

State of South Carolina
County of Greenville

Court of Common Pleas

Bonnie Brae Homeowners)	
)	
Plaintiff,)	Transcript of Record
v.)	2016-CP-23-06406
)	
HOA Community Management)	
)	
<u>Defendant.</u>)	

January 25, 2017
Greenville, South Carolina

B E F O R E:

The Honorable Edward Miller, Judge.

A P P E A R A N C E S:

Michael Dodd, Esquire
Attorney for the Plaintiff

Jesse Oates, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

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3 THE COURT: Okay. We had a -- this is in the
4 *Bonnie Brae HOA v. HOA Community Management LLC and*
5 *Charlene Rice.*

6 Had a meeting in chambers with counsel. I
7 understand there are a number of homeowners here and
8 two -- there are two motions before me. One is a
9 motion for summary judgment. One is a temporary
10 motion for temporary restraining order.

11 I've been involved in a number of these
12 homeowner association lawsuits, and I will tell you
13 that nothing -- not much strikes closer to home than
14 your home, and it stirs a lot of passion; a lot of
15 angst; a lot of emotion.

16 And so having said that -- and I don't want to
17 steal the thunder from your attorneys who, in the
18 hallway, have represented your respective positions
19 very well.

20 I understand there is a meeting -- is there
21 anything y'all want to say? I don't want to -- I'm
22 happy to go forward based on our discussions, unless
23 y'all want to say something.

24 I -- here's what I'm inclined to do. Let me
25 just tell you what I'm inclined to do, and then if

1 your attorneys needs to address me after that, I'd
2 be happy to hear from them.

3 I -- I am going to not hear the summary
4 judgment motion today. I am going to postpone the
5 meeting that's scheduled for Saturday to be held
6 within 30 days. I'm going to require the plaintiff
7 to post a \$1500 bond, which I'm not sure where we
8 have that held. Would your -- would you be
9 satisfied if it is held in Mr. Dodd's trust account?

10 MR. OATES: That's -- that's okay if that's the
11 Court's decision, Judge.

12 MR. DODD: That's -- that's agreeable, Your
13 Honor.

14 THE COURT: Okay. So your client's going to
15 have to put up \$1500 in your trust account. The
16 meeting's postponed for 30 days. And we'll continue
17 to operate paying -- payment of all the bills will
18 go on as it has been going on with the clear
19 understanding that if there's some misappropriation
20 of funds, it can not only be a problem in a civil
21 lawsuit, but could be the subject of further
22 investigation from law enforcement. So I think
23 everybody understands that. Nobody's -- I haven't
24 heard any allegations of inappropriate --
25 misappropriation of funds.

1 I will say this, that I am going to require --
2 and I think any judge would in this circumstance --
3 all the parties -- this issue to be mediated to
4 determine -- y'all could have a meeting at this
5 annual meeting. Get in there with having -- keeping
6 in mind the passion that each person feels, and I'm
7 sure it's a legitimate passion. So you need to be
8 respectful of your neighbors and their passion
9 whenever you meet and talk.

10 And I -- at this point, I'm not going to
11 require an independent third party be appointed to
12 oversee this dispute because I'll tell you this,
13 there's expense involved with that, but it's always
14 cheaper to pay the upfront price. You pay the money
15 now instead of paying it out over time which will
16 be, I'm quite sure, more expensive.

17 So I recommend that you authorize your
18 respective counsel to decide on an independent
19 third-party mediator who can come in and take a look
20 at this dispute and resolve it. Okay. It's not
21 going to resolve all of your various -- the angst
22 that each of you feels, but you're going to have to
23 respect that decision. So, otherwise, we'll go
24 through this long fight, people get -- go through
25 depositions, gets expensive, and in the end, one

1 side's going to win and one side's going lose. And
2 you're not going to be -- I think the losers are
3 going to be very upset; the winners might gloat.

4 So if y'all can get together and come to -- put
5 aside your passion and pick the thing up, turn it
6 around, and look at it from all different sides and
7 make a decision that resolves this dispute so you
8 can go on and enjoy your homes without a lot of
9 negative feelings.

10 All right. Now, having said all that, anything
11 from counsel?

12 MR. OATES: Judge, there -- there are a few
13 procedural issues that I'd like to talk about. One
14 of the things the plaintiff has claimed is that
15 there is a good deal of confusion about what's going
16 on in the -- in the community. It's our position
17 that there's not. This is the board as it's been
18 duly elected and operating and it has been for the
19 last two years. All of the terms are up for
20 election.

21 We, of course, argue against the issuance of a
22 temporary injunction to stop the meeting on the
23 28th. I think the -- I'd like to discuss with the
24 Court, just to create a record, of the reasons why.

25 But I also have in my hand 97 -- or excuse

1 me -- 79 proxies for substitute attendance at the
2 meeting on Saturday. The bylaws and the act allow
3 proxies to be valid for 11 months. And they're
4 canceled on conditions, you know, that happen after
5 they're signed. Like, if the member who signed it
6 attends the meeting, the proxy is canceled because
7 it doesn't need substitute attendance, right?

8 So one of the things I wanted to discuss with
9 the Court is, are these -- these proxies going to
10 remain in force and effect and then recognize are
11 they okay for the members who have signed them?
12 That authorizes those for at least 11 months.

13 THE COURT: If it comports with the documents
14 that allow the creation of those proxies, I'm not
15 changing any of that. If those people decide they
16 want to change their minds and they show up to the
17 meeting, fine. I'm not -- I am not requiring
18 re-issuance of a proxy.

19 MR. OATES: Okay. Is the -- is the Court's
20 order -- how does the Court plan on -- on issuing,
21 or does the Court plan on issuing an order?

22 THE COURT: I've continued the summary judgment
23 motion. You can do that -- do we even need an order
24 on that, Shawn?

25 THE CLERK: No, sir.

1 THE COURT: And I am -- I don't know if I'm
2 calling -- I'm granting a TRO or not. I think the
3 TRO wanted to stop the meeting, take the -- shut
4 down the books and records, just stop everything.
5 I'm not doing that.

6 Need to continue to operate the community, put
7 the meeting off for 30 days, and I am wholeheartedly
8 recommending that all the people on all the sides
9 recognize that it's much better to get someone
10 outside the court system. Because once we get into
11 a trial, the gloves come off.

12 And so I'm recommending that you all get
13 together, agree on someone who can independently
14 interpret whatever the issues are in this case, and
15 that everyone agree that that person's decision
16 would be final.

17 MR. OATES: Okay.

18 THE COURT: Otherwise, we'll do it with 12
19 people out of the community, and you don't know what
20 you're going to get.

21 MR. OATES: Judge, just as -- as the case is
22 currently postured is, it's a declaratory judgement
23 for the Court to determine who the board is.

24 THE COURT: Okay.

25 MR. OATES: I think that the annual meeting,

1 whether it happens on Saturday or 30 days from
2 today, moots that issue. If -- if I'm right about
3 what has transpired over the -- the course of the
4 last 12 months, then the board terms expire with
5 this meeting.

6 If Mr. Dodd is right about what has transpired
7 over the course of the last 12 months, the same
8 terms end at this meeting.

9 So, effectively, I think that the election --
10 the next election moots the entire purpose of the
11 lawsuit.

12 Is the Court -- maybe I'll offer this, would
13 the Court like for me to prepare an order that
14 delineates those -- those things that you've
15 discussed, the -- the -- the summary judgment motion
16 is continued, the -- the Court is not inclined to
17 stop the normal business of the association, but
18 ordered the meeting to -- to be put out 30 days from
19 today, and that -- that it will happen according to
20 the notices that have been sent, then proxies that
21 have been received are still in force and effect,
22 and that kind of thing? Would that be okay to do?
23 I'll send it, of course, to Mr. Dodd for his
24 comment.

25 THE COURT: Mr. Dodd, is that agreeable with

1 you?

2 MR. DODD: Your Honor, that is agreeable with
3 the exception of one thing that I really feel like I
4 need to bring to the Court's attention, the proxy
5 issue. That has been an issue as long as this
6 lawsuit has been going on. And the -- while --
7 while the governing documents and the Nonprofit
8 Corporation Act allow for these proxies to be
9 continued for 11 months and be valid as stated by
10 Mr. Oates, it is undoubtedly the plaintiff's
11 position that allowing those proxies to be counted
12 in this upcoming election or meeting election in
13 30 days from now would be grossly inequitable given
14 the fact that just for -- for the things we're
15 arguing over here over [sic] is that the meeting --
16 the special meeting that happened when these proxies
17 were submitted and they were rejected. Well, I've
18 been claiming -- and -- and the confusion ---

19 THE COURT: Why -- why were -- why were they
20 rejected?

21 MR. DODD: They weren't even looked at.
22 They -- they were rejected because they were -- I
23 mean, there are -- there's the letter from them that
24 states that they were improperly submitted and many
25 other things that -- that were wrong with them.

1 And, obviously, that's an issue of fact, but with
2 regard to these particular proxies, the concerns
3 that many of the homeowners have expressed leading
4 up to this hearing to both sides, I think are very
5 valid.

6 And the confusion over who to submit the proxy
7 to, the letters that have been sent out by the board
8 threatening legal action involving by the Mauldin --
9 Mauldin City Police instructing them not to talk to
10 one another about the election and certain named
11 homeowners about the election have -- have really
12 stepped in the way of these proxies being collected
13 and submitted in a fair and equitable manner. And
14 so that's why I would ask that ---

15 THE COURT: Well, I'll say this, if there have
16 been some inappropriate threats and comments made,
17 that's a violation of the First Amendment and it
18 would invalidate any election. So I don't know how
19 you -- that's why I think some independent third
20 party needs to be there to evaluate what these --
21 the issues with these proxies. And if there have
22 been threatening letters, that's got to stop.

23 MR. OATES: Just to be clear, Judge. I -- I
24 don't think there's been any threatening letters
25 from my office. Is that ---

1 MR. DODD: Not -- not from Mr. Oates.

2 MR. OATES: Okay.

3 MR. DODD: Certain of the named defendants.

4 MR. OATES: Oh, oh, I understand. I'm sorry.

5 MR. DODD: And by -- two -- two other -- two
6 homeowners. Nothing from -- from defense counsel.

7 THE COURT: Okay. Well, it's -- it's valid
8 under the homeowners association rules that these
9 proxies are acceptable. And if somebody tries to
10 impede that inappropriately, I don't know what's in
11 the -- in the document, but that -- that's
12 actionable conduct.

13 MR. OATES: Judge, this is very practicable
14 reasoning for those kinds of proxy validation rules.
15 And it's that, for example, in this -- this very
16 neighborhood, there's a company called American
17 Homes For Rent. It is the titleholder, the member
18 in the association for 19 of the homes.

19 Those proxies were evaluated at the last
20 meeting with you, and there many of them that were
21 disqualified because they were signed by renters.
22 There were -- some of them were disqualified because
23 you get one vote per lot, right, but joint
24 individuals can hold titles to that lot jointly.
25 They don't both get a vote. So there's a very

1 important practical process where the association
2 governs that -- that has to be observed in order to
3 make sure that that kind of thing doesn't happen.

4 And the reason that that's important, Judge, is
5 because we -- we deal with this kind of stuff all
6 the time. We don't want to get down the road two
7 years after the board is elected with renter
8 proxies, right, and then provide somebody who
9 doesn't like what the association's doing an
10 argument that this board isn't even valid because
11 they were voted in by renters. Those people aren't
12 even members of the association.

13 So, Judge, my firm represents over a thousand
14 HOA in North Carolina and South Carolina. And I'm
15 not kidding, that kind of stuff happens all the time
16 which is why my recommendation to the Court, as it
17 has been to Mr. Dodd and his clients and my client,
18 is that the solution to this problem, which is
19 99 percent political and maybe 1 percent legal, is
20 to schedule a meeting, have an election, and y'all
21 need to abide by the results of it.

22 THE COURT: And that's what -- that's what is
23 happening.

24 MR. DODD: We have no problem with that, Your
25 Honor.

1 THE COURT: Okay. And if you've got -- what
2 I'm telling your clients is, if you're threatening
3 somebody about signing a proxy, stop it. Everybody
4 gets to vote if they're lawfully entitled to under
5 the rules and regulations of the homeowners
6 association.

7 I don't know what it says about renters, but it
8 seems to me that they do not have authority to vote,
9 but that's governed by the document. If there's
10 some question and some independent third party can
11 take a look at it, or you all can slug it out, go
12 through depositions, discovery, and come on back up
13 here and someone in a black robe will make a
14 decision, so...

15 MR. OATES: Judge ---

16 THE COURT: Now, I'm not commenting on the
17 validity of those proxies.

18 MR. OATES: Right.

19 THE COURT: If they are invalid, they're
20 invalid, but I'm not negating them because I --
21 because this meeting has been continued. All right?

22 MR. DODD: Thank you, Judge.

23 THE COURT: We good? You going to prepare an
24 order?

25 MR. OATES: I will, Judge. Do you want to

1 hear -- one of the problems I have is, that I don't
2 believe the plaintiff can make out a case and hit
3 those legal points it needs to with regard to the
4 issuance of that kind of injunction. Does the Court
5 want to hear argument about that?

6 THE COURT: You want me just to say I am sua
7 sponte ordering that this hearing be set off for
8 30 days and not granting an injunction? Then he
9 doesn't have to post a bond.

10 I'm granting a limited temporary injunction or
11 restraining order, postponing the hearing, requiring
12 Mr. Dodd's clients to post a \$1500 bond in his trust
13 account, and you all set the hearing. I am
14 encouraging all the parties to agree on an
15 independent mediator who can look at these issues,
16 which probably aren't that complex, and make a
17 decision which everyone should agree to. That is
18 what I'm ruling.

19 I am not -- if you -- you want to go through
20 all the rule as Rule 65? If you want to go through
21 that, we'll go through it. But you -- maybe you
22 need to talk to whoever your clients are and see if
23 what I'm ruling is agreeable with them before we get
24 in -- go down that road.

25 There is irreparable harm potentially for these

1 potential members on the board who wouldn't get
2 elected. I mean, I can think of a number of things.
3 You want to speak to them? Y'all want to speak to
4 your clients and see if this is agreeable?

5 MR. OATES: That would be fine, Judge.

6 THE COURT: All right. Y'all go ahead and do
7 that.

8 (From 11:54 am to 12:02 p.m., a brief recess
9 was taken.)

10 THE COURT: Okay.

11 MR. OATES: Thank you, Judge, for that
12 courtesy.

13 Well, we -- the -- the defendants are agreeable
14 to what we've discussed with regard to -- to the
15 Court's order. Can I add one thing in? And -- and
16 I want to involve Mr. Dodd, as well.

17 One of the concerns is that the -- the
18 plaintiff, or at least the individuals whose claims
19 we were reversing, have limitations to -- to
20 ownership, which is okay. That's part of the
21 political process. I don't want to stop them from
22 doing that.

23 What I would like to do is with Mr. Dodd, write
24 a letter to all of the members such that there is no
25 confusion about what the Court has ordered, such

1 that, you know, where and when the new meeting's
2 going to be, because right now these folks have
3 noticed a simultaneous meeting at just another
4 location.

5 And I don't want to get -- I don't want to get
6 the -- the members -- the 271 members in this
7 community sideways on where to go, what to do. I've
8 got two annual meeting notices in my hand. What do
9 I do? Where do I send my assessments? I don't want
10 to expose some of those things. Mr. Cannon has
11 written letters essentially saying, "Do not pay your
12 assessments." I don't want to expose any of those
13 folks to any breach or any covenant that brings you
14 by taking title.

15 And I think the way to handle that, Judge, is
16 for me and Mr. Dodd to write a joint letter to the
17 association essentially indicating that the Court
18 has said, "Business as usual until this next
19 meeting. You need to send your, you know,
20 homeowners association dues in. You don't want to
21 get a late fee, and you certainly don't want to get
22 sideways with the association. We're going to
23 figure out who the board is at this meeting. We're
24 going to put it out 30 days from today. But as of
25 right now, you should continue to perform your

1 obligations so you're not exposed to anything bad
2 from not doing that."

3 Is that okay with the -- with the plaintiff?
4 And I'll -- I'll draft it. I'll send it to
5 Mr. Dodd. He can edit. He can comment. We can get
6 it where we want it to be. I just want -- I need a
7 way for the association members to understand what
8 we've done without just sending them the order.

9 MR. DODD: That -- that is fine with the
10 plaintiff, Your Honor. We certainly have no desire
11 to -- to harm the association overall in these
12 matters. So, certainly, you're the -- your proposed
13 order is -- is acceptable to the plaintiff, and I
14 think with that ---

15 THE COURT: All right. Good. Y'all draft a
16 letter. Agree on the terms. Send it out as quickly
17 as possible, and best of luck.

18 MR. DODD: Thank you, Your Honor.

19 THE COURT: All right. You send me a proposed
20 order.

21 (The proceedings concluded at 12:05 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Greenville County, South Carolina, on the 25th day of January, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 9, 2017

/s/Lisa Scott 

Lisa Scott
Circuit Court Reporter