

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants.)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER GRANTING
 MOTION TO COMPEL AND
 ORDER OF CONFIDENTIALITY

RECEIVED
Apr 09 2021
 SC Court of Appeals

THIS MATTER came before the Court on March 1, 2021 on Plaintiffs' Motion to Compel Discovery. Appearing before me via Webex were Ehrick K. Haight, Jr., Esquire and Stacey S. Collins, Esquire, attorneys for the Plaintiffs, and Mark S. Berglind, Esquire, Stephen S. Meyer, Esquire, and Antonia Lucia, Esquire, attorneys for the Defendants. Thomas Pendarvis, Esquire, counsel for the Receiver for Simmons Family Holdings, LLC, the nominal Defendant, did not appear.

The Plaintiffs moved for an order compelling the Defendants to fully answer Plaintiffs' First Supplemental Request for Production dated September 25, 2020 ("Discovery Requests"). Defendants have failed to produce the following:

1. Copies of any correspondence between Defendant Palmer E. Simmons and the law firm of Vaux Marscher Berglind, P.A. regarding transfers of membership in Simmons Family Holdings, LLC, as requested in Paragraph 3 of Plaintiffs' Discovery Requests.
2. Copies of all assignments of membership interests, membership agreements, or other indicia of membership in Simmons Family Holdings, LLC, whether signed or unsigned, prepared on behalf of Simmons Family Holdings, LLC or Palmer E Simmons, as Manager, Co-Manager, or otherwise, regardless of whether such instrument was prepared as a draft, as requested in Paragraph 5 of Plaintiffs' Discovery Requests.
3. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or Defendant Palmer E. Simmons, as Manager or Co-Manager thereof, as requested in Paragraph 6 of Plaintiffs' Discovery Requests.
4. Copies of all documents purporting to transfer any membership interest in Simmons Family Holdings, LLC into or out of the Trust, as requested in Paragraph 10 of Plaintiffs' Discovery Requests.
5. A copy of the Trust as requested in Paragraph 12 of Plaintiffs' Discovery Requests.

The Defendants objected to the Discovery Requests on the basis of the attorney-client privilege, Defendants' dispute of the Plaintiffs' membership interests in Simmons Family Holdings, LLC and on relevancy. Defendants also claim to have already responded to Paragraph 10 of Plaintiffs' Discovery Requests.

Having reviewed the submissions of the parties and considered the arguments of counsel, the Court finds and concludes as follows:

1. Plaintiffs are entitled to examine and copy the business records of Simmons Family Holdings, LLC pursuant to S.C. Code Ann. §33-44-408 (2006), including any resolutions(s) purporting to transfer membership interests, and any correspondence from the Defendants, as Co-Managers, with counsel concerning such transfer(s). These documents are relevant and likely to lead to admissible evidence regarding the transfer of membership(s) and the Defendants' actions concerning membership interests.
2. Plaintiffs are entitled to examine and copy the attorney billing statements for work performed for Simmons Family Holdings, LLC or Defendant Palmer E. Simmons in his capacity as Manager or Co-Manager, including statements in J&W Corp. of Greenwood, LLC v. Simmons Family Holdings, LLC, C.A. No. 2015-CP-07-02284 and in all matters pertaining to membership interests in Simmons Family Holdings, LLC. These documents are relevant and likely to lead to admissible evidence regarding the Defendants' management of Simmons Family Holdings, LLC and the J&W lawsuit, the transfer of membership(s), and the Defendants' actions concerning membership interests.
3. Plaintiffs are entitled to examine and copy the Trust Agreement for the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust Dated May 5, 2016 as the Trust holds an interest in Simmons Family Holdings, LLC and the Trust Agreement is relevant and likely to lead to admissible evidence regarding the proper transfer of membership(s) and Defendants' actions concerning membership interests.

IT IS THEREFORE ORDERED AS FOLLOWS:

The Plaintiffs' Motion to Compel Discovery is granted and the Defendants shall respond within thirty (30) days from the date of this Order. The Defendants have prepared and the parties

have agreed to the following confidentiality provisions with regard to the documents to be produced pursuant to this Order:

Confidentiality. Documents designated confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including appeal of that litigation). In the event a party seeks to file any material that is subject to this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the parties; (2) where appropriate, submitting the documents solely for *in camera* review; or (3) where the proceeding measures are not adequate, seeking permission to file the documents under seal pursuant to the South Carolina Rules of Civil Procedure or such other rule or procedure as may apply in the relevant jurisdiction. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated confidential under the terms of this Order to any other person or entity except as set forth in subparagraphs (1) – (5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment in writing, that he or she has read and understands the terms of this Confidentiality Order, is bound by it, and will not disclose or permit the disclosure of any documents designated confidential. Subject to these to these requirements, the following categories of persons may be allowed to review documents which have been designated confidential pursuant to this Order:

1. Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit, including the Receiver and counsel for the Receiver;
2. Court reporters engaged for the depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

3. Consultants, investigators or experts employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit;
4. The mediator hired by the parties for the mandatory mediation of this lawsuit; and
5. Other persons only upon consent of the producing party or upon order of the Court and on such conditions as are agreed and ordered.

Documents designated confidential shall include:

1. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or the Defendants, as Manager(s) or Co-Manager(s) of Simmons Family Holdings, LLC.
2. Copies of the Trust Agreement for Charles E. Simmons, Jr. and Rosa G Simmons Trust Dated May 6, 2016.

If Defendants contend that any particular document(s) should not be provided, counsel shall submit said document(s) to the Court for an *in camera* review within thirty (30) days from the date of this Order.

AND IT IS SO ORDERED.

R. LAWTON McINTOSH
CIRCUIT COURT JUDGE

Anderson, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH