

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
ELLIS E. SMITH, Individually, and on
behalf of A & E CONSTRUCTORS
AND CONSULTANTS, INC., a South
Carolina Corporation,

Plaintiff,

v.

ARTHUR WAYNE VEREEN, PARK
PLACE PROPERTIES OF MYRTLE
BEACH, LLC, PARKWAY OFFICES,
LLC, ARTHUR VEREEN
CONSTRUCTION, INC. and LINDA C.
VEREEN, et. al.,

Defendants

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-26-620

PRETRIAL ORDER

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Date of Hearing: October 11, 2010
Present: Frank H. DuRant, attorney for A & E
J. Jackson Thomas, attorney for Smith
Kathryn Cook, attorney for Defendants

This matter came before me for a Pre-Trial Conference to simplify the issues in the trial of this case. Present were the attorneys of records and by subpoena, the five certified public accountants identified as witnesses or expert witnesses in this case: Susan Brady, Bartlett Buie, Richard Crumpler, Elizabeth Montgomery and Bert Huggins. This is a shareholder's derivative action and breach of fiduciary duty action brought by Ellis E. Smith and A & E Constructors and Consultants, Inc. (the "Company") against Arthur Wayne Vereen ("Vereen") and others as a result of alleged financial irregularities by Mr. Vereen, who was a 50% shareholder, the Treasurer and a board member of the company. The parties agreed in the pleadings to judicial termination of the corporation. The Plaintiff's expert accounting witnesses have basically

completed their accounting of the company records and have provided all information to the Defendants, with the exception of the final 2007 report.


Based upon the requests of the parties and arguments presented before me, I hereby Order the following concerning the trial of this case, which has been referred to me with finality:

(1) That the Plaintiff A & E's request to add the Defendants Arthur Wayne Vereen, Trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust as defendants in their capacities as "Trustees" of the legal entity holding title to their marital home in Georgetown County, is hereby granted without specific amendment of the pleadings for the purposes of Plaintiff's claim that assets from this corporation were diverted and comingled to such Trustees in the purchase and building of the real property of such Trustees, which is the marital home of the Defendants in Georgetown County. This is a claim identical to the claims made by the Plaintiffs against the real property owned by the named Defendants and is not a "new" claim that would require additional discovery as a Notice of Lis Pendens has been filed for months against the real property owned by the named Defendants as Trustees. No additional responses shall be required by the defendants in their capacities as trustees as the claims will be deemed denied by such Defendants, in their capacities as "Trustees."

(2) To simplify the presentation of evidence in this accounting case of the Plaintiffs, it is Ordered that copies of business records, accounting records, tax records, checks and deposits, banking records, bills and invoices and the like for the named parties shall be admitted into evidence without authentication and as copies, provided however, that the same are business records of the parties and have been presented to the opposing parties in the discovery portion of this case. These records are the basis of the Plaintiffs' experts' opinions, which were gathered

during the discovery portion of this case and from the records of the Company maintained in the Defendants office. It is the intention of this order that the Plaintiff and its experts will not have to authenticate the copies or prove the records of the Defendants as ordinary business records of the named parties, as long as the documentary evidence was earlier disclosed or to the other party or in the possession of the Defendants and furthermore, that copies of original shall be admitted without producing the original. I reserve decision on the issue of business records to be submitted by the Defendants to support claims for reimbursement or claims for payment made on behalf of A&E for which they are entitled to credit since these documents have not been produced and inspected by the Plaintiffs. I reserve the right to make a similar ruling after discovery has been provided to the Plaintiff.


(3) The Plaintiff's expert Brady has just completed the 2007 "accounting" and shall produce and deliver a copy to the Defendant within two weeks. Defendant shall pay for the cost of copying such record.

 (4) The Plaintiff shall deliver another copy of its Answers to the Defendants Interrogatories and Requests for Production by Friday, October 15, 2010.

(5) That the Defendants did not verify the Answers to Plaintiff's Interrogatories as required by the Rules of this Court. The Defendants shall immediately verify the Answers as required by Rule 33, SCRCP and provide the required verifications to the Plaintiff. The Defendants have not responded to the Plaintiffs Requests for Production served in July, 2010 and shall provide responses by December 1, 2010 as required by Rule 34, SCRCP.

(6) That the Defendants have informed the Court that they have elected not to have an accounting expert or other "expert" in this accounting case. It is therefore Ordered, that the Defendants shall be precluded from using an accounting expert or other expert in the trial of this

case. This Order is predicated upon the request of the Plaintiff to the Court to require that the Defendants' accounting expert(s) meet with the accounting experts of the Plaintiff in an attempt to simplify the issues and resolve accounting issues according to standard accounting practices. The Defendants have informed the Court that Elizabeth V. Sisson, an employee of A & E, an attorney and the daughter of the Defendants Vereen was gathering this information and that the Attorneys Cook and Sisson would meet with the Plaintiff's expert in an attempt to simplify these issues. The Plaintiffs objected that such persons were not independent, were not accountants or trained in accounting practices, and lacked the ability to objectively review the evidence. It is not in the province of this Court to require the Defendants to obtain expert accounting advice or witnesses as the CPA's for the Defendants and the Plaintiffs were present in Court and the Defendants do not desire to use them in the trial of this case. Once the information is gathered, the representatives of the Defendants shall meet with the Plaintiffs experts to attempt to resolve accounting issues and attempt to simplify the issues at trial. The attorneys for the Plaintiffs shall immediately inform the Court if meaningful progress is not made toward simplification of these issues and I reserve the right to take further action to simplify these accounting issues.

 (7) The CPA's Montgomery, Crumpler and Huggins were present under subpoena at the hearing and had been advised by Defendants' attorney, Ms. Cook, not to talk or communicate with the Plaintiffs or their attorney, except through her office. These CPA's are members of the firm that prepared the tax returns and tentative tax returns of the Plaintiff A & E and the named Defendants. Since the attorney for the Defendants does not represent the accounting firm of Smith, Sapp or its members and it has not and cannot employ these certified public accountants as an expert witnesses in this case, it is improper for the Defendants to advise the CPAs not to discuss this matter with the Plaintiff as this firm prepared the tax returns of the Plaintiff. It is

ordered that the Plaintiff shall be entitled to discuss any matter concerning the tax returns and liabilities of the Plaintiff A & E with its accountants without limitation, notification or the presence of the Defendants and their attorney. This shall not be interpreted to require the firm to provide such services for no charge. The Plaintiff will have to make arrangements for reasonable compensation for the services requested and shall be entitled to receive copies of any documentation in the files of such accountants pertaining to the tax and accounting affairs of the Plaintiff A & E and any ancillary information used to prepare such returns or tentative returns and such accountants can remain as "factual" witnesses in this case.

(8) The Plaintiff informed the Court that it intended to impeach the creditability of the "employee" of the Plaintiff, if she testified or gathered the factual information to support the Defendants accounting defenses and/or counterclaims, as was discussed at the hearing. This information was provided to the Court in the Plaintiff's pre-trial brief and in Court so the Defendant would not claim surprise when this issue may be explored in more detail at trial. The Court noted the information provided by the Plaintiff and no decision was requested or made concerning such issues.

(9) The Defendants shall gather and deliver to the Plaintiffs attorneys all accounting information to support its claims for set-off or reimbursement by December 1, 2010 and the Plaintiff is granted leave to depose any witness concerning such claims or issues, including the previously deposed witnesses, as these are claims that were not presented when these depositions were taken. The Defendants shall present evidence of the actual invoice or bill for services or labor rendered and the cancelled check for payment made pursuant to such invoice. The Plaintiffs shall schedule its depositions immediately after receipt of this information. If the information is not delivered to the Plaintiffs within such deadline, it is Ordered that that such

accounting records and information shall not be presented in the trial of the case by the Defendants.

(10) The Defendants informed the Court that they had not deposed any witnesses and desired to depose the Plaintiff and its experts. The Defendants shall complete any depositions by the end of January, 2010 and this case shall be scheduled for trial in on February _____, 2010. I am mindful that the Defendants have not completed any depositions, but the Defendants have had opportunity to complete their discovery as required by the Rules of this Court. This matter shall not be rescheduled without my direct order.

(11) The attorneys for the parties shall attempt to pre-mark all exhibits and agree upon the introduction of all documentary evidence to be used in the trial of this case.

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If and when the Defendants deliver the accounting records to the Plaintiffs, the parties shall notify the Court if they have conducted meaningful accounting review of the accounting records of both parties and I expect a report from the Plaintiff's attorney as to whether meaningful resolution of the accounting issues has been reach by the Plaintiffs' experts and the representative of the Defendants. If meaningful discussions have not been held, the Court shall be advised by the Plaintiffs' experts in summary form.

AND IT IS SO ORDERED.


CINDY GRAHAM HOWE
Master-In-Equity

Conway, South Carolina
October 15, 2010