

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Bonnie Brae Homeowners' Association,)
Inc.,)
)
)
Plaintiff,)
vs.)
)
HOA Community Management, LLC, and)
Charlene Rice,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-23-06406

**DEFENDANTS' MOTION TO
DISMISS/AMENDED RESPONSE TO
PLAINTIFF'S MOTIONS FOR
IMMEDIATE TEMPORARY
RESTRAINING ORDER AND
INJUNCTION**

**TO: MICHAEL DODD, ESQ., ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE NAMED.**

Please take notice that the Defendants HOA Community Management, LLC., and Charlene Rice ("the Defendants"), by and through undersigned counsel, will move this Honorable Court for an Order dismissing Plaintiff's suit ten days from the date of filing of this motion or as soon thereafter as the parties may be heard by the Court. This motion is made pursuant to Rule 12(b)(7), SCRPC and Rule 19, SCRPC. This response will be supported by further memoranda of law, affidavits, the South Carolina Rules of Civil Procedure and laws of this State.

On November 3, 2016, Plaintiff initiated this lawsuit seeking declaratory and injunctive relief. Also on November 3, 2016, Plaintiff filed a Motion for Immediate Temporary Restraining Order and Motion for Temporary Injunction alleging, among other things, Defendants were engaged in misappropriation of Plaintiff's funds. The underlying facts of the suit and the motions describe a political battle amongst members of the Plaintiff Association who claim to be directors of the Association's Board. On November 15, 2016, Plaintiff filed an additional

Motion for Immediate Temporary Restraining Order and Motion for Temporary Injunction without notice to Defendants. Defendants filed their response to the above motions on November 18, 2016 and now file this motion to dismiss/amended responsive pleading according to Rule 15(a), SCRCPP and in response to Plaintiff's complaint.

This matter should be dismissed pursuant to Rule 12(b)(7), SCRCPP, because Plaintiff failed to join parties necessary for just adjudication. Rule 19, SCRCPP, states a person must be joined if:

(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

BancOhio Nat. Bank v. Neville, 310 S.C. 323, 326, 426 S.E.2d 773, 775 (1993) citing Rule 19(a), SCRCPP.

Additionally, it is incumbent on Plaintiff to state the names of persons not joined and the reasons why they are not joined in Plaintiff's pleading. *See* Rule 19(c), SCRCPP. The Rule states as follows:

Any pleading asserting a cause of action for relief shall state the names, if known to the pleader, of any persons described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined. *Id.*

Furthermore, the South Carolina Supreme Court, in evaluating this issue, squarely put the responsibility for identifying and stating reasons for non-joinder on the pleading party. The Court interpreted "the phrasing of Rule 19(c) to place the burden on the moving party to justify any reasons for nonjoinder. [The defendants in the *BancOhio* matter] also correctly interpret Rule 12 as allowing a defendant to establish an affirmative defense to any such nonjoinder by the plaintiff, regardless of the feasibility of a party's joinder. There is nothing in the rules which shifts the burden onto the defending party to either add or identify, for the plaintiff, other parties

which are indispensable. *BancOhio Nat. Bank v. Neville*, 310 S.C. 323, 326–27, 426 S.E.2d 773, 775–76 (1993).

As previously mentioned, the underlying facts of this dispute describe a political battle for governance of a South Carolina Non-Profit Corporation homeowners' association. While Plaintiff claims it is the Association and Mr. Dodd, in representation of his individual clients, has couched his suit in like terms, that issue is actually in dispute. In fact, Mr. Dodd's clients filed a similar suit on September 9, 2016 for themselves and on behalf of the Plaintiff Association. *See Pro Se Complaint*, attached hereto as Exhibit A. Interestingly, that suit identified the individuals who make up the legitimate Board of Directors of the Plaintiff Association as defendants. *Id.* Also, these individuals are all members of the Association by virtue of holding title to property in the Association. They all live in the Association and are, therefore, subject to this Court's jurisdiction such that their joinder will not deprive the Court of jurisdiction over the dispute. They all claim an interest in the dispute as pled by Plaintiff. Nearly all of the facts as pled by Plaintiff in the instant suit are disputed by the individuals identified in the Pro Se Complaint mentioned above. Additionally, Defendants are under contact with the Association, no matter which individuals make up the Board of Directors, and adjudication of the matter exposes Defendants to substantial risk of incurring double, multiple, or otherwise inconsistent obligations because Defendants have only ever taken direction from the Association's Board of Directors and Defendants are caught in the middle of this political battle.

Furthermore, Plaintiff's own Complaint in the instant matter, by its pled allegations, references another board of directors. Plaintiff asks this Court for a Declaratory Judgment "with respect to who is the legal board of directors for the Association, declaring the Plaintiff is the legal board of directors." *See Complaint*, prayer for relief, subparagraph a. Plaintiff's Complaint

further describes the “former Board of Directors,” and delineates the number of votes this former Board of Directors had at an alleged Special Meeting of the Association. *Id.* at ¶s 12 and 14, respectively. The Court cannot accord full relief or, indeed, the actual relief Plaintiff seeks without the individuals referenced in the prior suit. Plaintiff’s complaint is completely devoid of any mention of the individuals identified in Exhibit A and it is also devoid any reasoning for leaving them out of the instant action. Defendants are contract agents of Plaintiff no matter who actually controls the Association’s Board and are simply performing contractual duties and would be subject to multiple obligations without inclusion of all interested parties.

For all of the forgoing reasons, Defendants ask this Court to dismiss Plaintiff’s Complaint with prejudice.

Respectfully submitted,

McCABE, TROTTER & BEVERLY, P.C.

/s/ J. Ryan Oates

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Columbia, South Carolina
November 23, 2016