

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2012-CP-26-005610

Shaul Levy and Meir Levy,)
)
) Plaintiffs,)
)
v.)
)
Carolinian, LLC,)
)
) Defendant.)

ORDER DENYING
PLAINTIFF'S MOTION FOR CONTEMPT

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SC Court of Appeals

On June 25, 2019, a hearing was held before me pursuant to a Motion for Contempt filed by Plaintiffs Shaul and Meir Levy against Defendant Carolinian, LLC on May 16, 2019. Present at the hearing were R. Wayne Byrd and Mark B. Goddard, attorneys for the Plaintiffs, and Benjamin A. Baroody, attorney for the Defendant. For the reasons espoused at the hearing and as set forth below, this Court respectfully denies the Plaintiffs' motion.

While styled a "Motion for Contempt," Plaintiffs' motion is broad in scope. Plaintiffs' motion requests that this Court issue an order that:

- 1) Requires Loyd R. Daniel, Jr. and J. Patrick Lowe to sit for depositions related to their management of CN Resort and *the allocation of the gross sales proceeds in the WVR Transaction*;
- 2) Requires all entities to fully respond to the subpoenas attached [to their motion] as Exhibit H...; and
- 3) Requires CN Resort to show cause why it should not be held in contempt of court for preventing Plaintiffs access to necessary financial information *in order to properly evaluate CN Resort's treatment in the WVR Transaction* and compliance with the Order.

(Motion for Contempt, p. 5) (emphasis added).

The subpoenas referenced in Plaintiffs' motion include:

- 1) a subpoena to Loyd R. Daniel, Jr. for deposition;
- 2) a subpoena to J. Patrick Lowe for deposition;
- 3) a subpoena *duces tecum* to Strand Capital Group, LLC, requesting "complete copies of all appraisals and financial records ... for 2010-2013 **for all properties involved** in the acquisition by WVR South Carolina, LLC..." and "**[a]ll documentation showing how the gross sales prices from WVR South Carolina, LLC was allocated between the involved properties...**,"
- 4) a subpoena *duces tecum* to WVR South Carolina, LLC requesting the "[c]omplete closing package for the 2012 acquisition by WVR South Carolina, LLC of **multiple properties...**";
- 5) a subpoena *duces tecum* to Daniel Professional Group requesting the "[c]omplete file from 2010-2013 for CN Resort, LLC"; and
- 6) a subpoena *duces tecum* to King Cunningham, LLC requesting the "[c]omplete closing package for the 2012 acquisition by WVR South Carolina, LLC of **multiple properties...**"

(Motion for Contempt, Exhibit H (emphasis added)).

As set forth in the Plaintiffs' letter to Defendant dated March 27, 2019, and as confirmed at the hearing, Plaintiffs are ultimately seeking a "full un-redacted version" of the "Asset Purchase Agreement by and between CN Resort, LLC, **several other entities**, and WVR South Carolina, LLC," which was entered into on or around December 31, 2012 (the "WVR Transaction").

(Motion for Contempt, Exhibit F) (emphasis added). In that letter, the Levys explained, "[w]e must have the full un-redacted version **in order to appropriately determine if CN Resort was treated fairly in regards to the allocations of the sale proceeds as compared to the other entities.**"

Id. (emphasis added).

Based upon the foregoing, this Court will first analyze whether the Defendant should be held in contempt for allegedly violating this Court's order, as set forth in the third (3rd) request for

relief in their motion, and then analyze whether this Court should order that the discovery sought to be employed by the Plaintiffs in this case may proceed to permit the Plaintiffs to discover details of the WVR Transaction.

PLAINTIFFS' REQUEST FOR CONTEMPT

This Court will first analyze Plaintiffs' request that Defendant show cause why it should not be held in contempt of court for "preventing Plaintiffs access to necessary financial information in order to properly evaluate CN Resort's treatment in the WVR Transaction and compliance with the Order." (Motion for Contempt, p. 5). At the hearing, Plaintiffs cited the following two provisions from this Court's June 1, 2015 order which it contended the Defendant had violated:

The Defendants are PERMANENTLY ENJOINED FROM:

2. **maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;**

4. **taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. Section 33-44-503(e) and the Operating Agreement.**

(Order, entered June 1, 2015).

Based upon the evidence presented at the hearing and the arguments of counsel, I find no cause as to why Carolinian should be held in contempt of this Court's order.

First, applicable law, on its face, does not provide the Plaintiffs with a right to access the requested information about the WVR Transaction. Plaintiffs concede they are transferees of the distributional interest of one of Carolinian's members, Bhupi Patel, who have not been admitted as members themselves. "A transfer of a distributional interest does not entitle the transferee to

become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.” S.C. Code Ann. Section 33-44-502 (Code of Laws 1976, as amended). Moreover, “[a] transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company’s business, require access to information concerning the company’s transactions, or inspect or copy any of the company’s records.” S.C. Code Ann. Section 33-44-503(d) (Code of Laws 1976, as amended). Therefore, I do not find that Defendant’s alleged actions to deny Plaintiffs access to the requested information pertaining to the WVR Transaction is, on its face, inconsistent with the South Carolina Uniform Limited Liability Act.

Second, at the hearing, Plaintiffs cited to certain provisions in the Carolinian Operating Agreement upon which it based its contention that Plaintiffs may be entitled to the requested information. However, like the applicable law cited above, neither provision of the Operating Agreement, on their face, provides the Plaintiffs with access to the requested information regarding the WVR Transaction.

Moreover, Plaintiffs did not dispute the evidence presented by the Defendant that the Defendant had provided them with all of the information pertaining to Carolinian which they had requested, including all financial information pertaining to Carolinian from 2012 through the end of the 2018 year, copies of the same information Carolinian had provided to its members to analyze the proposed WVR Transaction prior to voting to approve it, and the closing statement for Carolinian’s portion of the proceeds from the WVR Transaction. In spite of being provided with this information, Plaintiffs have not presented sufficient evidence, if any, to demonstrate that the Defendant has taken actions inconsistent with either the applicable law or Operating Agreement this Court’s order was intended to enforce. Nor have the Plaintiffs presented sufficient evidence

that the Defendant has maintained “unauthorized sole dominion and control” of the Plaintiffs’ distributional rights in Carolinian.

PLAINTIFFS’ REQUEST FOR DISCOVERY

This Court will next analyze the first (1st) and second (2nd) requests for relief sought in Plaintiffs’ motion, e.g. to permit the discovery of information pertaining to the WVR Transaction *in this case*, via the issuance of subpoenas for depositions and document production, in an effort to determine whether Carolinian may have violated this Court’s order.

As a preliminary matter, the Court questions whether *this case*, which ended by order of this Court in 2015, remains open and active to give rise to discovery rights by either party. Plaintiffs appear to argue that, for so long as a permanent injunction remains of record, the case remains active and discovery is available to them in order to discover whether the terms of this Court’s order have been violated. The Court disagrees. Absent a showing of a genuine controversy between the parties *in this case* via the introduction of evidence that the Defendant has taken actions to either contravene or otherwise subvert this Court’s order, this Court must therefore deny the Plaintiffs’ requests to conduct the discovery sought.

As discussed above, the Plaintiffs have simply presented the Court with insufficient evidence, if any, that Carolinian has violated or may violate the terms of this Court’s order, or that a controversy presently exists between the parties to otherwise justify an order directing that discovery take place in this case. At the hearing, the Plaintiffs conceded as much, stating that, following a review of nearly seven (7) years of Carolinian’s financial records and corresponding corporate records, it had not discovered evidence upon which to base its present motion. Without such evidence, this Court can neither make a finding that Carolinian is in contempt of this Court’s

order or order that discovery ensue to aid the Plaintiffs in discovering that this Court's order has been violated.

WHEREFORE, it is hereby ORDERED that the Plaintiffs' Motion for Contempt is hereby DENIED.

[Document Prepared for Electronic Signature]



Horry Common Pleas

Case Caption: Shaul Levy , plaintiff, et al VS Carolinian LLC

Case Number: 2012CP2605610

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152