THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
14th Judicial Circuit

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2014-000266

William R. Hobson,

Respondent,

v.

The Callawassie Island
Members Club, Inc.

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. A. The trial Judge correctly held 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 that the Appellant/Club did not prove that it refused the inspection in good faith because of a reasonable basis for doubt about the Plaintiff's right, as a member of that non-profit corporation, to inspect and copy the materials sought.

B. The Defendant waived the issue in the final hearing in this case and failed to preserve the issue for appeal.

II. A. The trial court properly found that the Appellant failed to prove that it refused the Respondent's request for inspection in good faith upon a reasonable basis for doubt about the right of the Respondent, as a member, to inspect the records demanded.

III. A. The award of attorney's fees and costs in this case was proper because the evidence supported that the Appellant did not refuse the inspection in good faith based upon a reasonable basis for doubt about the right of the Respondent to inspect the records demanded. Further, the award was proper because it was appropriately pled and authorized by statute. The Master in Equity correctly found that the Appellant required the Respondent/Plaintiff to take unnecessary and expensive steps to force the participation of the Appellant/Defendant into compliance with S.C. law and the Order of the Court.

STATEMENT OF THE CASE

The Respondent (Hobson) is a member of the Appellant club ("the Club"), which is a non-profit social and golf club organized in South Carolina. Hobson joined a predecessor Club in 1988 and purchased a second Club membership in 1996 when he purchased a second property in the area of the Club. In 1998 Hobson placed his second membership upon the Club's Resale List. (See Complaint and Dec 11, 2011 Trans pp17-18). In June, 2010 Hobson had his legal counsel send a letter to the Club seeking information and Club records so that he might investigate what he suspected were improper billing practices and a failure by the Club to properly maintain the Resale List. The Club refused to provide any of the billing and Resale List records requested by the Respondent and on January 25, 2011 Hobson had another letter sent to the Club in order to narrow the request for documents. The Club again refused to provide any of the more narrowed requested records by way of letter of February 7, 2011. (Complaint and Exhibits)

On February 25, 2011 Hobson filed the current Declaratory Judgment action seeking a finding that he was entitled to receive the information requested in the January 25, 2011 letter (See Complaint at p. 2 paragraph 11). Hobson's Complaint and request for records was based in part upon South Carolina Code § 33-31-1602 et. seq.,and §33-31-720. Hobson's complaint also sought attorney's fees and expenses be awarded.

Beaufort County Master in Equity Marvin H. Dukes, III heard the matter on December 19, 2011 orally ruling in favor of Hobson. Following the trial hearing in December 2011 the Club submitted a 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, claiming that just producing an accounting of the Club membership resale list and memberships that had been sold, resigned or terminated since 2001 would take approximately 200 hours (5 weeks) of time. Thereafter the Court held several telephone conferences and an additional hearing on February 2, 2012 in which the Appellant contended that the costs of production were substantial and in which the Court sought some understanding of the record keeping that might justify the difficulty in production that was being claimed by the Club. The Court issued an Order on March 28, 2012 finding in favor of Hobson, to which the Club/Appellant filed a Motion to Reconsider on 3 grounds : 1) that the Order required production of information not maintained in the ordinary course and not records required to be maintained by S.C. Code § 33-31-1601 et. seq. and that those records not so maintained should be excluded from the Order 2) that the Order failed to address the costs of production and should be altered to direct the Plaintiff to pay the costs of production and 3) that the Order fails to address confidentiality of the billing records ordered to be produced and should be altered to include the execution of the confidentiality order.

The Court subsequently held hearings regarding how the Defendant maintains the information ordered to be disclosed and to have the Defendant explain why the costs of production to comply with the March 28, 2012 Order were claimed to be so high. As a result the Court issued an Interim Order which was filed June 26, 2012. The Interim Order specifically set forth materials to be produced which after inquiry the court held *would not be a substantial burden to the Defendant* [Appellant] to produce. The Interim Order included the production of "the Resale list documents in their possession or control" as well as the billing and file records of 34 specific named entities concerning

their "sell, resignation or termination from membership." (June 26, 2012 Interim Order p.2). The 34 named members in the Interim Order included all the previously named entities (members) requested in Hobson's letters of June 29, 2010 and January 25, 2011 as well as some additional names suspected by the Hobson of holding multiple memberships. The Interim Order disclosures represented the vast majority of the information sought by Hobson.

The Club did not appeal the Interim Order nor did it file any motion to reconsider thereto but instead complied with the Order and produced the documents ordered. On August 29, 2013 a hearing was held at the request of Hobson seeking a determination of the costs and attorney's fees he claimed. The Club asserted a claim for costs of production and sought a hearing on the issues remaining from its Motion to Reconsider. Prior to the hearing Hobson submitted an affidavit of attorney's fees and costs of $4,133.39. At the hearing the Club 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 Club (Defendant) was not contesting the scope of the materials produced pursuant to the Interim Order and that Hobson (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 was on the issue of costs and attorney's fees of the Plaintiff and the costs of production and request for attorney's fees set forth by the Defendant.

On January 7, 2014 the Master ordered that the Plaintiff's request for attorney's fees and costs of $4,133.39 was granted and that the Defendant's motion for costs and fees was denied and the Motion to Reconsider was denied.

The Appellant filed this appeal on February 7, 2014.

Standard of Review

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991).

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." Crossmann Cmtys. Of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (Citation omitted). However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard. Id. at 47, 717 S.E.2d at 592. (Auto Owners Insurance Co., W. Rhodes, 405 S.C. 584, 593, 748 S.E.2d 781, 785 (S.C. 2013)).

ARGUMENT

I. A. The trial Judge correctly found that the records requested by Hobson are part of the accounting records of the corporation as identified in S.C. Code § 33-31-1602(b)(2) and awarded attorney's fees to Hobson, whereas the Club did not prove that it refused the inspection in good faith because of a reasonable basis for doubt about Hobson's right, as a member of that non-profit corporation, to inspect and copy the materials sought. Regardless, the issue raised on appeal by the Club is either moot because the Club has produced the documents or the Club waived the issue in the final hearing in this case and failed to preserve the issue for appeal.

The Court's finding that the records requested by Hobson fall within those records identified as "accounting records" under S.C. Code § 33-31-1602(b) in no way undermines the award of attorneys fees to Hobson in this case.

The Order of March 28, 2012 sets forth the history of the case to that point. Specifically, the Order recounts that in June 2010 a letter was sent to the Appellant/Club on behalf of seven Club members, including Hobson, in which certain Club membership related documentation was requested. The letter included a statement explaining that the members had questions and concerns that some members were being charged differently than other members and that members owning multiple memberships were not being treated uniformly and not in compliance with the Bylaw, Membership Plan and Articles of the Club. (See Exhibit A to the Complaint). In its' response to the June 2010 letter the Club refused to provide most of the accounting documents requested under S.C. Code § 33-31-1602(b) by claiming that the rights provided a member in S.C. Code § 33-31-1620 (exhibit B to Complaint p. 2) regarding a right to a current financial statement somehow limited those rights provided in §33-31-1602.

At trial in this case, Hobson explained to the Court his basis for seeking the requested information when he testified as to several instances he alleged evidenced disparate treatment (Hearing Dec 19, 2011 Transcript pp. 17- 58) of Club members by the Club, including knowledge he had of members believed to be paying differing amounts of ongoing monthly dues to the Club for similarly held memberships. Likewise, Hobson testified of his attempt to get information regarding the Resale list, and of discrepancies in the amounts different members have been charged for membership exchange fees (he paid $13,500 and testified as to being told others paid only $500.00). (Dec. 9, 2011 Hrng

Trans. p. 25 lines 13-19). He further testified as to his attempts to get information about these discrepancies were "simply ignored." (Dec. 9, 2011 Hrng Trans. p. p. 25 line 14-19). Mr. Hobson also testified as to the research he had done to try and gather information about the activities of the Club (Dec. 9, 2011 Hrng Trans. p. 29 ln 4- p. 31 ln 25).

Mr. Harman Switzer was also called as a witness by the Plaintiff and testified that he was an officer on the Board of Directors of the Club and that he was aware of a letter of April 12, 2010 sent to Hobson making a confidential offer for Mr. Hobson to concede his membership to the Club. The receipt of such offer further raised suspicion of Hobson that select Club members were being made various undisclosed offers by the Club to terminate their membership(s) obligations, without resort to the Resale list of the Club. Mr. Switzer further testified, as the Treasurer of the Club, that he was unaware how the records were kept and had done nothing more than turn over the Plaintiff's request for records to counsel. (Hearing Trans of Dec 9, 2011 pp 89 ln 20- p 90 line 10 & pp 94-ln 12- p. 106 ln 9).

After hearing all the evidence and arguments, Judge Dukes ruled that the Club should turn over the "itemized accounting records of CIMC (the Club) 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." (Order March 28, 2011 p. 9).

In subsequent hearings the Club made the claim that the costs of producing this routine accounting information would be $20,100.00 (see affidavit of Craig Simonson

dated January 11, 2014 para. 12). At Hobson's request, the Court conducted several in-person and telephone hearings attempting to determine why it could possibly be so costly[1] to produce the information since the Club identified the billing information as being in digital format on computer files. Likewise, the Court had to make repeated inquiries to get the Club to identify how they maintained the Resale list and the members' files for records related to termination, concession or sale of a membership. (see March 28, 2012 Order p. 6) Eventually the Court determined that the member billing information was maintained by a billing program and could be readily converted to digital format for easy production. Likewise the Club testified that the Resale list was simply a "dynamic" Excel spreadsheet and that it did not maintain any other records of that Resale list.

The Court issued the June 26, 2012 Interim Order based upon the finding that the costs of production would "not be a substantial burden to the Defendant" (June 26, 2012 Interim Order p. 1) and the Club turned over the requested billing records, the Resale list materials and the membership files related to those persons identified by Hobson which he had suspicion had resigned, been terminated or sold their membership with the Club since 2001. Because the Club has now turned over the information requested and Ordered by the Court it has waived any argument that the information was improperly ordered to be disclosed. Further, by turning over such a large percentage of the documentation requested by Hobson, the Club has confirmed that this information in fact was available and in a readily transferable form, and that the earlier claims regarding the difficulty and costs of production were not justified. The Club made no motion, and has filed no appeal,

[1] The Official Comments also make it clear that the Corporation must maintain these records in a "form that allows the corporation to comply with the members' rights to obtain and inspect the records." (Official Comment 4. To § 33-31-1601).

regarding the scope of, or costs of, production of the materials provided pursuant to the June 26, 2012 Interim Order. These materials produced make up the bulk of the materials originally sought by Hobson and there was no reasonable basis for the Club to refuse to provide them when originally requested. Further, even if only as to these records, Mr. Hobson should not have been required to resort to filing the current action to obtain them.

The Club put up no evidence which "**proves** that it refused to permit the inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded" (Emphasis added) (S.C. Code § 33-31-1604(c)). In fact, the Club did eventually produced most of the requested information and has not appealed that part of the Order. The Club put up no witnesses or evidence which demonstrated any improper purpose by Hobson. The only evidence it relied upon was a couple emails which regarded a totally separate entity and not the Club at all. The purpose of Hobson's request for his Club's records, if not the specific records themselves, is completely supported by the Official Comments to Section 16.02(b) of S.C. Code § 33-31-1602, where it states (speaking of the requirement of the member to inform the corporation of the purpose of the request) that "[T]he object of this requirement is to inform the corporation in general terms of the object of the member, **not to limit the purpose of the inspection rights**. Thus, for example, a request to contact fellow members concerning the corporation or a request to examine records **to determine whether improper transactions have occurred** or a charitable trust breached states a proper purpose." (Emphasis added) This is precisely the application of Hobson's request to the Club, a nonprofit corporation, in which he was an equity member, having paid not only an original purchase price (December 9, 2011 Hearing Trans p 23 lines 14-18) but

ongoing monthly dues fees and assessments (Dec. 9, 2011 Hrng Trans. p. 23 ln s 20-23 for more than 20 years. (December 9, 2011 Trans p17 lns 13-15). Hobson testified in detail as to the basis for his suspicions of misconduct by the Club and his reasons for, and efforts to investigate, (Dec 9, 2011 Trans pp 17-58) those suspicions.

The Appellant argues that the documents requested under S.C. Code § 33-31-1602(b)(2) do not qualify as "accounting records of the corporation". To justify this position they Appellant refers to S.C. Code 33-31-1601 regarding the state requirement that non-profit corporations maintain "appropriate accounting records" and contends that this requirement creates a ceiling on what can be requested by the Club member, such as Hobson. This argument is not supported in the statute and the Club should not be allowed to use the requirements of §33-31-1601 to create a barrier to access of information to Club members if there exists other accounting records of the corporation, even if those include material in addition to those required to be maintained by §33-31-1601. Furthermore, where §1601 refers to the records which "A corporation **shall** maintain" (emphasis added) , §1602 is not necessarily restrictive to only the §1601 accounting records, nor does it even 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.

However, even if this Court believes that the "appropriate accounting records" required by §33-31-1601 should be used as the measure of documents that can be requested, the Official Comments make it clear that those records would include exactly the type information requested by Hobson in this case. 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 Club can not deny that it is a significantly funded corporation that would therefore be subject to the "more detailed accounting records" standard. (Memo in Opposition to Defendant's motion for Reconsideration p. 2-3). Note that the Club does not claim not to have such records, just that they do not want their member to be allowed to view those records.

Finally, the Official Comments make it clear that one legitimate purpose for a member to request such records would be "to determine whether improper transactions have occurred or a charitable trust breached." (Official Comment 2 to § 33-31-1602) This purpose would be completely thwarted under the Appellant's argument that individual transactions can not be examined and that the member is only able to get those records which would allow the creation of a current financial statement. Again, the Appellant is confusing the mandated obligations to maintain specific records with a member's right to access the accounting records of the nonprofit corporation to which they are a member.

In its' Brief the Appellant argues that the March 28, 2012 Order of the Court was too expansive and ordered the release of documents beyond what it is required be maintained by §33-31-1601 and that since only the June 26, 2012 Interim Order material was legitimate for production then the award of attorney's fees was therefore reversible error. Upon examination this argument is not persuasive because the award of attorney's fees is fully supported even if only by the more narrow Interim Order materials which the Appellant eventually relinquished, and of which the Appellant can not now argue should not be disclosed. At the final hearing, and in their brief, the Appellant raises no issue with

regard to the Interim Order (Aug 9, 2013 Hearing p. 38) and claims to be in compliance with the same. Therefore, even if they were only ordered to turn over the materials in the June 26, 2012 Interim Order, it is undisputed that the Interim Order requires the immediate release of some (but not all) of the materials identified in the March 28, 2012 Order (being the same materials sought by Hobson) and that the Appellant has waived any argument that those documents should not have been produced. Therefore, the Appellant's argument that the award of attorney's fees was based upon the requirement that it release materials it should not have to release is waived as well. Likewise, the award of attorney's fees is supported even if only as to the disclosures supplied under the Interim Order, since those materials had been requested and refused as well.

I. B. ISSUES NOT PRESERVED

Regardless, the issue of whether the Order had an overly expansive view of "accounting records" was waived by the Appellant at the final hearing in this matter. Specifically, the trial Judge notes that the Appellant has complied with the Interim Order in the case and that the Respondent is not seeking additional information be turned over. In fact the following exchange between the trial Judge and counsel for both parties captures the waiver of the issue:

> (p. 37 lines 24- p. 39 line 5 of Aug. 29, 2013 hearing)
>
> JUDGE DUKES: And those issues—those documents have been given to the Plaintiff. With regard to the balance of any documents from the order that were not referenced in the interim order, the Plaintiff at this point, based upon the posture of the case, no longer seeks those documents. The remaining issues then have to do with attorneys fees and costs, right?
>
> MR. HAIGHT(counsel for the Appellant): Correct.

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

MR. MCDANIEL(counsel for Respondent): Yes. If you are going to deny their motion to reconsider on the—but I guess we can kind of get past that.

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

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

MR HAIGT: Which we believe we have fully complied with and which they appear to be happy with.

JUDGE DUKES: Right. So that issue—we are left with attorneys fees, right?

Mr. MCDANIEL: Right.

MR HAIGHT: Correct.

JUDGE DUKES: And nothing more? Okay. All right.

By agreeing that the Interim Order was not being challenged, and that they had complied with the production required by the Interim Order, the issue of whether the original order took too broad a view of "accounting records" is waived and/or moot. It is the position of the Respondent that the Interim Order records included the vast majority of the records sought and previously ordered in the March 28, 2012 Order. A review of the March 28, 2012 Order shows that it included the production of 1) the accounting records of members holding multiple memberships since 2001 (p. 9 paragraph a. March 28, 2012 Order) to include those listed in the Plaintiff's June 29, 2010 letter and an 2) accounting of the Resale list. In comparison the Interim order similarly identified the production of 1) the billing and payment records and complete file relating to the same list of persons in the June 29, 2010 letter plus some additional entities and 2) copies of the Resale list documents in their possession or control. While this may be a slight narrowing, clearly there is a substantial overlap in these two orders. The Interim Order

clearly set out that it represents the effort of the Court to cut through the Appellant's claims that the costs of production were too burdensome, but it nowhere indicates that it is a narrowing of the scope of the previous order based upon some more narrow definition of "accounting records". Therefore, since Hobson has agreed to forego any further production under the Interim Order (which he believes provided sufficient information to confirm his fears of unequal treatment by the Club), and since the Appellant as complied with the Interim Order, the issue of what should be included as part of the production is moot. Likewise, the Appellant waived this issue in the hearing when it responded affirmatively when asked specifically by Judge Dukes if the only remaining issue was attorney's fees. (see quotation above).

II A. The Trial Court properly found that the Defendant 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, as a member, to inspect the records demanded.

In its' second argument the Club improperly attempts to shift the burden of proving good faith and a proper purpose to Respondent. The Appellant contends that "This section,"[referring to 33-31-1602] "however, requires that the member's demand be in good faith and for a proper purpose." (Appellant Brief p. 8) The law actually requires that with regard to the attorney's fees (the only issue before the court) that "if the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the members costs, including reasonable counsel fees, incurred to obtain the order unless **the corporation proves** that it refused the inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the

records demanded. (S.C. Code § 33-31-1604(c)). (Emphasis Added) This statute clearly places the burden of proof in the case before this court upon the Appellant/ Club. That is to say, that once a court rules that the member is entitled to the records and has complied with the good faith requirements of S.C. Code § 33-31-1602 (as the Court found in the Orders in this case) then in assessing attorney's fees it shall award the costs and fees unless the corporation meets its' burden of proof. The Club in this case offered no evidence to support its position and has failed to prove it had a reasonable basis to believe Hobson should not be allowed to see, for instance, the Resale list. On appeal this court should not disturb these factual determinations of the trial Judge unless you find that there is no evidence to reasonably support them." Crossmann Cmtys. Of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (Citation omitted).

In its' Brief the Appellant claims that the discussion of an email of Mr. Hobson is evidence that Mr. Hobson requested the information at issue in this case for an improper purpose, but this is unconvincing for several reasons. First, the email and testimony referenced indicates specifically that Mr. Hobson's communication was to members of a community (that included some Club members and some non-members) and was focused on making a possible change to that communities Property Owners Association (CIPOA) Restrictive Covenants – not making a change to Club documents or membership (see p. 74 ln 22 through 1). Second, the emails, even if they are regarding the Club, which they are not, do not evidence anything improper, but are simply a property owner trying to get support from other property owners to make a change to the Restrictive Covenants. Even if this were an attempt by Mr. Hobson to gather support for a change to the Club (which

it is not) that is not in itself an improper purpose. In this case the Club has presented nothing else to substantiate or explain its contention that the email to a group of property owners is proof that it had a good faith basis to believe that Mr. Hobson was not entitled to inspect the corporate records.

III. A. The Respondent's demand for attorney's fees in the case was properly pled and the Trial Court's award of attorney's fees to the Respondent was proper.

In his Complaint in this matter Hobson 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 requested that the Court award costs pursuant to S.C. Code §15-53-100 (See Complaint at Para. 15) which allow 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 Club was fully aware of the nature of this action and of Hobson's request for attorney's fees in the 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 Sub-article 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. The Respondent therefore directs the court to its analysis and argument on this argument previously in this Brief which demonstrate that the Club 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 Club'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 Club 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. In fact in the Final Order (January 7, 2014 Order p. 5) the trial judge found that "the Defendant failed to provide a reasonable basis which would support the cost of production claimed by the Defendant for disclosure under the March 28, 2012 Order." Each step required the Plaintiff to take unnecessary and expensive steps to force the participation and compliance of the Defendant. During the course of the case the Club claimed that the Plaintiff was requiring the requested documents be organized in a certain manner and that doing so would be unduly burdensome, when the Plaintiff never made such a request and in fact offered to undertake the review itself if given access (Dec. 9, 2011 Hrng Trans. p. 37 lines 5 – 21) but the Club would never allow this to be done. The Court found that "the Defendant's conduct both before and during this litigation has evidenced a resistance to investigate or

participate in the proceeding in good faith" resulting in the incursion of unnecessary legal fees by Hobson. (January 7, 2014 final Order p. 6).

ADDITIONAL GROUNDS

The Respondent requests that the appellate court affirm the decision of the lower court on any grounds found in the record, pursuant to SCACR 220(c), which supports the holdings of the lower court.

Also, in its' CONCLUSION and request for relief the Appellant seeks, in addition to the issues raised and argued in its brief, that the Appellate Court remand and reverse as to the denial of costs and attorney's fees of the Appellant. (p. 13 Appellant's Brief). This issue is not identified as an Issue on Appeal, is not argued in the Appellant's Brief and is not properly before the court.

CONCLUSION

For these reasons the orders of March 28, 2012 and the Final Order of January 17, 2014 and the award of attorney's fees to the Plaintiff should be affirmed.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2014-000266

William R. Hobson,

Respondent,

v.

The Callawassie Island
Members Club, Inc.,

Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and the Respondent's Designation of Matter to be included in the record on appeal upon The Callawassie Island Members Club, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2014, addressed to its attorneys of record, Ehrick K. Haight, Jr., Esquire, Stacey S. Collins, Esquire, Minor Haight & Arundell, P.O. Drawer 6067, Hilton Head Island, SC 29938.

August 8, 2014

Teresa McDaniel

Law Office of Brian McDaniel, LLC
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Beaufort, South Carolina 29901
(843) 379-5117
Attorney for the Respondent

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AUG 11 2014
SC Court of Appeals

Law Office of
BRIAN McDANIEL, LLC

bmcdaniel@attorneymcdaniel.com

VIA US MAIL
August 8, 2014

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: William R. Hobson v. The Callawassie Island Members Club, Inc.;
Civil Action No.: 2011-CP-07-0945;
Appellate Case No.: 2014-000266.

Dear Ms. Kitchings:

Enclosed please find for filing an original and one copy of the Initial Brief of Respondent and Designation of Matter and Proof of Service to be included in the Record on Appeal related to the above referenced matter. I would appreciate your filing and returning the copy to my office in the enclosed stamped, self-addressed envelope.

By copy of this letter with documents I am also serving all counsel of record.

Sincerely,

Brian McDaniel/tm

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

BDM/tm

Enclosures

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cc: **Minor, Haight & Arundell, P.C.**
Ehrick K. Haight, Esquire, Stacey S. Collins, Esquire,
P.O. Drawer 6067, Hilton Head Island, SC 29938.