable to explain the location, nature, and manner in which the Ordered records are kept, therefore causing the Court to delay said ruling to allow for that information to be produced. It is the Plaintiff’s position that the Defendant’s own evasive stance on this issue not be the basis for the Court to delay or change the ruling, excepting a modification to assess costs against the Defendant for the same.

Furthermore, if the Court does seek to modify the Order, the proper modification would rely on §33-31-1604(a) which states that a Court ordered inspection such as this is “at the corporation’s expenses upon application of the member.” If not previously taken by the pleadings and in consideration of the motion of the Defendant, this memo is presented to serve as that application.

Alternatively, the Plaintiff has offered and is willing to review the records on his own and make his own copies thereby relieving the Defendant of this obligation. Or at a minimum the Plaintiff should be given the opportunity to review the records to investigate the Defendant’s claims for costs. Given the inexplicably high costs set forth by the Defendant for records that they maintain as a business, which is supposed

to be for the benefit of its members (such as the Plaintiff) requiring the Defendant to make the records available for review to the Plaintiff or assessing the costs to the Defendant would be the most appropriate Order if this matter is addressed.

DEFENDANT' S THIRD ARGUMENT:

III. THE ORDER DOES NOT ADDRESS CONFIDENTIALITY

The Defendant seeks to have the previously agreed to Confidentiality Order signed. This is not an appropriate matter for Reconsideration of the Order, but should be addressed directly or by way of motion.

**Law Office of Brian McDaniel**

  
A handwritten signature in cursive script, appearing to read "Brian McDaniel", is written over a horizontal line.

BRIAN MCDANIEL  
PO Box 2085  
Beaufort, SC 29901  
(843) 379-5117

Attorney for the Plaintiff

May 14, 2012

MEMO IN SUPPORT OF PLAINTIFF'S  
REQUEST FOR ATTORNEY'S FEES AND COSTS

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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.: 2013-CP-070945

MEMO IN SUPPORT OF  
PLAINTIFF'S REQUEST FOR  
ATTORNEY'S FEES AND COSTS

2013 AUG 29 AM 8:58  
CLERK OF COURT  
BEAUFORT COUNTY  
SOUTH CAROLINA

COMES NOW THE PLAINTIFF William R. Hobson presents the following memorandum in Support of Plaintiff's Request for Fees and Costs.

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.. (See Complaint at Para. 4). Plaintiff requests the Court award costs pursuant to S.C. Code §15-53-100 (See Complaint at Para. 15) which allows for "In any proceeding under this chapter the court may make such award of costs as may seem equitable and just." Further, at paragraph 12 of the Complaint the Plaintiff specifically alleged a right to the information arising 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 §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 case of South Carolina Electric & Gas Co., v. Hartough, 375 S.C. 541, 654 S.E.2d 87 (S.C.App. 2007) speaks directly to this issue. In that case, while the court states that “Generally, a party may not recover attorney’s fees absent a contract or statute (citing Blumberg v. Nealco, Inc. 310 S.C. 492 (1993) the court clearly goes on to establish that the pleadings only need request attorney’s fees or costs without the need to specifically plead the basis from which that right would arise. In the SCE&G case the Plaintiff (SCE&G) “did not specifically plead the contract between the parties as the basis for its claim” [for attorney’s fees], yet the award of attorney’s fees was affirmed. The court went on to state that because the Defendant was apprised that the Plaintiff would seek attorney’s fees if successful it was not necessary for the Plaintiff to specifically plead the basis for the attorney’s fees (Id at 551), only that such a basis did exist.

In the SCE&G case, just as in the current case, the action was brought as a Declaratory Judgment action in which the general request for attorney’s fees pursuant to the equitable powers of the court is sufficient notice to make the award of costs. Here, the Defendant, Callawassie Island Members Club, Inc. was fully aware of the nature of this action and the Plaintiff’s request for attorney’s fees in this action. 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 Subarticle from which such costs would rightly be ordered.

The Defendant contends that they have proven that it refused inspection by the Plaintiff in good faith and further rely on the defense provided by SC Code § 33-31-1604(d). The statute, however, requires that the refusal be proven and that it be based

upon a reasonable basis for doubt about the right of the member to inspect the records demanded. The Defendant has failed to prove any such basis for its refusal but has relied primarily upon allegations that the costs of production are the basis for its refusal to allow the inspection.

On March 28, 2013 this Court Ordered that the Defendant turn over, to the extent in its possession, custody or control, the itemized accounting since December 2001 of all multiple membership holders with the club, including those specifically listed by Plaintiff, and an accounting of the Resale List and those memberships sold, resigned or terminated since December 2001. These were the documents and information requested by the Plaintiff in his letter of January 25, 2011 and they are records that a nonprofit equity club should be able to obtain. 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 these records. Further, the Defendant's conduct in this litigation has evidenced a refusal to investigate or participate in the proceedings in good faith. As a result the Plaintiff has had to seek assistance from the court such that the Court has had to conduct hearings or telephone conferences on five separate occasions. In several of the hearings it was clear that the Defendant was not investigating nor making any reasonable attempt to locate, collect or comply with the attempts of the Court to determine how the information requested was kept by the Defendant. Each step required the Plaintiff to take unnecessary and expensive steps to force the participation of the Defendant.

Furthermore, the information that has been finally provided is mostly material not requested by the Plaintiff in this matter. In fact, by the Plaintiff's calculation, the

Defendant produced 851 pages of documents pursuant to the interim Order, of which only 165 of those pages pertain to the requested accounting of Club membership records. In review of the items finally provided, the Defendant has either lost or failed to provide many of the records Ordered, such that the Plaintiff is left to assume that those other membership records are not in their possession or control.

For all of these reasons and as set forth in the hearing on this matter the Plaintiff requests that he be awarded costs and fees as requested in the Complaint in this case.

**Law Office of Brian McDaniel**



**BRIAN MCDANIEL**

PO Box 2085

Beaufort, SC 29901

(843) 379-5117

Attorney for the Plaintiff

August 28, 2013

## AFFIDAVIT OF CRAIG SIMONSON

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

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2011-CP-07-945

AFFIDAVIT OF CRAIG SIMONSON

2012 JAN 26 PM 1:52  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

PERSONALLY appeared before the undersigned Notary Public Craig Simonson, the acting Chief Financial Officer of Callawassie Island Members Club (hereinafter, "CIMC") Defendant in the above-captioned matter and President of Phoenix Financial Services, LLC, a South Carolina Limited Liability Company contracted by CIMC for the handling of its accounting records and related financial matters, who having first been duly sworn, deposes and says as follows:

That as the acting Chief Financial Officer of CIMC, he is familiar with the official records of CIMC, which are the subject of this action, and that he has reviewed said records, as they are kept in the ordinary course of business, in response to Plaintiff's request for (A) itemized accounting records since December 1, 2001 for all multiple ownership holders within CIMC including those individuals identified in Item #2 of the Plaintiff's letter dated June 29, 2010; and (B) an accounting of the "Resale List" as well as those memberships sold, resigned or terminated for any reason since December 1, 2001.

That based upon the foregoing and the official records of CIMC in his possession, the Deponent is informed and verily believes that:

WITH RESPECT TO ITEM (A) ABOVE

- (1) That CIMC maintains accounting records for all of its members, however, such records do not indicate whether or not a given member owns more than one membership. In order to respond to Plaintiff's request, detailed research will need to be conducted in order to construct a complete history for each and every member, past and present, for the time period requested.
- (2) That the Deponent anticipates that it will take sixty (60) hours to create the itemized accounting requested by Plaintiff.
- (3) That the cost of creating such itemized accounting records is estimated to be Four Thousand Five Hundred and No/100 (\$4,500.00) Dollars based on Deponent's hourly rate of Seventy-Five and No/100 (\$75.00) Dollars per hour.
- (4) That CIMC will incur copy charges for reproducing the items identified in Item (A) above in the estimated amount of One Hundred and No/100 (\$100.00) Dollars.

WITH RESPECT TO ITEM (B) ABOVE

- (5) That in early 2005 the Developer of Callawassie Island, Callawassie Island Company, L.P. (hereinafter, the "Developer"), transferred the management of the real estate brokerage operation to the Callawassie Island Property Owners Association (hereinafter, "CIPOA"). Prior to that time, the Developer maintained the records requested by the Plaintiff in Item B above. That after a diligent search of the records available to Deponent, he is unable to ascertain whether the records in his possession are complete for the period of time prior to said transfer.
- (6) That subsequent to said transfer from the Developer, the requested records were jointly managed by CIOA and CIMC. That the records identified in Item (B) above, to the extent

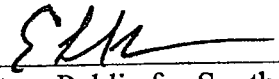
they exist, were maintained by various membership coordinators and sales agents.

- (7) That upon diligent search of the records in Deponent's possession and upon further inquiry directed to current or former staff and, to the extent available, to the various membership coordinators, as well as various sales agent(s), the records identified in Item (B) above (to the extent they exist), will take approximately Two Hundred (200) hours to locate, compile and process.
- (8) That upon Deponent's information and belief, the process of culling through said records will require the examination of between Two Hundred Fifty (250) and Three Hundred (300) real estate transactions for the period requested.
- (9) That the process of compiling these records requires extensive collection efforts (including retrieval of same from third party custodians); verification of sales data; and cross reference with CIMC's membership records; the conduction of which require the skills and requisite knowledge of Deponent, his accounting staff and other CIMC management representatives.
- (10) That the cost of preparing said records is estimated to be Fifteen Thousand and No/100 (\$15,000.00) Dollars based on Deponent's hourly rate of Seventy-Five and No/100 (\$75.00) Dollars per hour.
- (11) That in addition to the costs for preparing such records, CIMC will incur copy charges for reproducing the items identified in Item (B) above in the estimated amount of Five Hundred and No/100 (\$500.00) Dollars.
- (12) That the total cost to locate, compile and reproduce the requested records is Twenty Thousand One Hundred and No/100 (\$20,100.00) Dollars.

FURTHER DEPONENT SAYETH NOT.

  
\_\_\_\_\_  
Craig Simonson, as "Acting" Chief  
Financial Officer of Callawassie  
Island Members Club

SWORN TO AND SUBSCRIBED BEFORE me  
this 11<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission expires: My Commission Expires  
February 7, 2017

SUPPLEMENTAL AFFIDAVIT OF  
CRAIG SIMONSON

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|                         |   |                                 |
|-------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF                 |
|                         | ) | COMMON PLEAS                    |
|                         | ) | FOR THE FOURTEENTH              |
| JUDICIAL CIRCUIT        | ) |                                 |
| COUNTY OF BEAUFORT      | ) | CIVIL ACTION NO. 2011-CP-07-945 |
| WILLIAM R. HOBSON,      | ) |                                 |
|                         | ) |                                 |
| Plaintiff,              | ) | SUPPLEMENTAL AFFIDAVIT OF       |
|                         | ) | CRAIG SIMONSON                  |
| v.                      | ) |                                 |
|                         | ) |                                 |
| CALLAWASSIE ISLAND      | ) |                                 |
| MEMBERS CLUB, INC.      | ) |                                 |
|                         | ) |                                 |
| Defendants.             | ) |                                 |

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PERSONALLY appeared before the undersigned Notary Public Craig Simonson, the acting Chief Financial Officer of Callawassie Island Members Club (hereinafter, "CIMC") Defendant in the above-captioned matter and President of Phoenix Financial Services, LLC, a South Carolina Limited Liability Company contracted by CIMC for the handling of its accounting records and related financial matters, who having first been duly sworn, deposes and says as follows:

(1) That this Supplemental Affidavit is given for the purpose of clarifying and elaborating upon the testimony reflected in Deponent's initial affidavit dated January 11, 2012 in response to questions raised by the Hon. Marvin H. Dukes, III at that certain telephonic hearing held on January 12, 2012.

WITH RESPECT TO CIMC'S "RESALE LIST"

(2) That the master resale list, as it is presently maintained, reflects all membership interests

currently available for sale and that said resale list exists in an electronic format.

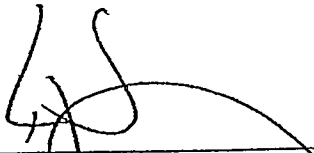
- (3) That the resale list is presently maintained by the membership director who is responsible for adding or subtracting membership interests as they are listed or sold. It is the responsibility of the members to notify CIMC when a sale occurs or when they wish to add or remove their membership from the resale list. Said requests are typically made verbally by the member.
- (4) That the resale list is maintained as a dynamic inventory list and does not contain historical data reflecting past transactions. To the best of Deponent's knowledge and belief, the historical data required to produce an accurate record of all membership sales for the period in question, must be obtained by reference to closing documents, many of which are not in CIMC's possession and control, as was previously stated in Deponent's initial affidavit.
- (5) That upon information and belief, CIMC does not maintain a ledger or other record of resales other than the current electronic version of its "resale list".
- (6) That Deponent's initial estimate for creating the historical record requested remains Two Hundred (200) hours as set forth in Deponent's initial affidavit.

#### WITH RESPECT TO MULTIPLE MEMBERSHIP INTERESTS

- (7) That although the list of members and their respective membership interests are maintained in an electronic format, said format does not indicate whether multiple memberships were held simultaneously or successively. Further, properties held jointly or as tenants in common may have acquired memberships under either owners' names, making reference to the physical files necessary to accurately respond to Plaintiff's request.

- (8) That the Deponents initial estimate for verifying multiple memberships remains Sixty (60) hours as set forth in Deponent's initial affidavit.

FURTHER DEPONENT SAYETH NOT.

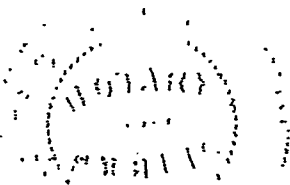
  
\_\_\_\_\_  
Craig Simonson, as "Acting" Chief  
Financial Officer of Callawassie Island  
Members Club

SWORN TO AND SUBSCRIBED BEFORE me  
this 27<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina

My Commission expires: ~~My Commission Expires~~  
February 7, 2017



TRANSCRIPT OF  
DECEMBER 9, 2011 HEARING

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1 Q. Mr. Hobson if you would identify yourself for the  
2 Court.

3 A. My name is Bill Hobson.

4 Q. And tell me if you would for the Court when you  
5 first became a member of Callawassie Island Members  
6 Club?

7 A. That would have been in 1988 I had been coming down  
8 -- I don't know if you want me to elaborate but --

9 Q. Yes, just give us a timeline.

10 A. I had been coming down to Hilton Head on a regular  
11 basis. I became aware of Callawassie probably in 1986.  
12 At the time it was controlled by the developer. I met  
13 with the developer in 1988 and purchased a lot and a  
14 membership in the Club which he also controlled. They  
15 are two separate entities at Callawassie. Subsequent to  
16 that in 1996 I purchased another property on the island  
17 and another membership; again from the developer. He  
18 controlled both the property owners'  
19 association and the Club at that time and was projected  
20 to control it until 2012. Do you want me to continue?  
21

22 A. Yes.

23 Q. Tell us the status of those memberships.

24 A. In 1998 I subsequently sold the villa but I was  
25 unable to sell the second membership because the people

1 that bought the villa didn't want the membership and in  
2 those days membership wasn't mandatory. When I  
3 purchased the membership I was assured by the developer  
4 at the time that the Club would not charge dues on  
5 secondary memberships and that all changed in 2001 when  
6 the members took control of the Club and they suddenly  
7 without any warning or notice or discussion or anything  
8 just started billing me dues on the second membership.  
9 At the time --

10 Q. This was the membership you had had since --

11 A. Since 1996.

12 Q. Okay.

13 A. For the first five years as promised I was not  
14 charged dues on that membership. I lost my train of  
15 thought --

16 Q. Sorry 2001 they began charging you dues on --

17 A. 2001 the members took over and I challenged as why  
18 I was suddenly being charged dues on that second  
19 membership and I  
20 was simply told that now that the members are in charge,  
21 we need the money. I was told that there were two other  
22 people at the time that were affected but they wouldn't  
23 tell me who they were.

24 Q. Who told you this that there were two other people?

1 A. The head accounting person, Joyce Smith at the  
2 time.

3 ~~Q. And she -- again explain that a little bit further.~~

4 She is saying there were two other people affected as to  
5 what?

6 A. In that same fashion, that they owned multiple  
7 memberships and were supposedly starting to pay dues on  
8 the second membership.

9 Q. Okay, do you know if it was just two memberships or  
10 was it multiple memberships or did she --

11 A. She didn't distinguish. I just -- she just told me  
12 there were two other people that were similarly  
13 affected, but I couldn't find out who.

14 Q. Okay. If you can, keep going with the timeline of  
15 what happened with your memberships.

16 A. I was saddled with that second membership for  
17 approximately nine years and during the time when I was  
18 told if I didn't pay dues on the second membership, my  
19 privileges would be suspended on the main membership  
20 even if I was current on that membership. And I really  
21 had no recourse  
22 until around 2009 when I started asking more questions  
23 about what might be going on with other memberships.  
24 Other members and their situation and I became aware of  
25

1 the Aultons. I met the Aultons through a neighborhood  
2 bible study and found out that they owned multiple  
3 ~~memberships and just in conversations with these people~~  
4 and trying to pour through the records that were  
5 available to me, I was able to identify some of the  
6 people that owned multiple memberships. And when I went  
7 to Brian almost two years ago, that was the foundation  
8 for that initial letter that he wrote requesting  
9 information about that because I had been led to believe  
10 that not everybody has been billed the same way for  
11 multiple memberships. But I don't know -- what I don't  
12 know and the Club won't tell me. I have painstakingly  
13 gone through six years' worth of Club directories that I  
14 retained, cross-referenced them to publicly available  
15 property transfer records and I found numerous cases,  
16 many of which were on the original letter where people  
17 had bought property and didn't buy memberships. People  
18 that were members bought additional property, didn't buy  
19 memberships and it's fairly obvious to me that it's a  
20 whimsical kind of management structure. It seems that -  
21 - and I don't know if it is just sloppiness or  
22 favoritism, cronyism or what, but you try to get  
23 explanations for the thing and you are just stonewalled.

24 Q. Let's back up a little bit.

A. I am sorry - I was rambling.

1 Q. That's okay. Specifically as to your properties,  
2 ~~at any point did you -- I guess as far as -- earlier~~

3 that you can remember -- what is the resale list?  
4

5 A. The resale list is supposedly a list of those  
6 members who want to sell their memberships and the  
7 memberships can only be sold by the Club. You can't  
8 just take your membership and run an ad in Bluffton  
9 Today and try to sell it. You must sell your membership  
10 through the resale list that the Club manages and the  
11 Club is responsible for marketing its memberships and  
12 all memberships on the resale list. There is no other  
13 way to unload a membership unless you also sell property  
14 that you have with it.  
15

16 Q. And if you sell property -- well let me just  
17 explain if you can for the Court, what are the  
18 memberships that are available to purchase -- that you  
19 purchased specifically. What are the types of  
20 memberships that the Club offers?  
21

22 A. There's -- well that's part of the muddiness that I  
23 don't quite understand it. The Club apparently owns 53  
24 of its own memberships. It won't really elaborate on  
25 how it actually obtained those memberships but there are

1 those memberships and there are also memberships that  
2 the developer recently turned back in.

3 Q. Well -- sorry to interrupt you. I am trying to get  
4 to the -- I mean the golf membership, social membership,  
5 are those the memberships you are aware of that are  
6 available to purchase through the Club?

7 A. Yeah, there's those two categories of memberships.

8 Q. Okay and are you aware of any other categories?

9 A. There's an associate membership as well.

10 Q. Do you know when that came about? How long has  
11 there been an associate membership?

12 A. No I don't really know when it began. It has been  
13 a long standing program.

14 Q. Okay and with regard to -- you were talking earlier  
15 about selling memberships. I just want the Court to  
16 understand at least as to your understanding of the  
17 rules with transferring a membership, if you for  
18 instance when you sold your property, you could sell the  
19 membership with it. Is that what you testified to?

20 A. Yes.

21 Q. Can you change the membership type when you sell  
22 your property? For instance, if you have a golf  
23 membership with a piece of property, can you sell it and  
24 have the owner take it as a social membership?

1 A. No you can't. There's no way you can downgrade a  
2 membership. If you own property and you have a golf

3 ~~membership and you sell that property to somebody that~~

4 only wants to buy a social membership, according to the  
5 Club documents, you still own that golf membership and  
6 you have to put it on the resale list.

7 Q. Okay, so you can sell your property and still own  
8 the membership and the new owner would just have to buy  
9 a separate membership, is that --

10 A. Yes.

11 Q. Okay and are these equity memberships?

12 A. They are.

13 Q. Okay and tell the Court how much did you pay for  
14 your memberships?

15 A. My first membership I paid \$12,000 for and my  
16 second membership it was either \$24,000 or \$25,000 I  
17 frankly can't recall.

18 Q. And what are the ongoing obligations that you  
19 initially or -- in general terms what are the  
20 obligations you have monthly? Or had as a member?

21 A. Monthly dues and monthly assessments.

22 Q. And -- all right we will get to that. And at what  
23 point if ever did you put your memberships on the resale  
24 list?  
25

1 A. Well I put my number 2 membership on the resale  
2 list in 1998 when I sold my villa because I was told  
3 ~~that was really my only recourse. I understood at the~~  
4 time that I wasn't going to get my equity back until it  
5 was reissued if ever, but I didn't have to pay any dues  
6 on that number 2 membership.

7 Q. So at the time the -- you testified to the rule  
8 they began charging you dues on the second membership,  
9 your second membership was already on the resale list,  
10 is that correct?

11 A. That's correct.

12 Q. And were you ever given any sort of indication or  
13 list from anybody as to how many people were ahead of  
14 you on the resale list?

15 A. No.

16 Q. Have you ever been told what number you are on the  
17 resale list?

18 A. I may have been given a list by Ellen Padgett when  
19 the developer still controlled that, but ever since the  
20 members took over, no I have no idea where I am on that  
21 list.

22 Q. Okay, have they ever told you -- well let me go  
23 ahead and finish. The membership that you had, that  
24  
25

second membership, has it ever sold from the resale  
list?

A. ~~Well in a way because after about seven years I was~~  
able to exchange it with another member for a social  
membership and the social membership eventually did sell  
supposedly from the resale list.

Q. Okay and so do you know what year it was that you  
exchanged it for a social membership?

A. I think 2007 -- 2007, 2008.

Q. And you know what year that it sold?

A. 2009 sold as a social. I would also like to  
mention that when I was allowed to exchange it for a  
social membership, the Club charged me \$13,500 to make  
that transaction. I have since spoken with three other  
members who were able to make an exchange for \$500.00.  
I requested an explanation of why the discrepancy and I  
was simply ignored.

Q. So you are talking about a transaction fee at the  
time that you transferred from a golf membership to a  
social membership?

A. On the number 2 right.

Q. And why would you want to transfer to a social  
membership?

1 A. Just to save money. I mean the dues on a social  
2 membership are less than they are on a golf membership.

3 Q. ~~Okay, how many I guess continue with the~~  
4 timeline if you would. What is your current status with  
5 your membership or memberships?

6 A. Well, I, in January of this year I sent a letter of  
7 resignation in and basically out of frustration for the  
8 way I felt I was being mistreated and the way the Club  
9 was behaving,  
10 when I originally bought my membership I was told you  
11 could resign your membership by just submitting a letter  
12 of resignation. You wouldn't necessarily get your  
13 equity back but you would have no other dues obligation  
14 and over the years the boards and management have  
15 modified and adjusted the membership plan to make that  
16 now supposedly impossible. I felt I was controlled by  
17 what I agreed to when I bought the membership.

18 Q. So other than the membership resigned, do you own  
19 any other memberships currently?

20 A. In that Club?

21 Q. Yes.

22 A. No.

23 Q. Are you aware of -- I just want to show you a  
24 couple of documents and see if you can identify what  
25

1 these are. First, second -- I will give you this as  
2 well and there's --

3 ~~MR. HAIGHT: Your Honor, I am going to~~  
4 object. I don't see what possible relevance a  
5 deed to -- Mr. Hawkins conveyed to Mr. and  
6 Mrs. Wise in 2005 has to do with the issue  
7 which is before the Court today which is, has  
8 my client adequately responded to the request  
9 made pursuant to the Non-Profit Corporation  
10 Act. It is our position that these deeds --  
11 this deed and I guess the MLS  
12 listing, whatever the other thing is has no  
13 possible bearing on what's before the Court  
14 today.

15  
16 MR. McDANIEL: It may not show the  
17 relevance of it, but you know part of the non-  
18 profit production is the power of the Court  
19 under (d)(2) it is the power of the Court  
20 independent of the chapter to compel the  
21 production of corporate records for  
22 examination so we have asked that the Court  
23 compel the production of these documents. So  
24 even if it is determined that they have  
25 complied with certain aspects which we

1 disagree with, one of the 33-31-1602 say the  
2 accounting records of the corporation in a  
3 ~~very broad sense we do not believe they~~  
4 complied with that but in addition there's --  
5 within that same section is the power of the  
6 Court to compel production, even if it's not  
7 listed specifically in that section, we  
8 believe this will - I will represent to you  
9 that it won't take but a minute and Mr. Hobson  
10 can explain why these are relevant. It will  
11 only take a few minutes of time to do that.

12  
13 MR. HAIGHT: Your Honor, it would be our  
14 position that what the statute is talking  
15 about is in a case that dealt with other  
16 issues. Here we are simply looking at their  
17 request under the  
18 statute for documents. He has not brought  
19 this action that he wants to bring. Possibly  
20 in that action the Court could compel  
21 additional documentation. But that action is  
22 not before the Court.

23  
24 COURT: Well let's do this, I will give  
25 him some latitude so actually I guess they  
weren't even marked for identification yet. I

1                   guess the objection came before the submission  
2                   of them, so I will allow it.

3 BY MR. McDANIEL:

4 Q.   Mr. Hobson, have you done any research on your own  
5       trying to determine any of the issues you brought up in  
6       the letters that he sent in this past June -- July 10<sup>th</sup>?

7 A.   I have been compelled to do research on my own  
8       because I can't find out what I don't know. I presented  
9       this documentation because I thought we would have to  
10      substantiate just why we are suspicious that there is  
11      disparate treatment of the members and this is one of  
12      the cases where I believe an "X" member was allowed to  
13      just walk away from a membership without following what  
14      the rules were that the Board is supposed to enforce.

15 Q.   Okay, what are the documents -- you said two  
16       documents. The first one I had handed to you; what is  
17       that?  
18

19 A.   It was the deeds indicating the sale of the  
20       property of a gentleman who was a golf member.  
21

22 Q.   Okay, and from the review, did you also review the  
23       membership directory with regard to those - of the  
24       grantor and grantee in that transaction?

25 A.   Yes. He sold it to a person who only purchased a  
      social membership.

1 Q. And do you recognize the property as being within  
2 Callawassie Island or on Callawassie Island?

3 A. Yes.

4 Q. Are you familiar with the person?

5 A. I know them both well.

6 Q. Okay, so you know these folks. Do you know whether  
7 or not they are members of the Club?

8 A. Correct.

9 Q. Okay, and from your review, did you determine  
10 whether the person purchased it, purchased the golf  
11 membership that was sold?

12 A. From what the directory shows, no they did not.  
13 They purchased a social membership.

14 Q. And if that's the case, what would the rules  
15 require happen to that membership?

16 A. Well the golf membership should have been put on  
17 the resale list, as I was told to put mine on the resale  
18 list, and that person that departed should have been  
19 forced to pay dues on it the entire time they owned it  
20 like I was.

21 Q. Okay and are you aware whether or not they continue  
22 to stay a member on the resale list?

23 A. According to the directory they did not maintain  
24 their membership, but again the Club won't reveal the  
25

individual billing records so I can't substantiate my  
suspicious.

Q. And was this one of the persons specifically listed  
in the request for information?

A. I believe.

Q. Okay, and that person that did this, what was the  
full name of the person who transferred their membership  
and apparently didn't have to put their -- apparently  
didn't have to put their membership on the resale list?

A. That was Bill Hawkins.

Q. Is that the same as William Hawkins?

A. Correct.

Q. And the second set of documents there is that --

A. It's a reproduction from the annually printed  
directory that the property owners association publishes  
and it indicates a member's -- it indicates the property  
owner's membership status.

Q. Okay and you have two different pages from that one  
on the first page and one on the third page. What year  
-- or what does the first page say and what's the last  
page show?

A. The first page shows Bill Hawkins as a golf member  
in 2005 and the third page shows Tom Wise as a social  
member in 2007.

1 MR. McDANIEL: Okay and Your Honor I  
2 would like to submit those as Plaintiff's  
3 ~~Exhibit 1 and 2.~~

4 COURT: All right, subject to the  
5 objection that's already been made.

6 MR. McDANIEL: Your Honor, we have  
7 multiples of these that we would like to  
8 put in. We can go through each one of  
9 them. Considering the objection, we  
10 don't have to do that, but we would offer  
11 if the -- certainly he can identify these  
12 as to the same indication where a buyer  
13 with one membership sells to some -- a  
14 seller sells one type of membership and  
15 buyer has a different type and then the  
16 seller is no longer on the membership  
17 list in the year or years following that  
18 and it is in the time period when Mr.  
19 Hobson's membership was on the resale  
20 list for throughout that period.

21 COURT: Well let me ask the  
22 Defendant this. I don't know if this is  
23 possible based on the posture of the  
24 case, but is it possible to stipulate to  
25

1 the fact that you have certain documents  
2 that show that or not?

3 MR. HAIGHT: No, Your Honor because  
4 they have not been supplied to us before  
5 today. You know we are not willing to  
6 rely on Mr. Hobson's abilities as a title  
7 abstractor and you know -- it remains our  
8 position that those are arguments for  
9 another case and another day.

10 COURT: No, no I understand and I  
11 don't -- I didn't take them to be expert  
12 testimony of the title abstractor. I  
13 understood his testimony to be kind of  
14 what peaked his interest in looking  
15 further and as I understand this case,  
16 this case is a case seeking to look  
17 further and maybe I am misinterpreting  
18 the whole thing, but this seems to be a  
19 declaratory judgment action that's  
20 basically a discovery action that seeks  
21 nothing more than discovery and  
22 attorney's fees for what is asserted to  
23 be a failure to comply with sort of a  
24 discovery map that's set forth in  
25

corporate law and I understood at least  
the last two documents the testimony to

~~be this is what caused the Plaintiff to~~

look a lot further. And so I don't think  
it is offered for its truth necessarily  
as I assume that would be part of some  
other case as you suggest. So, I don't  
even know if I need any more of it quite  
frankly, but I thought if it speeds  
things up and you could stipulate oh sure  
they've got lots of deeds showing this  
sort of thing. It doesn't make any  
difference in this case, but and it  
probably doesn't.

MR. HAIGHT: Your Honor, I am  
unwilling to do that because I simply  
don't know. I have not had the  
opportunity to look at these things  
myself and it remains our position that  
what this is, is a declaratory judgment  
action with regard to the statutes and  
whether we have adequately complied with  
those. It remains our position that we  
have. You know if you want -- it seems

1 to us if Mr. McDaniel wants to bring the  
2 other action, he needs to do that. But  
3 ~~the ten years of records, collated this~~  
4 way and collated that way that he seems  
5 to want in this action are not anything  
6 called for by the statute and  
7 certainly you know unduly burdensome on  
8 my client and not what's before the Court  
9 today.

10 COURT: What's a little bit strange  
11 about this hearing, it is a lot like a  
12 discovery motion you know and that part  
13 of the objection I guess is the collation  
14 and the cost and the difficulty in  
15 producing these things. Part of it  
16 perhaps is whether he is entitled to it  
17 and there is probably a mix of those two  
18 things it sounds like just from the  
19 argument. And it takes me back to where  
20 we started this. I assume you all have  
21 spoken -- the statute requires the person  
22 seeking this, I think, to pay the costs  
23 of production and I guess you all have  
24  
25

discussed that but are unable to come up  
with --

~~MR. HAIGHT: No, Your Honor, that~~

has not been discussed. We simply got  
together the materials that were required  
by the statutes and provided to them free  
of cost. We did not send them a bill for  
it because what the statute speaks to are  
things like the Articles and the Minutes  
of Meetings and we have provided them all  
that and we have -- he certainly has  
access as well Your Honor to the website.  
It is a very user friendly, interactive  
web site where you can pull down minutes  
of board meetings and committee meetings  
if you are a member. It is my  
understanding that despite him being  
delinquent, that Mr. Hobson remains a  
member with access to the website and you  
know all those materials are things that  
he can gather from the website. He is  
using this action to try to get more. He  
is using this to put an undue burden on

1 my client to produce documents that he  
2 should be seeking in another lawsuit.

3 ~~COURT: The documents are the~~  
4 accounting records is that more or less?

5 MR. HAIGHT: He wants the accounting  
6 records going back -- if you read the  
7 letter he wants accounting records going  
8 back ten years, organized this way and  
9 organized that way.

10 MR. McDANIEL: That's not accurate  
11 Your Honor. We offered and my client  
12 would be glad to go look through the  
13 records or send an accountant to go  
14 through the records ourselves and pay for  
15 that. That's not been -- that's never  
16 been addressed as an issue to us that  
17 there's some concern that -- because of  
18 the organization that's why we are not  
19 getting the documents.  
20

21  
22 COURT: Well I guess what was said I  
23 thought I would ask because there is  
24 maybe a way to resolve this. And just so  
25 -- maybe we can cut through some of this,  
is it the Defendant's position that they

1 are not -- that the Plaintiff is not  
2 entitled to the accounting records?

3 ~~MR. HAIGHT: We have turned over~~  
4 accounting records to the Plaintiff. He  
5 is not entitled to the accounting records  
6 going back ten years as he is requesting.

7 COURT: Okay how many years were  
8 sent?

9 MR. HAIGHT: He has three years'  
10 worth. He has '08, '09 and 2010.

11 MR. McDANIEL: Your Honor, those are  
12 the summary -- these are summary  
13 accounting records. These are not the  
14 accounting records that somebody could  
15 actually -- that the problems that have  
16 arisen and the disparate treatment could  
17 really be determined and that's the --  
18 that's been the issue. They know there's  
19 been deals worked out with some members  
20 to let them go. There's been deals with  
21 the previous developer. That have been  
22 kept secret and Mr. Hobson has made  
23 multiple, multiple efforts to gather that  
24 without having to seek it this way.  
25

1 COURT: I mean just out of  
2 curiosity, is it -- three years have been  
3 given. I understand there's a difference  
4 in what's sought and perhaps what's  
5 given. It is a sort of summary, not the  
6 entire accounting records, but and the  
7 other seven years I guess that are sought  
8 -- the concern is that they are costly?  
9 Is that the concern because if so, that's  
10 pretty easily solved.

11 MR. HAIGHT: And Your Honor, it's  
12 simply not something that is permitted  
13 under the statutes that they brought this  
14 action under.

15 COURT: Probably premature to even  
16 being arguing about this because we  
17 started talking about some documents but  
18 I mean under 33-31-1602 looking on the  
19 screen but it talks about accounting  
20 records of the corporation. You might  
21 have some great argument later that  
22 doesn't make any difference, but --

23 MR. HAIGHT: Your Honor, I think all  
24 these statutes need to be read together.  
25

1                   You know 1620 talks about you know for  
2                   the latest annual financial statements  
3                   ~~which have been provided.~~

4                   MR. McDANIEL: There are several  
5                   statutes that require several different  
6                   things and I think that's been what the  
7                   confusion is, we don't -- they want to  
8                   rely on one or two specific things that  
9                   are required, but the statute is broader  
10                  than that.

11                  MR. HAIGHT: But the statute --

12                  MR. McDANIEL: I believe it does  
13                  require these accounting records and if  
14                  it's reasonable, the Court can compel the  
15                  discovery.

16                  COURT: All right, well let's do  
17                  this. I don't know if I need to have a  
18                  lot of deeds and things in the record  
19                  with regards to his interest. I mean the  
20                  purpose is to show that he became  
21                  interested and I think probably both  
22                  sides can stipulate he became interested,  
23                  but at some point he asked for these  
24                  things and so --  
25

1 MR. McDANIEL: I mean that would be  
2 the basis of why he got these, Your  
3 ~~Honor, but to the extent that these are~~  
4 public records, filed public records that  
5 demonstrate what the claim he is making  
6 that one, there was this transfer and  
7 two, that the directories themselves show  
8 the membership at least somewhat  
9 demonstrating that there is this issue,  
10 is apparent from the membership list and  
11 from the deed, I would like at least put  
12 in one more to further bolster that  
13 evidence that it is not just that -- I  
14 mean I think it is more than just the  
15 fact that he's developed this suspicion.  
16 I think there's a lot of good reason the  
17 Court can see that there is something  
18 going on here and there is disparate  
19 treatment --  
20

21  
22 COURT: These aren't offered to show  
23 disparate treatment as I understand it.  
24 They are offered to show because this  
25 case isn't about the disparate treatment  
today. The case is about getting records

1 to determine whether or not there was  
2 disparate treatment -- was that --

3 ~~MR. McDANIEL: Right they are~~  
4 offered for the point that there's some  
5 evidence out there. Whether there's  
6 enough evidence for him to move forward  
7 or not you know that's the determination  
8 he has made or not --

9 COURT: Right.

10 MR. McDANIEL: But there's enough to  
11 create a suspicion.

12 COURT: But I guess my question is,  
13 is there an evidentiary standard in the  
14 statute. I mean the statute either --  
15 you all -- it's almost like a summary  
16 judgment case because you all just have a  
17 different opinion as to what the statute  
18 says it sounds like.

19 MR. McDANIEL: I think that is true  
20 except they have argued bad faith and  
21 they have argued that Mr. Hobson has done  
22 this in bad faith in their memo  
23 suggesting that he doesn't have a basis  
24 to do this and he is trying to tank the  
25

1 membership and they have asked for  
2 attorney's fees in case they failed to  
3 provide them and they should have  
4 provided them.

5 COURT: Let's go now. I will -- as  
6 I understand it, he's going to -- you  
7 seek to put in some membership lists and  
8 deeds not for the truth of the matter  
9 that may be in the case who knows may be  
10 brought at some point or not brought, but  
11 simply to show why he wants further  
12 records. Is that correct?

13  
14 MR. McDANIEL: That's correct.

15 COURT: Okay, so those documents  
16 aren't being offered for any kind of  
17 truth even though they are public  
18 records, I suppose. So I think you  
19 actually objected to that earlier. I  
20 will allow them for purposes stated.  
21

22 BY MR. MCDANIEL:

23 Q. What other documents do you have?

24 A. This is a similar case and it is one of about  
25 fifteen that I uncovered. I only brought -- he asked me  
to bring some to substantiate you know our suspicion

1 that management was not consistent in running the Club  
2 in accordance with the governing documents, but this is  
3 a case where a Gary Starr who

4 was a golf member in 2005 sold to a Jackie Warfield who  
5 was indicated in the directory as a social member in  
6 2007. It is just another instance of --

7 MR. McDANIEL: I will mark them as a  
8 deed as 3.

9 (WHEREUPON,

10 PLAINTIFF'S

11 EXHIBIT NUMBER 3 WAS  
12 MARKED INTO ENTERED  
13 INTO EVIDENCE.)  
14

15 BY MR. McDANIEL:

16 Q. Mr. Hobson, I will ask you if you can identify this  
17 two page document?

18 A. This is a dialogue that happened by way of email  
19 between Roger Stroud, another club member, and myself.  
20 He initially contacted everybody that had a golf  
21 membership --  
22

23 MR. HAIGHT: Your Honor, I am going  
24 to object to hearsay. I don't know Mr.  
25 Stroud. I have not talked to Mr. Stroud  
and Mr. Stroud is not here.

1 MR. McDANIEL: Outside Mr. Hobson  
2 identified that he received the email or  
3 ~~it really is not even submitted for the~~  
4 truth of the matter. I'll proffer to the  
5 Court that it is going to show a  
6 disparate treatment than he, Mr. Hobson  
7 received. Whether or not that's true,  
8 whether or not the matters are true or  
9 not, again goes to his belief as to why  
10 he believes he needs the documents that  
11 are being requested that this exchange of  
12 emails in which you know it is suggested  
13 one member was getting charged  
14 differently than what Mr. Hobson was  
15 getting charged to exchange his  
16 membership. Again, it wouldn't be for  
17 the -- whether or not that's true or not,  
18 we are not trying to allege as much as  
19 why that would make his present belief be  
20 that there was this disparate treatment  
21 among the members.  
22

24 MR. HAIGHT: Your Honor, it is our  
25 position that they are truly introduced  
for the truth of the matter as they

1 allege in there and it's clear hearsay  
2 and we have had no opportunity to cross-  
3 examine this fellow.

4 COURT: It is probably for the next  
5 case and it is the same -- honestly maybe  
6 I am missing something, but I don't know  
7 how far you need to go to say that he  
8 really -- why  
9 he wanted them. I mean maybe you are all  
10 going to enlighten me as to the statute,  
11 but it seems like he simply would be  
12 entitled to them based on the statute,  
13 but anyway -- I'll sustain that.

14  
15 BY MR. MCDANIEL:

16 Q. A couple more documents. If you can look at this  
17 two page -- actually let me just make that one page  
18 here, well two pages; that's fine. Can you identify  
19 what these two documents are?

20 A. They are a letter from Harmon Switzer to me.

21 Q. The date?

22 A. Dated April 12, 2010 and also a letter from Brian  
23 Sauda, the acting club general manager dated, February  
24 3, 2010.  
25

1 Q. Okay and in that first letter, the April 12<sup>th</sup>  
2 letter, it is your understanding that you received any  
3 kind of offer with regard to your memberships from that  
4 letter?

5 A. Yeah, Mr. Switzer maintained that in this letter I  
6 can concede one of my memberships by paying a one year's  
7 dues, apparently as a buyout or as a method of getting  
8 rid of one of my memberships.

9 Q. Was there -- are there any other stipulations of  
10 that agreement?

11 A. That I would have to sign a general release and a  
12 confidentiality agreement.

13 Q. And are you aware of whether or not there is any  
14 provision for that type of thing in the club governing  
15 documents?

16 A. There are none in the documents that --

17  
18 MR. McDANIEL: Your Honor, I am  
19 going to object again. It is getting --  
20 in our view it's in the realm of  
21 irrelevance for the matter that is before  
22 the Court today.

23  
24 COURT: Irrelevant and again I guess  
25 I am trying to -- this is an unusual case  
which makes it sort of interesting, but I

mean the pertinent issues at least as far  
as I read the statute based on the

~~argument I have heard from you so far is~~  
whether or not the request is made in  
good faith and whether or not the request  
is excessive. Is that the bottom line?  
Is that kind of where we are?

MR. HAIGHT: Your Honor, and I think  
we made it clear in our Memorandum, there  
are certain items that he can ask for  
that he probably can ask for with  
complete and utter bad faith. You know  
the Articles, things of  
that nature. It is our position we have  
given him all that. We have also given  
him much of what they have asked for in  
the other category where he does have to  
exhibit good faith and yes, it is our  
position that he has not exercised and  
shown good faith and here these things  
that he is asking for you know that are  
detailed in Mr. McDaniel's letter which  
is the first exhibit to his Complaint,  
are nothing that you will see in the

1 statutes. I mean they are far in excess  
2 of that. Yes, I guess we are arguing  
3 that its way more than the statute  
4 contemplates in any manner, shape or  
5 form.

6 MR. McDANIEL: If I can just reply  
7 to that, it does occur to me that in  
8 their memo they also submitted emails of  
9 Mr. Hobson to get into some of these  
10 issues of his belief and why he is doing  
11 these things, and I believe that it is  
12 pertinent to the Court or could be  
13 pertinent to the Court to understand just  
14 how at least the circumstantial, if not  
15 direct evidence, that there has been this  
16 disparate treatment and why that compels  
17 production of these documents. I mean if  
18 the Court believes this is just merely a  
19 matter of he should get them because he  
20 is an equity member, we would agree with  
21 that, but we believe these additional  
22 factors weigh just as, if not more so,  
23 should be done and should have been done  
24 long ago.  
25

1 COURT: It is an interesting  
2 question because had he simply brought

3 the action, asserted that he was the  
4 victim of not getting -- and then --

5 MR. McDANIEL: But he didn't.

6 COURT: But then he can ask for  
7 these things in discovery.

8 MR. HAIGHT: We would have had  
9 motion hearings that would have addressed  
10 whether ten years was unduly burdensome  
11 and outside the realm of --

12 COURT: Well, that would have been  
13 the issue.

14 MR. HAIGHT: And collated the way he  
15 wants them collated.

16 COURT: Who bears the cost, etc.

17 MR. McDANIEL: But that's not the  
18 case that's here today. It probably will  
19 be at some point, but it is not the case  
20 that's here today. And as far as Mr.  
21 Hobson's email, I mean I guess if he  
22 denies that it is his email, then that  
23 takes care of that, but we don't have  
24  
25

1 issues of hearsay with the parties on an  
2 email.

3 ~~MR. HAIGHT: We obviously disagree~~  
4 that it is not an issue today. We  
5 believe it is exactly the issue today is  
6 the declaratory judgment the Court  
7 clearly has the power in declaratory  
8 judgment capacity as an equity court to  
9 require these documents be turned over.  
10 We believe the statute specifically deals  
11 with the accounting records, deals with  
12 the Court's power to do that so obviously  
13 we disagree with the premise that it's  
14 not part of this action.

15  
16 COURT: Well it is a little unfair  
17 to ask a question as though it were a  
18 different case, so -- but anyway I forget  
19 the objection that's on the table and  
20 can't remember the --

21  
22 MR. McDANIEL: I think we wanted to  
23 admit this document -- this letter that  
24 Mr. Hobson received. He can identify it  
25 because it is a document he received

1 mailed to him from the club so I don't  
2 know why --

3 ~~COURT: This is from the Club or~~

4 from --

5 MR. McDANIEL: It is from the Club  
6 itself. I think he is objecting on the  
7 grounds of it being irrelevant.

8 MR. HAIGHT: We have no objection  
9 other than of relevance for the present  
10 proceeding.

11 COURT: I'll allow it. What number  
12 are you intending it to be?

13 MR. McDANIEL: Number 1 exhibit?

14 COURT REPORTER: Number 5.

15  
16 BY MR. McDANIEL:

17 Q. Did you accept that offer, Mr. Hobson?

18 A. No.

19 Q. And I believe you testified that you are not aware  
20 of any provision in the rules governing documents that  
21 sets forth that sort of an arrangement for somebody to  
22 turn in their membership?

23 A. No, not a part of the membership plan.

24 Q. Are you aware of any discussions from previous  
25 board meetings or emails from the Board or from the Club

1 regarding the use of confidentiality settlements with  
2 other Club members?

3 A. No, I don't know that -- I had heard that there was  
4 something going on like this but never from a Board  
5 member or any as -- you know a board meeting.

6 Q. I will hand you another document and see if you  
7 recognize this document?

8 A. This is a document produced by the Club discussing  
9 in part the special arrangement they are going to make  
10 or they made with the original developer when he still  
11 held something like 66 memberships.

12 Q. When was this?

13 A. It is dated September, 2010.

14 Q. Okay, and what is your understanding of what the  
15 arrangement was made with -- I mean I believe the name  
16 would be CIC or the Callawassie Island Club. Was that  
17 the developer?

18 A. Yeah, Jim Chaffin is CIC, the same entity.

19 Q. Okay, does this letter specify what the agreement  
20 was or what agreement was reached with the developer in  
21 2010 or whatever time this was reached?

22 A. Yes, it describes how his memberships will be  
23 handled. He is being allowed to turn in something like  
24 66 memberships and whatever debt he accumulated has been  
25

1 forgiven. And I believe this is also the one where they  
2 described it and made a deal with him where he would get  
3 \$22,000.00 for each of the memberships that he held once  
4 they were sold.

5 Q. And does it mention in there the amount of dues  
6 that -- it says on the second page -- does it mention in  
7 there the amount of dues that was being paid from 2007  
8 to 2009 by CIC?

9 A. A million dollars. He was paying around  
10 \$300,000.00 a year.

11 Q. Okay, and was that given up -- by your  
12 understanding of that agreement that that money was  
13 released by the Club?

14 A. It is my understanding is whatever dues he had  
15 accrued at the point in time he decided he wasn't going  
16 to honor his agreements anymore was forgiven and they  
17 took back his memberships.

18 Q. Okay and what about ongoing dues that he would have  
19 had to pay? Do you know whether -- did he continue to  
20 pay dues?

21 A. Leaving a hole of \$300,000 in future revenues so my  
22 understanding is he is no longer paying any dues.

23 Q. Have you ever inquired as to why that deal was  
24 made?

1 A. Well they describe in the letter that the reason  
2 they are making is because they feel he would have  
3 ~~counterclaims against the Club.~~

4 Q. Do you know what the counterclaims would be?

5 A. They mention a number of things in the letter that  
6 they worried that he would claim many of which I don't  
7 frankly understand.

8 MR. McDANIEL: I would like to admit  
9 that into evidence as well.

10 COURT: What is the origin of this  
11 letter or --

12 MR. HOBSON: It came from the Club  
13 in September of 2010.

14 COURT: Just a general letter to the  
15 membership?

16 MR. HOBSON: A letter to the  
17 membership describing the special deal  
18 that they made with his memberships.

19 COURT: Mr. Haight?

20 MR. HAIGHT: Yes, Your Honor and  
21 these are the type of materials that are  
22 available to all members, even Mr. Hobson  
23 on the website and this is nothing that  
24 he hasn't been given.  
25

1 COURT: Okay so anyway as far as an  
2 exhibit then you --

3 ~~MR. HAIGHT: This one was not on the~~  
4 website apparently but a lot similar type  
5 letters are put on the website.

6 COURT: So objection, no objection?

7 MR. HAIGHT: No objection other than  
8 to relevance.

9 COURT: All right then.

10 MR. McDANIEL: Your Honor, can we  
11 take just a two minute break for me to --  
12 I believe that might be all I have for  
13 Mr. Hobson so I can look over something  
14 and consult with my client for a moment.

15 COURT: Well you can't discuss the -  
16 -

17  
18 MR. McDANIEL: That's fine if I can  
19 just have one minute.

20 MR. McDANIEL: I am ready Your Honor  
21 whenever the other parties are.

22 COURT: All right, back on the  
23 record.  
24

25 BY MR. McDANIEL:

1 Q. Mr. Hobson, when you originally requested the  
2 information or the letter was sent from you and some  
3 ~~other members is it -- what was your intent with that~~  
4 letter? With that requested information?

5 A. Well the goal was to try to get detailed accounting  
6 records concerning the number of people that I ran  
7 across that seemed to be treated inconsistently with the  
8 rules of the Club. I can't substantiate my suspicions  
9 without access to that information.

10 Q. And are you familiar with any memberships of The  
11 Tilton Group?

12 A. I began monitoring -- I do have access to the  
13 website and I began monitoring the suspended member list  
14 and I noticed The Tilton Group showed up as being on the  
15 suspended member list and as owning two memberships.  
16 The Club would not otherwise reveal who owned multiple  
17 memberships to me but I just happen to spot them from  
18 the suspended member list and then suddenly they were  
19 just not -- they were no longer on the member list at  
20 all. They were no longer on the suspended member list.  
21 They were just gone.

22 Q. Do you know if they had multiple properties?

23 A. I believe at one point in time they did have  
24 multiple properties.  
25

1 Q. Do you know whether they sold those properties at  
2 the point they were taken off the membership list?

3 A. ~~I do not believe they sold those properties during~~  
4 the time that they evaporated from the suspended member  
5 list. I monitored the website of the register of deeds  
6 for that information.

7 Q. Is there anything else that you believe the Court  
8 should be aware of with regard to your request for  
9 information?

10 A. Just a general statement that you know as an equity  
11 owner in the organization I just feel that this constant  
12 stubborn refusal to release information is just --  
13 there's got to be a reason for it. I don't understand  
14 why if everything is being run the way it ought to be, I  
15 can't have access to those records.

17 MR. McDANIEL: That's all I have,

18 Your Honor.

19 BY MR. HAIGHT:

20 Q. Mr. Hobson, I am Rick Haight. You and I have met  
21 previously I believe at one of the Aulton's hearings.

23 MR. HAIGHT: Is this an Exhibit  
24 already -- your June 29<sup>th</sup> letter?

25 MR. McDANIEL: I don't know if it is  
an exhibit. It is part of the pleadings.

1 COURT: Let me ask this because  
2 maybe I am confused by something. From  
3 looking at the June 29, 2010 letter, I  
4 thought that in response to the June 29,  
5 2010 letter that satisfied the Plaintiff  
6 except for the items in the --

7 MR. McDANIEL: -- January 25<sup>th</sup>.

8 COURT: January 25<sup>th</sup>, 2011 letter. Am  
9 I wrong on that? Is that -- I thought  
10 the list that we were working off of for  
11 purposes of this lawsuit were the items  
12 in the January 25, 2011 letter and that  
13 Plaintiff no longer seeks the items other  
14 than that.  
15

16 MR. HAIGHT: And that's fine Your  
17 Honor. I just wanted to put it in  
18 context to show what was being asked. We  
19 were also being asked what were  
20 essentially interrogatories and there's  
21 absolutely no provision in the statutes  
22 for asking interrogatories in this  
23 context and that's the situation we were  
24 dealing with.  
25

1 I am asking you to look at is kind of towards the bottom  
2 third of the first page. What appears to be your email?

3 A. Yeah, the top part I haven't seen before, but the  
4 bottom part is an email that I sent out to all of the  
5 property owners, not necessarily Club members but  
6 property owners on Callawassie Island concerning an  
7 action that Dataw is trying to take to break their  
8 mandatory membership provision.

9 Q. Okay and in fact in that letter or that email you  
10 say, "If enough Callawassie property owners pool their  
11 resources, it may be possible to capitalize somewhat on  
12 the time and money already invested by the Dataw Island  
13 Property Owners and their attorneys to file our own  
14 action to have our Amendment rescinded for those  
15 participating".

17 A. Yeah, that sounds like what I wrote. I can't find  
18 it but yeah, I said that.

19 Q. Well it's kind of towards the bottom half of the  
20 second page if you need to find it.

21 A. Yeah, I start out by saying there are over 150  
22 Callawassie properties being offered for sale with more  
23 waiting in the wings. If enough Callawassie --- yeah I  
24 do say that.  
25

1 Q. So your purpose in all this is to bring eventually  
2 some kind of action to have the 2001 Amendments which  
3 were both to the documents relating to the Club and  
4 relating to CIPOA the property owners association to try  
5 to attempt to set all that aside? Is that your ultimate  
6 purpose here?

7 MR. McDANIEL: Object to as to what  
8 he means by here as in this email in  
9 which he's talking to the property owners  
10 association or is he is talking about  
11 here as in this case because they are two  
12 different matters.

13  
14 COURT: Be more specific.

15 BY MR. HAIGHT:

16 Q. Okay, in the email that we just discussed, is your  
17 purpose to enlist others to bring an action to set aside  
18 the 2001 Amendments including not just those made by the  
19 Club but those made by CIPOA of the Callawassie Island  
20 Property Owners Association?

21  
22 A. Yeah, my purpose in producing this email was to  
23 alert people what was going on at Dataw and raise the  
24 possibility that we might be able to do a similar action  
25 as regards to the CIPOA covenants.

Q. But --

A. It didn't have anything to do with the Club.

1 Q. Well let me ask this. Don't the CIPOA covenants

2 ~~create the mandatory obligation to purchase a Club~~

3 membership at any point where somebody purchases real  
4 property?  
5

6 A. They do.

7 Q. Then it would be your intention to do something  
8 about that too?

9 A. Yes, I would like to see our property values  
10 restored.

11 Q. But to date you have not brought that action, have  
12 you?  
13

14 A. No.

15 Q. And then your purpose today in bringing the present  
16 action is it simply to obtain information to help you in  
17 that case that you intend to bring?

18 A. The two are separate issues. My purpose today is  
19 to try to substantiate whether or not other members have  
20 been treated the same way that I have in the Club. The  
21 purpose of this email was to discuss possible changes to  
22 the covenants that got changed in 2001 that required a  
23 mandatory membership. The two are two distinct efforts.  
24  
25

1 today, but that is another matter that is  
2 pending and really not ---

3 ~~COURT: I think it is probably~~  
4 irrelevant I mean you know I think it is  
5 probably outside of whether or not this  
6 is good faith that they request for  
7 records essentially is what this case is  
8 about so I will sustain that on  
9 irrelevance.

10 MR. McDANIEL: All right Your Honor  
11 that's all we have then.

12 COURT: All right, any questions of  
13 Ms. Aulton?

14 MR. HAIGHT: I do not.

15 COURT: Thank you. Do you have any  
16 other witnesses?

17 MR. McDANIEL: Just one second Your  
18 Honor. I will call Mr. Switzer.

19 MR. SWITZER, called as a  
20 witness, after being duly sworn,  
21 testified as follows:

22 BY MR. McDANIEL:  
23  
24  
25

1 Q. Mr. Switzer please tell me your position -- the  
2 position you hold with the Callawassie Island Members  
3 Club.

4 A. I hold the position of Treasurer which I have done  
5 so since spring of 2009.

6 Q. Did you have any previous officer or positions with  
7 the Board prior to that?

8 A. Yes. Beginning in '96 through '98 I was on the  
9 property owner's board.

10 Q. I am referring specifically to the Club.

11 A. In 2000 excuse me, in 1998 maybe the fall through  
12 March of 2002 I was on the original Callawassie Island  
13 Members Club Board and the advisory Board of Governors,  
14 excuse me which was a Board that prior to take over from  
15 the developer -- it was the same thing.

16 Q. And what was your position there?

17 A. I was Vice-President at one point in time I think  
18 at the end.

19 Q. Since 2002 have you been a board member any time  
20 prior to the spring of 2009?

21 A. No.

22 Q. Are you familiar with the offer of settlement that  
23 was made to Mr. Hobson with regard to his memberships?

24 A. Yes, sir.

1 to object to these lines of questions  
2 have nothing to do with the matter that's  
before the Court today.

3 COURT: All right, well in questions  
4 in particular that last question seems a  
5 little far -- so I will sustain that  
6 objection.  
7

8 MR. McDANIEL: That's fine Your  
9 Honor we can narrow it down to the  
10 particular issues.  
11

12 BY MR. McDANIEL:

13 Q. Are you familiar with how the accounting records  
14 are kept by the Club?

15 A. Which accounting records?

16 Q. What accounting records are there at the Club?

17 A. Well everything from member billing to the balance  
18 sheet and audit report.

19 Q. Okay, are you familiar with how member billing and  
20 records are kept?

21 A. Not really. I mean there are records that are in  
22 the computer, but --

23 Q. Do you know what programs you use to --

24 A. No I do not.

25 Q. For member billing?

1 A. No I do not.

2 Q. And who handles member billing?

3 A. ~~The -- now it is the accounting firm of Phoenix~~  
4 Financial Services. Prior to that it was the  
5 Callawassie Island Company.

6 Q. When did that transfer? Or that change from  
7 Callawassie Island Company to Phoenix?

8 A. It occurred at the end of last year after  
9 dissolution of any arrangement with the developer.

10 Q. Do you know whether the records from Callawassie  
11 Island Club are currently being kept?

12 A. I would assume still with their accountant.

13 Q. Which is who? The Phoenix --

14 A. Yes.

15 Q. So it is your understanding that Callawassie Island  
16 Club just transferred all those records to Phoenix?

17 A. Yes actually they perform services for several  
18 clubs.

19 Q. Who does Phoenix?

20  
21  
22 MR. HAIGHT: Your Honor, I am going  
23 to object again. I think this is all  
24 just fishing for the lawsuit -- the  
25 lawsuits that he has in this --

1 COURT: This is about the records  
2 they are looking for so I am going to  
3 allow it.

4 BY MR. McDANIEL:

5 Q. Are you familiar with any attempts made to gather  
6 those accounting records on behalf of Mr. Hobson as  
7 requested in 2010?

8 A. I am aware of the request which prompted our Board  
9 to ask Mr. Haight to look at the request because at the  
10 time we received the letter from you listing a series of  
11 clients you represented, we were actively pursuing  
12 delinquent actions against them.

13 Q. So is that a, "No"?

14 A. Well I am aware that there was a request made and  
15 that's when we asked Mr. Haight to review whether or not  
16 those records should be produced.

17 Q. And are you familiar with whether or not there was  
18 any attempt to compile those records?

19 A. The attempt was to ask Mr. Haight to determine what  
20 limits or how many of those records should be compiled  
21 and sent back to -- in response to your request.

22 Q. Okay, but has there ever been a discussion amongst  
23 yourself or the Board that you are aware of with regard  
24  
25

1 to the actual going through any records to determine how  
2 that would be done? How those could be produced?

3 A. While we -- again we went to Mr. Haight and asked  
4 him to pursue the collections with our accountants and  
5 whoever else.

6 Q. Is it fair to say that that was, as far as the  
7 Board's and your understanding, that was the last  
8 communication you had with regard to the obtaining --

9 MR. HAIGHT: Object to the leading,  
10 Your Honor.

11 COURT: It is his witness.

12 Sustained.

13 BY MR. McDANIEL:

14 Q. Were there any other communications that you had as  
15 a Board with regard to how to comply with the requests  
16 that were made by Mr. Hobson and others?

17 A. To my recollection we relied on our counsel as to  
18 see how we could respond or should respond.

19 Q. Okay, and is that true even after January 25, 2011  
20 that there was no further discussions or meetings or was  
21 there any further discussions or meetings about the  
22 effort or the actual administration of producing these  
23 documents?

24 A. I don't recall any discussion.  
25

1 Q. And I am going to show you the pleadings as Exhibit  
2 B -- it is not in this case and see if you received or  
3 have seen that with this letter before.

4 A. I am sorry, repeat the question.

5 Q. Have you seen this letter? Are you familiar with -  
6 - even with the request that is made in that letter ---  
7 the January 25, 2011?

8 A. I am familiar with the request which we forwarded  
9 to counsel.

10 Q. Okay and this was and I will represent to you this  
11 was something that was sent from my office to your  
12 counsel and I guess what I am asking you as a Board or  
13 individually, are you familiar with whether or not that  
14 you have seen that letter before?

15 A. I have seen that letter because generally Eric  
16 copies me on anything that he sends and also Mr. Keller,  
17 but I don't recall any active discussion beyond that in  
18 the Board.

19 Q. Okay and that's what I wanted to ask you. Was  
20 there any further discussion after receiving this letter  
21 of January 25, 2011 from the Board with regard to  
22 complying with the request of Mr. Hobson?

23 A. No I basically left this up to counsel and for the  
24 reason I stated earlier that other people mentioned in  
25

1 the very original request we were pursuing for  
2 delinquent accounts and it just seemed like we didn't  
3 want to get ahead of any case.

4 Q. Fair enough. Did you have any communications  
5 directly with the accountant yourself about this?

6 A. No.

7 Q. So you hadn't -- you wouldn't know whether or not  
8 or would you know whether or not the compilation of  
9 these records would require simply downloading them to a  
10 flash drive or going through thousands of boxes of  
11 documents? Are you aware of how they keep their records  
12 of the accounting firm?

13 A. I would assume they are on some kind of computer  
14 file, but no I don't know.

15 Q. Okay the reality is you can't say today? You can't  
16 tell one way or the other?

17 MR. HAIGHT: Object again to the  
18 leading.

19 COURT: Sustained.

20 BY MR. McDANIEL:

21 Q. Are you aware of any way that or are you familiar  
22 with the resale list?

23 A. Yes.

1 Q. How is the resale list maintained where -- format  
2 is it maintained?

3 A. ~~It's a long list that's been maintained since the~~  
4 developer was in charge of those people that have or  
5 resigned their membership which per our membership plan  
6 means that you elect to put your membership on the list  
7 and you are responsible for all dues, assessments,  
8 addendums until that list is satisfied. Until that  
9 membership is reissued.

10 Q. What is the format of that though? How it is  
11 maintained by the Club? Are you familiar with that?  
12 With the actual maintenance of that?

13 A. The prior membership director and current  
14 membership director take note of all transactions and  
15 requests from the members and keep the file, keep the  
16 list.

17 Q. I guess what I am wondering is this a word  
18 document? Is this a piece of paper? A ledger? Do you  
19 know actually what the list --- how is it actually  
20 physically maintained?

21 A. Yea, it is obviously put into some kind of file a  
22 PDF and --

23 Q. So it is a computer file?

24 A. Yes.

1 Q. Do you have any idea how long that file is?

2 A. It is a page of about 75 or five names and numbers.

3 Q. All right. Was Richard Carley the treasurer before  
4 you?

5 A. He was -- he was not my immediate predecessor but  
6 no, he was the past president and past treasurer. I  
7 don't know which years.

8 Q. And just to be brief with regard to this letter I  
9 don't want to go through each part of it again but just  
10 ask you if I can again generally are you familiar with  
11 conversations outside of giving it to you attorney to  
12 produce the resale list and the accounting of the resale  
13 list, any other discussions that were had from yourself  
14 or any of the Board members?

15  
16 MR. HAIGHT: Your Honor, again the  
17 resale list is something that they should  
18 be looking for if they think they are  
19 entitled to it in the other actions that  
20 are pending.

21  
22 MR. McDANIEL: Your Honor, I say you  
23 have ruled on this. I mean he is  
24 objecting to the same things and you have  
25 already ruled that this is within what we  
have asked for in the January 25<sup>th</sup> letter,

1 the specific resale list, the specific  
2 documents, and I am simply trying to find  
3 ~~out why they are going to claim well~~  
4 they --this is all compilations and  
5 problems with getting this stuff out when  
6 in reality they probably could have  
7 gotten this on a computer disc in three  
8 seconds is what I am trying to show.

9 MR. HAIGHT: Well that's reading Mr.  
10 McDaniel's' letter what he says is we are  
11 also seeking an accounting of the resale  
12 list as well as those memberships sold,  
13 resigned or terminated for any reason  
14 since December 1 of 2001. Now he is  
15 asking for more than just the current  
16 resale list. He is asking for every  
17 resale list that has ever existed and  
18 documentation with regard to every single  
19 transaction flowing from that list.

20  
21  
22 MR. McDANIEL: And I am going to ask  
23 him about those other things, but I think  
24 I have a right to ask him about the  
25 resale list.

1 MR. HAIGHT: Again Your Honor it is  
2 not in the statute. Nowhere are we going  
3 ~~to see resale list in there. This is~~  
4 something that is germane potentially to  
5 these other lawsuits they are involved  
6 in. This they have attempted to take the  
7 statute, expand on what the statute  
8 allows and turn it into a fishing  
9 expedition that properly belongs in the  
10 other cases.

11  
12 MR. McDANIEL: I don't know how an  
13 equity member can be excused of going on  
14 a fishing expedition on a company that he  
15 has paid tens of thousands of dollars to  
16 be a part of. I mean I think that is  
17 insulting to an equity member to sit  
18 there and try and tell him you don't have  
19 a right to get some basic information  
20 about what's happened with this Club even  
21 though it is pretty clear that they have  
22 not been treating people equally.

23  
24 COURT: Well let's do this. That  
25 was an objection that's overruled. Go  
ahead and continue to ask him about them.

BY MR. McDANIEL:

1 Q. Tell me if you can what -- are you familiar with  
2 how the accounting records related to the resale list  
3 are kept?

4 A. No.

5 Q. Are they done through Phoenix accounting firm?

6 A. Yes.

7 Q. And again is that the same set up as you had  
8 testified to earlier with regard to --

9 A. It's got to be far more than a one page document.

10 Q. Okay.

11 A. It's got to include all the real estate  
12 transactions and everything else and individual files.  
13 It could be quite voluminous.

14 Q. So the Club maintains the real estate transaction  
15 documents?

16 A. It is a combination of the POA and the Club as I  
17 recall.

18 Q. So is it --

19 A. And the old documents that might have been relevant  
20 at the time the developer and --

21 Q. So it is your understanding that Phoenix does the  
22 accounting for both the Club and the POA?

23 A. Yes.

Q. And they do that as one entity?

1  
2 A. ~~As one entity -- yea I mean it is a company that~~  
3 ~~provides accounting services to both.~~

4 Q. Okay and I guess I am wondering if those records --  
5 you are saying the records for the POA -- it is your  
6 understanding they are intermingled with the records  
7 from the Club?

8 A. If you ask me where they were, I couldn't tell you.  
9 I just don't know.

10 Q. I am just asking you for your understanding of how  
11 that accounting is done as the Treasurer, whether or not  
12 you know whether your accounting is kept comingled with  
13 the accounting of the POA?

14 A. The books are separate but the records of the  
15 property transactions and associated memberships I can't  
16 tell you.

17 Q. Okay, are there -- do you know how the records with  
18 regard to sold memberships, resigned or terminated  
19 memberships, any of those three what -- outside of  
20 what's with the accounting firm, do you know of any --  
21 or the accounting firm, any of those records are being  
22 maintained otherwise with the Club or otherwise?

23 A. I would suspect with the membership director the  
24 vast majority of them.  
25

Q. Okay, and who is the membership director?

A. Currently it is Lindsay Cooler. Prior to that I think it was Ellen Padgett in other capacity or other people.

Q. And are you aware of how they maintained those records?

A. No.

Q. Are you aware of -- does the Club itself own any memberships?

A. The Club owns all memberships because the transaction occurs through the Club. So what happens -- that's it.

Q. So there's no specific memberships that are just owned by the Club alone or are there? I guess that is what I am wondering. Does the Club have any memberships that aren't owned by some other person. They are just owned by the Club?

A. I am sorry -- the Club owns all unissued memberships.

Q. Okay, I guess that is what I am asking is. Where would those unissued memberships come from?

A. They are in -- I guess you would call the treasury stock.

1 State of South Carolina ) Court of Common Pleas  
 2 County of Beaufort ) 14th Judicial Circuit  
 No.: 2011-CP-07-0945

3  
 4 William Hobson, )  
 5 Plaintiffs, )  
 6 vs. ) HEARING  
 7 Callawassie Island )  
 8 Members Club, Inc., )  
 9 Defendant. ) August 29, 2013  
 10

11 Hearing reported by Deborah S. Thomas,  
 12 Certified Verbatim Reporter and Notary Public in and  
 13 for the State of South Carolina; said hearing held  
 14 before the Honorable Marvin H. Dukes, III, Beaufort  
 15 County Master in Equity and Special Circuit Court  
 16 Judge in accordance with the South Carolina Rules of  
 17 Civil Procedure, at the Beaufort County Courthouse,  
 18 102 Ribaut Road, Room 212, Beaufort, South Carolina,  
 19 on August 29, 2013, at the hour of 9:50 a.m.

20  
 21 COPY

22  
 23 ABACTIS REPORTING SERVICES  
 24 15 Pineapple Drive  
 Bluffton, South Carolina 29909  
 (803) 206-7390  
 25

Appearances

Representing the Plaintiff:

BRIAN D. MCDANIEL, ESQUIRE  
Law Office of Brian McDaniel, LLC  
P.O. Box 2085  
Beaufort, South Carolina 29901-2085  
bmcdaniel@attorneymcdaniel.com

Representing the Defendant:

EHRICK K. HAIGHT, JR., ESQUIRE  
Minor Haight & Arundell, PC  
1000 William Hilton Parkway, Suite 203  
The Clarendon Building - Village at Wexford  
P.O. Drawer 6067  
Hilton Head Island, South Carolina 29938  
rick@mhalawfirm.com

Also Present:

RUSSELL PIERCE PATTERSON, ESQUIRE  
Russell P. Patterson, PA  
P.O. Box 8047  
Hilton Head Island, South Carolina 29938  
russell@russellpattesonlaw.com

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1 This hearing is taken in accordance  
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning, we are  
4 here on Hobson versus Callawassie Island Members  
5 Club, Incorporated, Case 11-CP-07-945. We have  
6 today, among other things, a motion to reconsider  
7 and issues with regard to attorneys fees and costs  
8 associated with previous orders.

9 I think it would logically probably best  
10 start with the motion to reconsider. Do you all  
11 disagree or is that -- probably makes good sense?  
12 So happy to hear from you, Mr. Haight.

13 MR. HAIGHT: Thank you, Your Honor.  
14 If I could I think in order to do that it would help  
15 to go through the chronology. And I'll pass up, you  
16 know, various documents over the course of this case  
17 which would start, of course, with the complaint in  
18 this matter.

19 There are certain exhibits to that  
20 complaint the first of which is the letter that  
21 started all of this, which is a June 29th, 2010,  
22 letter, to my client from Mr. McDaniel which we  
23 think it's fair to say it requested virtually all  
24 the records since December 1st of 2001.

25 We thought it was an extremely broad

1 request. And much of it was outside the purview of  
2 the statutes. And that is what we with indicated in

3 a letter back to Mr. McDaniel of July 14th, 2010,  
4 which is also attached to the complaint.

5 In August of 2010, we supplied the  
6 documents that we believe were required. And we  
7 also, you know, advised him with regard to the  
8 website access for members. You know, they can get  
9 on the website and find out a lot of the things that  
10 they were requesting.

11 Again, there were more letters in the  
12 early part of 2001. January 23rd of 2011 -- excuse  
13 me. January 25th, 2011, where Brian said he wanted  
14 accounting records since December 1st of 2001 of all  
15 multiple membership holders and an accounting of the  
16 resale list as well as those memberships sold,  
17 resigned, or terminated for any reason since  
18 December 1st of 2001.

19 Again, we responded letter of  
20 February 7th, 2011, saying that it was our good  
21 faith position that these accounting records were  
22 outside the purview of the statutes; namely,  
23 33-31-1602(b) and 33-31-1620.

24 And in the answer -- or rather in the  
25 complaint that was filed, it's clear that what they

1 are seeking is all information requested in the  
2 June 29th, 2010, letter. I think subsequently Brian  
3 has said, no, you know, we've limited that by our  
4 January 25th, 2011, letter, but it's clear in the  
5 complaint in the prayer for relief they seek  
6 information requested in the June 29th, 2010,  
7 letter.

8 And they seek attorneys fees under  
9 33-31-720(d) which it's our position is completely  
10 inapplicable in this situation. We filed an answer,  
11 which I can pass to the court, which is here. In  
12 that answer, you know, we allege that we complied  
13 fully with 33-31-1601, ad sec.

14 You know, we denied that any request was  
15 made under 33-31-720 which would activate that  
16 attorneys fee provision. And most importantly, it  
17 was our belief that we had exercised good faith  
18 under 33-31-1604, that clearly some of these  
19 requests fell outside the purview of the statutes.  
20 And it was our position that Mr. Hobson was not  
21 entitled to attorneys fees.

22 Now, prior to the hearing in this matter,  
23 you know, we passed up a memorandum of law, a copy  
24 of which I'm passing up. And it was our position  
25 that all required documentation had been provided

1 despite what we viewed as Mr. Hobson's lack of good  
2 faith or proper purpose on his part.

3 Subsequent to that we had the hearing.  
4 And the court issued an order of March 29th, 2012,  
5 which I believe Brian has already passed up. And in  
6 that order in A it was ordered that we produce  
7 itemized accounting records of C.I.M.C., that is my  
8 client, since December of 2001, of all multiple  
9 membership holders including names listed on the  
10 June 29th, 2010, letter, and an accounting of the  
11 resale lists as well as those memberships sold,  
12 resigned, or terminated for any reason since  
13 December 1st, 2001.

14 And B, the issues of payment for cost of  
15 production and the Plaintiff's requests for  
16 attorneys fees and costs held in abeyance, which has  
17 been continued even in the interim order.

18 C, a complete copy of the membership  
19 accounts currently maintained by way of their Jonas  
20 software. D, the resale list and membership list.  
21 And E, format on what medium or storage devices the  
22 records of multiple membership holders and the order  
23 of records of those memberships sold, resigned, or  
24 terminated are kept.

25 Now, again, it's been our position that

1 we've complied with much of this. And we've told  
2 them what we know about the Jonas software. There

3 has been -- you know, with regard to this order and  
4 what was being required of this order, which it's  
5 our position was clearly every record we've ever  
6 had.

7           You know, we submitted affidavits of Craig  
8 Simonson with regard to what the cost would be if my  
9 client had to comply with that. I'm passing those  
10 up. Similarly there was a lot of -- the court may  
11 or -- may or may not recall. There was a lot of  
12 back and forth where we had telephone conferences  
13 with the judge. We even had conferences in person  
14 where all of that was discussed.

15           And we also -- let me pass these up. We  
16 had a supplemental memorandum in opposition to their  
17 request for attorneys fees. Again, we said that  
18 33-31-720(d) was inappropriate because the statute  
19 only requires production of a membership list in  
20 advance of a meeting, and no meeting was pending.

21           And a membership list was provided along  
22 with web access which that information is available  
23 on the web. Again, we thought 33-31-1604 was  
24 inapplicable owing to good faith, delivery of all  
25 documents that are required by the statutes.

1 And it was also our position that  
2 15-53-100, which is the declaratory judgment

3 statute, does not create an independent right to  
4 attorneys fees. You know, that right needs to be  
5 found in the Nonprofit Corporation Act statutes.

6 What all of this gets to, Your Honor, is  
7 the interim order, which you have a copy of I  
8 believe already, but there is another copy. And we  
9 had also filed obviously subsequent to the first --  
10 subsequent to the interim order we had filed our  
11 motion for reconsideration which I believe you  
12 already have, but here is another copy.

13 There was also a confidentiality order  
14 which probably doesn't have any bearing on anything.  
15 Now, in the motion for reconsideration our primary  
16 argument was that, again, this was an overly  
17 expansive definition of what was required to be  
18 produced under the statutes and that attorneys fees  
19 were inappropriate. So it's been consistent with  
20 what the arguments have been here.

21 What we liked about the interim order was  
22 that it substantially reduced what was ordered under  
23 the order dated March 29th of 2012. Kept open  
24 challenges to that order. It kept open issues of  
25 production. It kept open issues of costs including

1 attorneys fees and any other open issues, but what  
2 we liked about it was that it substantially narrowed  
3 what was required.

4 Now, the court was party to this, so I'm  
5 passing these up, too. This was e-mail  
6 correspondence that went back and forth amongst the  
7 three of us. This was prior to the interim order.

8 JUDGE DUKES: Did you want to make  
9 this an exhibit? Everything else so far is filed.

10 MR. HAIGHT: Yes, I would, Your  
11 Honor.

12 JUDGE DUKES: Okay.

13 MR. McDANIEL: I'm sorry. What is  
14 this?

15 MR. HAIGHT: This is our e-mail  
16 correspondence prior to the entering into of the  
17 interim order which shows the discussions amongst  
18 the three of us and also shows how basically we were  
19 narrowing the required production.

20 MR. McDANIEL: And I object to it in  
21 as much as not having a chance to verify if it's  
22 complete and --

23 MR. HAIGHT: And, Your Honor, if Mr.  
24 McDaniel thinks he needs to supplement later with  
25 additional e-mails, I have no objection to that.

1 JUDGE DUKES: Yeah. I mean, allowing  
2 for that we'll go ahead and let's pass that down to  
3 Deborah --

4 MR. HAIGHT: Shall I have this  
5 marked?

6 JUDGE DUKES: -- and let's get it  
7 marked Defendant's 1.

8 MR. HAIGHT: Defendant's Exhibit 1.  
9 And similarly, Your Honor --

10 JUDGE DUKES: We'll wait one second.  
11 Let's let her mark it.

12 MR. HAIGHT: Okay. I will want these  
13 marked, too, so --

14 JUDGE DUKES: Okay. Well, why don't  
15 we --

16 MR. HAIGHT: Shall we get those  
17 marked as 2?

18 JUDGE DUKES: What are those?

19 MR. HAIGHT: These are e-mail  
20 correspondence that simply shows the submission of  
21 the proposed order by Mr. McDaniel.

22 JUDGE DUKES: Okay. All right.  
23 Well, let's let Deborah mark them.

24 MR. HAIGHT: Well, actually, no. I  
25 think that is the same as the last one. Here is

1 the -- here is the one I was talking about.

2 JUDGE DUKES: Wait. Is she marking

3 the wrong one then?

4 MR. HAIGHT: That one there should be  
5 Number 2.

6 JUDGE DUKES: Okay.

7 MR. HAIGHT: The second one I passed  
8 up was the same as the first one.

9 MR. McDANIEL: And I would just renew  
10 the objection that I don't know how -- from the  
11 motion to reconsider, I don't believe these have any  
12 relevance to what you are hearing about today. They  
13 had specific things in their motion to reconsider  
14 that this doesn't appear to have anything that I see  
15 to do with it. And there are redacted parts in the  
16 last one I got.

17 JUDGE DUKES: All right.

18 MR. HAIGHT: That was simply just  
19 showing who I sent a copy of this too, but, you  
20 know, we can black out all of the top part if you  
21 want and just simply have the e-mail with Heather  
22 and then your submission to the court.

23 (MARKED DEFENDANT'S EXHIBIT NO. 1.)

24 (MARKED DEFENDANT'S EXHIBIT NO. 2.)

25 JUDGE DUKES: All right. So

1 essentially we've got Defendant's 1 and 2 which are  
2 e-mails back and forth. And I suppose it could have  
3 some relevance with regard to the way the order is  
4 written on the order one, but again I will give it  
5 the proper weight at the appropriate time, if any,  
6 and certainly allow you to supplement. I will give  
7 you 10 days if you want after this to come up with  
8 anything you would like after reviewing them.

9 Anyway, go ahead, Mr. Haight.

10 MR. HAIGHT: So, Your Honor, if I  
11 could pass up that. That is Exhibit 1 which is the  
12 e-mail correspondence between May 22nd and June 15th  
13 amongst the three of us prior to the interim order  
14 which shows the narrowing of the scope of production  
15 because again it has always been our position that  
16 it was overbroad to start with and not within the  
17 purview of the statutes in question.

18 The second one is simply the e-mail  
19 correspondence saying, you know, that essentially  
20 Mr. McDaniel and I had -- to the extent that we were  
21 going to agree, had agreed on the interim order and  
22 that is what is being passed up.

23 JUDGE DUKES: All right. Put that  
24 right there.

25 MR. HAIGHT: Now, what I have next

1 are documents showing -- and I didn't supply all the  
2 pages of what was being produced because that is  
3 voluminous. The first one I guess I would ask to be  
4 marked are e-mails -- my e-mail of July 9th, 2012,  
5 to Mr. McDaniel providing the Jonas printout for  
6 those listed in the interim order and which exist  
7 because many of them did not exist.

8 Some names were simply not in the Jonas  
9 system. There were two subsequent e-mails.

10 MR. MCDANIEL: May I see those?

11 MR. HAIGHT: Sure.

12 JUDGE DUKES: Thank you.

13 (MARKED DEFENDANT'S EXHIBIT NO. 3.)

14 MR. HAIGHT: Number 3, Your Honor --  
15 Exhibit Number 3 shows -- actually, I think we've  
16 marked the same one twice.

17 JUDGE DUKES: Thanks.

18 MR. HAIGHT: Actually this is the one  
19 that needs to be marked. I think it's 4.

20 (MARKED DEFENDANT'S EXHIBIT NO. 4.)

21 COURT REPORTER: Okay. So the one  
22 that I marked 4 is not 4?

23 MR. HAIGHT: Right. That is the same  
24 as 3.

25 COURT REPORTER: I'll take that

1 sticker and put it on this document then.

2 MR. HAIGHT: Okay. And what I have,

3 Your Honor, in Number 3 is, you know, the answers  
4 with regard to the Jonas system and who is in it and  
5 who is not in it, you know, the almost 2,000 pages  
6 of records that were supplied.

7 Also we e-mailed the resale list that we  
8 had. I mean, we didn't have any that we could find  
9 prior to 2005, but I sent two batches. The resale  
10 lists that we found from 2005 through 2008 and then  
11 those from 2009 to, at that time, May of 2012. So  
12 that is in Exhibit 3.

13 And in Exhibit 4, this was just e-mail  
14 correspondence with regard to the copies of the  
15 files because we also went -- and I personally went,  
16 and that is reflected in my affidavit, more than  
17 once to my client to look through files. Once we  
18 had files, you know, obviously there were concerns.  
19 There were a lot of Social Security numbers and  
20 things like that in there.

21 You know, so I personally reviewed, you  
22 know, the files that were produced for those that we  
23 could find because many of them -- again, what  
24 they've got is what we've been able to find. And  
25 that is correspondence indicating when that was

1           supplied to Mr. McDaniel. Those were hand-delivered  
2           to his office.

3                       JUDGE DUKES: This one is 4. That  
4           one is 4.

5                       MR. HAIGHT: And Number 5, this is a  
6           letter from Mr. McDaniel to me, you know, asking  
7           some more questions with regard to what was  
8           produced.

9                       (MARKED DEFENDANT'S EXHIBIT NO. 5.)

10                      MR. HAIGHT: And then what we will  
11           mark as Exhibit 6 is my response back to him  
12           providing the additional -- there was some  
13           additional information we found. We provided that.  
14           And also provided clarification because, again, you  
15           know, for many of those people we didn't have  
16           records or there were some where we didn't have  
17           records under the name he was looking for, but we  
18           did have records under, say, the individual's name  
19           as opposed to a corporate entity name. And that is  
20           Exhibit 6.

21                      (MARKED DEFENDANT'S EXHIBIT NO. 6.)

22                      MR. HAIGHT: And finally, what I've  
23           already passed up is my affidavit with regard to the  
24           time just my firm devoted to this production which  
25           is \$3,855 worth of time. If necessary I can get --

1       you know, get another supplemental affidavit from my  
2       client, but again, you know, the interim order

3       greatly narrowed what was required, so consequently  
4       the cost was not as great, but it was still, you  
5       know, not in substantial.

6               And for that reason we have passed up my  
7       affidavit with regard to what was required to do  
8       that production, but that kind of in a nutshell is  
9       the history on this. I think it's clear that my  
10      client has exercised good faith throughout this  
11      process. They have produced what we believe was  
12      required under the statutes.

13             You know, throughout Mr. McDaniel had been  
14      requesting virtually every record that ever existed.  
15      That is our position. And we think that is a fair  
16      reading. And we think that is particularly true  
17      when one looks at the initial order in this matter  
18      which clearly mandated production of virtually  
19      everything.

20             Again, they were seeking everything they  
21      sought in the June 29th, 2010, letter, in their  
22      complaint. That is essentially what was in the  
23      first order. The interim order greatly narrowed  
24      that to a more refined search for what they said  
25      they were looking for.

1 And it's our position that we have in good  
2 faith responded to that. Some of these things don't  
3 exist. We've told them what we can't find. And  
4 it's our position at this time that we should be  
5 compensated for that production, narrowed, thank  
6 goodness, as it is. And we don't believe that they  
7 are entitled to attorneys fees because it's clear  
8 that throughout this process my client has exercised  
9 good faith in complying.

10 JUDGE DUKES: All right. And with  
11 regard to your motion to reconsider, you had a  
12 couple of issues here that -- ordinary course of  
13 business issue and did you want to address those  
14 or --

15 MR. HAIGHT: Sure. The motion for  
16 reconsideration, you know, basically two of those  
17 arguments are still arguably in play. And the first  
18 one had to do with, you know, what are accounting  
19 records as those are contemplated to be under the  
20 relevant statutes?

21 And we believe it's clear based on the  
22 statutes and the comments to those statutes that  
23 accounting records are the current accounting  
24 records of the corporation. Certainly not the  
25 accounting records going back to 2001 which is what

1 they said they were seeking.

2 Also to ask for things such as an

3 accounting of the resale list, not sure how the  
4 resale list is an accounting record or what an  
5 accounting of the resale list is supposed to be, but  
6 we have given them the copies of the resale lists  
7 that we have been able to find.

8 You know, they know and it's clear  
9 throughout this process that accounting -- that  
10 resale list is an Excel spreadsheet that was  
11 initially kept by real estate agents and people who  
12 did not work for my client. You know, in recent  
13 years it's been kept by the membership director, but  
14 before that it was not.

15 And that is not something, you know, that  
16 we controlled for a long period of time. And we  
17 don't even have anything that we can find from  
18 before 2005 because it's a dynamic Excel sheet that  
19 is being changed regularly and only I guess if it's  
20 printed out do we have an image of it from that  
21 period of time, but we found, you know, monthly  
22 printouts of it for a substantial period of time all  
23 of which have been provided that they've been  
24 utilizing in the litigation in these matters.

25 So, again, our first argument had been

1        what are accounting records. It has been our  
2        position that we have in good faith supplied what  
3        are accounting records as those are defined in the  
4        relevant statutes.

5                Again, the second argument, we said the  
6        order was incomplete in that it failed to address  
7        the cost of producing the information despite the  
8        fact that the only testimony presented on this issue  
9        indicated such costs would be substantial.

10               Again, that has to do with Craig  
11        Simonson's affidavits of the \$20,000 that it would  
12        cost my client to comply with what was set forth in  
13        the court's initial order.

14               And it's been our position throughout that  
15        as far as attorneys fees go that, one, they are not  
16        authorized by the relevant statutory authority  
17        relied upon. What was cited in the complaint and  
18        what has been talked about was 720 which really has  
19        nothing to do with this case. And the Plaintiff  
20        failed to cite any other authority for it.

21               Most importantly we believe that my client  
22        timely and in good faith and at least so far at no  
23        charge has provided all the records that they are  
24        required to provide by the statute and by the  
25        interim order.

1 And, again, finally the additional  
2 material requested is clearly outside the scope of  
3 what is required under 33-31-1601, ad sec. And if  
4 the court were to open this back up to the original  
5 order requiring that, again it's our position that  
6 that goes way beyond the purview of the statutes.  
7 And the cost in that case would be even more  
8 substantial. And that if that was to occur that we  
9 would be entitled to the cost of the \$20,000 as set  
10 forth in Mr. Simonson's affidavits which is the only  
11 evidence before the court with regard to what those  
12 costs would be.

13 JUDGE DUKES: All right. Anything  
14 else?

15 MR. HAIGHT: Not at this time, Your  
16 Honor.

17 JUDGE DUKES: Okay. Thank you very  
18 much. Happy to hear from you.

19 MR. McDANIEL: The motion to  
20 reconsider -- I'm just going to address those issues  
21 that are raised in that. I think the attorneys fees  
22 issues for both sides is not really addressed other  
23 than it's a cost issue in their motion to reconsider  
24 so we can get to it, but, you know, our position is  
25 generally that this paperwork and this numerous

1       hearings have been a result of Callawassie Island  
2       Club's refusal to turn over basic documents that any  
3       club should provide it's equity members in a  
4       nonprofit. Not things that they should be seeking  
5       to find ways or reasons not to turn over, but the  
6       general rule would be you have access to it because  
7       you paid a large chunk of money to be a member of  
8       this club.

9               That being said, the specific arguments  
10       that are made here are that the records were not  
11       accounting records. Well, as I believe I've passed  
12       this to you, but just to make sure you have a copy  
13       of it for this is they are pulling words from 1601  
14       that says a corporation shall maintain certain  
15       documents. And interposing that into 1602 which  
16       provides for the release of other documents and  
17       other accounting records other than those that they  
18       just shall maintain.

19              They are putting those two things together  
20       in a way that the statute does not do and they are  
21       trying to restrict the 1602 access in a way that is  
22       not applicable to it.

23              They are also taking comments -- parts  
24       from the comments where it says they would have to  
25       be able to make financial statements from the

1 records. And claiming that they only have to  
2 provide financial statements, or at least that was  
3 the position.

4 You know, in fact, as the comments further  
5 explain, it's perfectly reasonable that the  
6 corporation would have additional documents beyond  
7 whatever the current accounting records are. And  
8 there is no definition of current accounting  
9 records. So these could very well fall within the  
10 1601 definition any way.

11 Therefore, you know, the idea that the  
12 order disregards the statutory language I don't  
13 believe is persuasive. The 1601 comment  
14 specifically says, appropriate records that shall  
15 allow the financial statements to be prepared, but  
16 does not confine those records to only those argued  
17 by Defendant.

18 And it further goes on to say that the  
19 request -- the reason for this request is precisely  
20 the reason that Mr. Haight has said, it's to examine  
21 records to determine whether improper transactions  
22 have occurred or charitable trust breached states  
23 its proper purpose.

24 I mean, they have defined this purpose and  
25 said he's got a proper purpose here. That is the

1       burden that the club has to prove he did not have a  
2       proper purpose if they want to get attorneys fees by  
3       the way.

4               Furthermore, the comments on 1601 indicate  
5       that they would expect even small nonprofits would  
6       have things like checkbooks, canceled checks,  
7       receipts, whatever they have. And I would say  
8       despite all of that, if they don't have it, they  
9       don't have it. That was never the issue with  
10      Mr. Hobson.

11             It was always kind of the issue that  
12      Callawassie tried to make up in this was we are  
13      asking them to create things when we never -- he  
14      never was. Obviously he was asking for the  
15      documents that existed that would support the resale  
16      list, documents that could give him some idea or  
17      some accounting of why is he still so high on the  
18      resale list or why is this person off the resale  
19      list, where did they go or is the resale list being  
20      handled properly.

21             We have gotten those. They did eventually  
22      turn some of that stuff over after -- you know,  
23      through the order. And we believe that it was  
24      proper for them to turn those things over -- those  
25      resale lists over, because they have demonstrated

1 exactly the fears Mr. Hobson had that there are  
2 people on the resale list that didn't -- they are  
3 not being required to continue to pay dues and fees.  
4 And this -- obviously that is a dispute between the  
5 club and other members as to whether that is correct  
6 or are not, but it was a legitimate concern.

7 The second argument made in the motion to  
8 reconsider that I think is unpersuasive is that it  
9 fails to address the cost of production. As you  
10 know, Your Honor, we've had four or five hearings on  
11 this issue, telephone, in-person hearings. And in  
12 virtually all of those hearings at least our  
13 position has been that the club is being less than  
14 up front with what they have.

15 My client has made numerous attempts to  
16 say -- to find -- help them find ways to turn this  
17 over without incurring the costs. They've been  
18 unable to explain why it's so difficult, where the  
19 documents are kept. Eventually we have gotten I  
20 think some of that information over numerous  
21 hearings, but if you may recall we were during the  
22 hearing trying to call to get basic answers about  
23 was this in a file? Is this in a box? Is this on  
24 computers. And we couldn't get those answers  
25 without two or three hearings before the court. I

1 think really an unnecessary runaround to Mr. Hobson  
2 and what he was trying to get.

3 It would have been perfectly legitimate  
4 for at the beginning the club to say it's  
5 disorganized and we have it in these three boxes,  
6 but they would never come out and tell us. They  
7 would say it's \$20,000 that is all we are going to  
8 say to you. It's \$20,000 to figure out how we are  
9 going to get it.

10 I don't believe that is legitimate. And  
11 we believe their own evasive stance on this has  
12 caused them to incur the costs they've had. There  
13 is no need for them to incur costs.

14 Furthermore, the statute, 1604 says it  
15 will be -- if it's ordered it's at the company's  
16 cost. 1604(a) says the inspection is -- this is at  
17 the corporation's expense if not -- yeah. So that  
18 would be the alternative. And at that time, as we  
19 said, if they would turn over the documents --

20 MR. HAIGHT: Which section were you  
21 reading?

22 MR. McDANIEL: 1604(a). The  
23 Plaintiff has offered and is willing to review the  
24 records on his own, make copies on his own, as I  
25 said. And addressing this idea of costs, you know,

1 these are supposed to be for the benefit of the  
2 member and requiring the defendant to make the

3 records available for review to the Plaintiff, we've  
4 got a confidentiality order. He could sign that if  
5 there is some issue with him getting them.

6 But really at this point that issue of  
7 their -- of the costs that they've incurred I think  
8 is still a future cost in the sense that the interim  
9 order set from what they've produced at this point,  
10 they agree and the court has already found, and this  
11 hasn't been appealed, that it would not be a  
12 substantial burden to the Defendant to produce what  
13 they produced. That is from the interim order.

14 MR. HAIGHT: Your Honor, I will  
15 object. He's saying it haven't been appealed, but  
16 by its -- on its face it indicates it's not on final  
17 order thus it would not be required to be appealed.

18 MR. MCDANIEL: Well, the interim  
19 order is the order that relates to the documents  
20 that have been produced. As to the final order, the  
21 additional discovery, if there is any additional  
22 production, that issue may -- may be maintained on  
23 that, but I don't believe there is any statutory  
24 basis. I don't believe there is any legal basis.  
25 And certainly in equity there is no reason that the

1 club should get costs from Mr. Hobson for basic club  
2 information that he's asked for. This idea that  
3 this is -- he's asking for some in-depth study of  
4 all the club's records isn't accurate.

5 It was narrowed specifically in the  
6 complaint to the January 25th letter. And I'll show  
7 you that --

8 MR. HAIGHT: Again, I'll object. If  
9 you read the prayer for relief --

10 MR. McDANIEL: -- your Honor, if you  
11 will go to Paragraph 10 it says --

12 JUDGE DUKES: Hold on, Rick. Hold  
13 on. Let him state his objection and then you can  
14 continue on. So what was your objection? Sorry.

15 MR. HAIGHT: Because in the prayer  
16 for relief in (a) it says an order requiring the  
17 Defendant to produce to the Plaintiff the  
18 information requested in his letter of June 29th,  
19 2010. That is what it says. Any statement to the  
20 contrary is again contrary to exactly what he's  
21 asked for in his prayer for relief.

22 MR. McDANIEL: And in the complaint  
23 it says specifically in Paragraph 10 that the  
24 parties include -- that letters were exchanged  
25 between the parties including a January 25th letter

1 from the Plaintiff in which the information sought  
2 was further narrowed. And it attaches that as an  
3 exhibit.

4 And that is what we went forward with in  
5 the case. And even from that January 25th letter,  
6 when that was established by the court, we got no  
7 agreement or compliance that they would turn over  
8 those documents. So I think that is even -- even  
9 taking the fact that it was -- that they -- if there  
10 is some dispute about what the original complaint  
11 was asking for, by the time of the hearing it was  
12 known to the Defendant that it had been narrowed.  
13 That had been well established in the case.

14 And we believe it's established there.  
15 And regardless, the position of the law in this is  
16 if they see documents requested that should be  
17 turned over, and clearly the January 25th letter was  
18 sent to them, and they refused to turn those over,  
19 even if they believed that a hundred percent is not  
20 included, if they think they are only required to  
21 turn over 75 percent, they didn't do that. They  
22 turned over nothing. And said, no, you've asked for  
23 too much. We are not going to give you anything.

24 So I think it's disingenuous for them to  
25 argue that, well, we would have done this more

1 narrow thing had been more reasonable, but we just  
2 didn't want to give you those few extra documents  
3 from your earlier letter if you don't believe that  
4 it's already been properly narrowed.

5 And I think that is the position of this  
6 statute. The idea of the statute is that it's not  
7 upon Mr. Hobson. The default position is  
8 disclosure. If they don't know and it looks like it  
9 may be -- may be entitled to it, I would argue that  
10 they would have a duty to turn that over to him and  
11 not take the opposite position that he's got to  
12 prove his right to every document that he asks for.

13 However, the statute is broad. And as to  
14 the accounting records of the corporation, he's  
15 allowed to get, and that is what he asked for.  
16 1602(b)2 is accounting records of the corporation  
17 that he can ask for.

18 And I think that addresses I think their  
19 motion to reconsider should be denied. You heard  
20 this matter in full at the hearing in December and  
21 ruled as you did in the order. It was thoroughly,  
22 thoroughly reviewed and gone through the order as  
23 the e-mails show went back and forth over and over  
24 to get the order that we had.

25 Obviously Mr. -- his client does disagree

1 with it, but it was not something that was slipped  
2 through as an order that was unreviewed or unknown

3 at the time.

4 JUDGE DUKES: Let me ask this. Of  
5 course, we have the interim order in the interim and  
6 you've received it sounds like a number of  
7 documents, the Jonas software and some of these  
8 other things. What more is there?

9 MR. McDANIEL: My client is -- here  
10 is my concern. My client is fine with not getting  
11 any more documents through this process. However, I  
12 believe he was entitled to the documents in the  
13 final order. And I believe that he is entitled to  
14 attorneys fees for having to go through the process  
15 of getting this.

16 However, he would -- he's not  
17 relinquishing the right to get attorneys fees. He  
18 would be okay with saying the interim order, the  
19 documents produced are -- he won't -- he's not going  
20 to go forward anymore with asking that there is  
21 something additional that they haven't produced in  
22 this case.

23 He's been sued by the club at this point,  
24 so he does have other ways to get the information  
25 that he needs.

1 JUDGE DUKES: What was the cost of  
2 production, Mr. Haight, of the things that were  
3 given so far? I mean, they were just the \$3,000  
4 something, right?

5 MR. HAIGHT: That is simply my costs.

6 JUDGE DUKES: Right.

7 MR. HAIGHT: I mean, I haven't asked  
8 my client. If you want, I can supplement and get  
9 them to try to reconstruct their time spent in  
10 gathering that information. That was simply my time  
11 and my offices' time in reviewing these files,  
12 gathering these files, and communicating them.

13 JUDGE DUKES: What they did was they  
14 just e-mailed the Jonas stuff, right? The Jonas  
15 data?

16 MR. HAIGHT: Yes.

17 JUDGE DUKES: Okay.

18 MR. HAIGHT: But the big part of it  
19 was I went over twice to look through files over  
20 there. And that was a substantial amount of time.

21 JUDGE DUKES: That is within your  
22 hourly report?

23 MR. HAIGHT: Yes.

24 JUDGE DUKES: I still was amazed the  
25 day I got it and am still amazed at the \$20,000

1 figure since that just seemed sky high to me and  
2 still does. And I'm just wondering where that came  
3 from or --

4 MR. HAIGHT: Well, at that point they  
5 wanted everything. And I think when Mr. McDaniel  
6 says, he used the term disingenuous with us. I  
7 think I'll use it with regard to their side because  
8 in the complaint they said we want everything under  
9 the June 29th letter. It's right there in A in the  
10 prayer for relief.

11 MR. MCDANIEL: The supplemental  
12 affidavits came right after the hearing.

13 JUDGE DUKES: Let him finish.

14 MR. HAIGHT: And in the order I think  
15 the only fair reading of the court's order of  
16 March 29th of 2012, is again they are still seeking  
17 everything and the court is ordering everything  
18 which is why we filed our motion for  
19 reconsideration. And in our view, which is why that  
20 order was narrowed in the interim order because  
21 clearly that first order was, in our view,  
22 overbroad.

23 And our client, it's our position, was  
24 acting in good faith in saying, that is way beyond  
25 what the statute requires. I think that is the only

1 fair reading. You know, the interim order, much  
2 more palatable. You know, it took asking for  
3 everybody's records from the beginning of time,  
4 which for us is 2001, to, okay, here are 34 names.  
5 You know, so maybe two dozen of them were actually  
6 people we had records for.

7 And we supplied those records. That is  
8 much -- as opposed to be hundreds of people, two  
9 dozen.

10 JUDGE DUKES: On the other hand, of  
11 course, you are weren't even going to do the interim  
12 order without the case, so that is --

13 MR. HAIGHT: And they also neglect  
14 the fact that we did respond to the letters with  
15 what we in good faith thought was required. We  
16 still don't think what they are asking for, you  
17 know, of records from people going back to 2001 is  
18 within the purview of the statutes. We don't think  
19 that is what the accounting records are as that is  
20 defined we think in the official comments. It's  
21 talking about the current accounting records.

22 I mean, many people wouldn't even have  
23 records going back more than six or seven years,  
24 keep what the I.R.S. requires them to keep and get  
25 rid of everything else. They were asking way beyond

1       that. We think that is way outside the purview of  
2       the statute.

3               JUDGE DUKES: But if you keep them,  
4       what is the argument not to hand them over?

5               MR. HAIGHT: Well, searching and  
6       finding --

7               JUDGE DUKES: I don't necessarily  
8       disagree with you if you burned them. Great, you  
9       know, but if you've got them in a file cabinet --

10              MR. HAIGHT: But we had file cabinets  
11       upon file cabinets. And if we are having to give  
12       everybody's file up, you know, we've got to review  
13       them. You know, we redacted these with Social  
14       Security numbers and things of that nature. I mean,  
15       we are talking, you know, multiple lateral files  
16       like this stuffed with files.

17              MR. MCDANIEL: I don't understand  
18       that though because they said they don't have most  
19       of the records back past about 2007. And what they  
20       turned over for us -- what you see is a specific  
21       list and they said we can't find files for this many  
22       people. So I don't know how they have that many  
23       files when there is not that many members or -- and  
24       they are talking about they basically didn't have --

25              MR. HAIGHT: Since 2001 there have

1       been hundreds of members.

2                   MR. McDANIEL: Yeah, but you don't

3       have those records. That is what they said. You  
4       said you don't have those records.

5                   MR. HAIGHT: We have what we have,  
6       but -- and we don't -- you know, as we know for the  
7       list of 34 there are people there we don't have  
8       records for.

9                   MR. McDANIEL: Right. Well, that is  
10      what I'm saying.

11                  MR. HAIGHT: Probably because they  
12      are very old members or he's got the name wrong or  
13      something. I don't know. But what they were asking  
14      for was essentially everything. And, frankly, we  
15      are not just going to allow Mr. Hobson to go in and  
16      look through everything. You know, we've got to  
17      look through it first.

18                  JUDGE DUKES: And I guess what I was  
19      getting at is no matter which order or what order I  
20      issue it sounds like it can say the interim order  
21      was complied with; is that right? And those --

22                  MR. HAIGHT: It's our position it  
23      was.

24                  JUDGE DUKES: And those issues --  
25      those documents have been given to the Plaintiff.

1 With regard to the balance of any documents from the  
2 order that were not referenced in the interim order,  
3 the Plaintiff at this point, based on the posture of  
4 the case, no longer seeks those documents.

5 The remaining issues then have to do with  
6 attorneys fees and costs, right?

7 MR. HAIGHT: Correct.

8 JUDGE DUKES: Since you are happy  
9 with the interim order. So this is really nothing  
10 more than an attorneys fees -- and not even costs.  
11 I mean, it's just attorneys fees.

12 MR. McDANIEL: Yes. If you are going  
13 to deny their motion to reconsider on the -- but I  
14 guess we can kind of get past that.

15 MR. HAIGHT: Well, our motion to  
16 reconsider is directed at that initial order, you  
17 know, the --

18 JUDGE DUKES: I understand. But at  
19 this point the initial order has changed into the  
20 interim order with regard to the production of  
21 documents.

22 MR. HAIGHT: Which we believe we have  
23 fully complied with and which they appear to be  
24 happy with.

25 JUDGE DUKES: Right. So that

1 issue -- so we are left with attorneys fees, right?

2 MR. McDANIEL: Right.

3 MR. HAIGHT: Correct.

4 JUDGE DUKES: And nothing more?

5 Okay. All right. I'm just trying to figure out  
6 what I need to do here. All right. And I've got  
7 your attorneys fee affidavit which is in the amount  
8 of about 4,000 yours which is in the amount of about  
9 4,000.

10 MR. HAIGHT: Thirty-eight something.

11 JUDGE DUKES: And shockingly very  
12 similar.

13 MR. McDANIEL: And I turned in a  
14 memo, I just want to make sure you have that, in  
15 support of the attorneys fees.

16 JUDGE DUKES: Uh-huh. I think I've  
17 got that. I'm happy to take that one if you don't  
18 think I've got it here in my stack.

19 MR. HAIGHT: Your Honor, I've got  
20 copies in case you need it here of the statutes.  
21 I'm sure Brian has a copy, but there is another  
22 copy.

23 MR. McDANIEL: And I would ask  
24 that -- I mean, I didn't -- you know, I guess the  
25 issue of costs -- I mean, as far as their submission

1 of attorneys fees, I would ask for permission to  
2 submit a memo of some sort specifically on that  
3 issue of them asking for attorneys fees. You know,  
4 I hadn't seen the specific numbers. The only  
5 numbers I've seen is the \$20,000. So, I don't know,  
6 maybe I had it, but I don't recall getting the  
7 affidavit of your attorneys fees all though --

8 MR. HAIGHT: I e-mailed it to you  
9 late yesterday.

10 MR. MCDANIEL: Okay. I haven't seen  
11 that yet. So I would like some opportunity to look  
12 at it and respond because, again, I don't believe  
13 this -- I believe the statute says just the  
14 opposite, that there is no provision anywhere for  
15 that for their attorneys fees and their costs. And  
16 if there is, it would be limited as in the statute  
17 to the actual costs of copying the documents, not to  
18 attorneys fees and these extra things.

19 And also I would just make sure as far as  
20 our attorneys fees, which I haven't really had a  
21 chance to address. I think he made a motion on that  
22 that we didn't properly plead it, but I would just  
23 refer the court to the SCE&G case which says --  
24 which did it precisely as we did it which is saying  
25 it's a declaratory judgment action. The court has

1 the power to do it -- to award attorneys fees.

2 And as long as there is a statute or a

3 contractual provision that allows it, you don't have  
4 to cite the specific statute or the specific  
5 contractual provision. That is what this SCE&G case  
6 said, that even though he did not cite the  
7 contractual provision, but the court said they were  
8 on notice. They knew that they were fighting about  
9 these statutes or this contract in that case. And  
10 that the contract allowed for attorneys fees and  
11 he's going to grant them. So we believe we are  
12 entitled to it. And that is the end of the memo.

13 JUDGE DUKES: All right.

14 MR. HAIGHT: And, Your Honor, we  
15 believe they are not. We believe that our client  
16 has exercised good faith throughout. We responded  
17 with what we believe was required with letters.  
18 They then brought a suit seeking more. We opposed  
19 that because we thought it was overly broad.

20 Now it has been narrowed and we've been  
21 willing to comply with that. We think that shows  
22 good faith throughout this process. The  
23 over-breadth of their request and, frankly the  
24 over-breadth of what was required in the initial  
25 order, we think we are in good faith in opposing

1 that.

2 And we think that that is essentially

3 proven by the interim order, you know, which was  
4 much more limited and less -- you know, less onerous  
5 in what would be required. And we believe we fully  
6 complied with it. And we think that that has  
7 established the good faith that defeats their claim  
8 for attorneys fees.

9 MR. MCDANIEL: Okay. I have just one  
10 final thing and I will stop.

11 JUDGE DUKES: Sure.

12 MR. MCDANIEL: Their affidavits for  
13 how much it would cost for production were after the  
14 hearing in this case, after it was on the record and  
15 undeniably limited to the January 25th letter. They  
16 may say they are confused about that going to the  
17 case, but after the hiring in December that was not  
18 an issue because it was on the record, narrowed to  
19 the January 25th letter.

20 So the cost of production they put out had  
21 been based on the production on that. The interim  
22 order simply was put in place not as a justification  
23 to narrow the issues, but because they were saying  
24 we can turn over some of these things and it would  
25 no substantial cost to us. And that is what -- that

1 is why it was agreed to go forward with the interim  
2 order and that is what it says in the interim order.

3 MR. HAIGHT: I think the no  
4 substantial cost was voiced by Mr. McDaniel and  
5 voiced by the court. I don't know that that was  
6 voiced by us because we still thought the costs were  
7 substantial. Certainly not to the level that they  
8 were before. And, again, we still -- we think that  
9 that January 25th letter was probably much too broad  
10 and not in compliance with the statute. But what is  
11 clear is that the initial order went beyond that.  
12 The initial order, you know, required essentially  
13 what they were seeking in the June 29th letter of  
14 2010.

15 And we think it's good faith to oppose  
16 that because it was in our view clearly overbroad.  
17 And even if the court were to disagree, that  
18 position is a reasonable position under the  
19 circumstances here.

20 JUDGE DUKES: Well, and, of course, I  
21 don't think I have to find bad faith, do I? You  
22 were mentioning good faith, one way or the other.

23 MR. HAIGHT: Well, good faith -- if  
24 we show that what we produced was done in good  
25 faith -- what we didn't process was done in good

1 faith, they are not entitled to attorneys fees.

2 That is what the statute says.

3 JUDGE DUKES: Let me take a look at  
4 it and --

5 MR. McDANIEL: I'll just refer to my  
6 memo on that because the issue on that is they've  
7 got to prove that he did not have a good faith  
8 basis. Not just that, well, it's too expensive or  
9 we've got to look too hard or whatever. He didn't  
10 have a good faith basis to make that request. That  
11 is the burden they have.

12 JUDGE DUKES: All right. And I'm  
13 going to hold this for, what did we say, 10 days, to  
14 allow you to take a look at the e-mails and respond.

15 MR. McDANIEL: Okay.

16 JUDGE DUKES: And so I'm going to  
17 give this to Heather. Let's pass these exhibits  
18 which are 1 through 6 back down to Deborah to  
19 include with wherever she puts things. Anything  
20 else we need to do?

21 All right. Well, thank you both very  
22 much. Always interesting.

23 (Whereupon, the hearing  
24 was concluded at 10:38 a.m.)  
25

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 19, 2014.



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Stacey S. Collins  
Ehrick K. Haight, Jr.  
MINOR, HAIGHT & ARUNDELL, P.C.  
Post Office Drawer 6067  
Hilton Head Island, South Carolina 29938  
(843) 785-8040  
Attorneys for Appellant

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SEP 30 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
14<sup>th</sup> Judicial Circuit

Marvin H. Dukes, III, Master In Equity

Case No. 2011-CP-07-0945

William R. Hobson,

Respondent,

v.

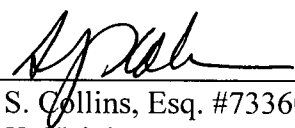
Callawassie Island Members  
Club, Inc.,

Appellant.

AMENDED PROOF OF SERVICE

I certify that I have served the corrected Record on Appeal on the Respondent, William R. Hobson, by depositing a copy of it in the United States Mail, postage prepaid, to his attorney of record, Brian McDaniel, Esq. on September 19, 2014, addressed to Post Office Box 2085, Beaufort, South Carolina 29901.

September 19, 2014.

  
\_\_\_\_\_  
Stacey S. Collins, Esq. #73360  
Ehrick K. Haight, Jr., Esq. #2446  
MINOR, HAIGHT & ARUNDELL, P.C.  
Post Office Drawer 6067  
Hilton Head Island, South Carolina 29938  
(843) 785-8040  
Attorneys for Appellant

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SEP 22 2014

**SC Court of Appeals**