

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS)
2016-CP-23-06406)

BONNIE BRAE HOMEOWNERS)
ASSOCIATION, INC.)

ORIGINAL

PLAINTIFF))

vs.)

TRANSCRIPT OF RECORD)

HOA COMMUNITY MANAGEMENT, LLC,)
ET AL)

DEFENDANT))

February 17, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

MICHAEL DODD, ESQ.
Attorney for the Plaintiff

JESSE OATES, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 16

1 THE COURT: Okay, it appears we have on the
2 docket, the case of Bonnie Brae Homeowners
3 Association versus HOA Community Management, LLC.
4 And that is case no. 2016-CP-23-6406. And we're
5 before the court on a motion for injunctive relief
6 and a Rule to Show Cause. Am I correct?

7 MR. DODD: That's correct, Your Honor.

8 THE COURT: Okay. Well, I will defer to y'all.
9 I'll be happy to hear from you.

10 MR. DODD: Thank you, Your Honor. I'm Michael
11 Dodd for the Plaintiff.

12 THE COURT: Yes, sir.

13 MR. DODD: First of all, thank you to the Court
14 for your time here today and for the Court -- the
15 Defendants for agreeing to have this hearing.

16 THE COURT: Yes, sir.

17 MR. DODD: We appreciate that accommodation.

18 THE COURT: No worries.

19 MR. DODD: Your Honor, I guess I'll defer to the
20 Court, you want to take up that matter of the
21 injunction first?

22 THE COURT: I defer to y'all. Whatever you
23 think makes logical sense.

24 MR. DODD: Very good. Well, I will proceed, I
25 guess, with the motion for injunction, first.

1 THE COURT: Yes, sir.

2 MR. DODD: The injunction brought by the
3 Plaintiff in this case is to stop a meeting that was
4 noted by the Defendants. Which is actually scheduled
5 for this evening, February 17th.

6 THE COURT: Yes, sir.

7 MR. DODD: I believe at five o'clock or seven
8 o'clock, I'm not sure. But anyway, it was scheduled
9 for this evening. And the Plaintiff's contention was
10 that this meeting was called in direct opposition to
11 an Order by Judge Miller on January 25th, 2017. And
12 without the agreement and consent of the Plaintiff,
13 which was part of the discussion and the Order at the
14 hearing on January 25th.

15 By way of background, and I'll try to be as
16 brief as I can, but Your Honor I'm here today
17 representing the Plaintiff in this case who are those
18 members of the Bonnie Brae Homeowners Association
19 that were elected as the Board of Directors at a
20 special meeting held on July 28th, 2016. That
21 meeting was called after the annual meeting in 2016
22 was attempted to be held and called off due to no
23 quorum. And this case and this litigation derives
24 from the result of that meeting, in which the
25 Plaintiffs in this action, who are representative of

1 the association and are the duly and legally elected
2 board of the association.

3 There's a long history between many members of
4 the association, the management company, HOA
5 Community Management, and the named Defendants in
6 this case, mainly whom have served on the board for a
7 very, very long time. And in many cases almost 10
8 years. And their -- the relationship between the
9 management company and the board and its members has
10 in many cases been difficult, attention filled and in
11 many cases very ugly. The management company has, in
12 the Plaintiffs opinion, overstepped its bounds on
13 many occasions, causing elections to be invalidated,
14 influenced. And the Plaintiffs in its complaint in a
15 prior motion for an injunction, as well as motion for
16 summary judgment and many other things that have been
17 a part of the record, bear out those tensions. And
18 through affidavits and evidence that has been put
19 forth by the Plaintiff.

20 As a result of the dispute from the April 28th
21 special meeting and election, the management company

22 and those named Defendants refused to recognize the
23 Plaintiff as the board of the association. And so,
24 now we're in a dispute. To get quickly to the
25 Defendants in their memorandum in opposition pointed

1 out that the Plaintiff had filed prior injunctions in
2 this matter and that is true. Back in December we
3 filed an injunction to stop the originally scheduled
4 annual meeting from January because it was not
5 noticed by the legally elected board. And the
6 Plaintiff did everything they could to negotiate with
7 the Defendants to try to, because there was a
8 dispute, to try to come to an agreement over how and
9 when that meeting was going to be held. They
10 reserved numerous alternate locations and made them
11 known to the Plaintiff for time, dates and otherwise.
12 Tried to negotiate proxies and the balance for those
13 who were going to be considered for the board, we got
14 no where.

15 Ultimately, that injunction was withdrawn by the
16 Plaintiff because we felt that we were in
17 negotiations with the Defendants, we soon found out
18 that we were wrong about that, which led to the
19 filing of another injunction. In that case, the
20 Defendants has been in opposition states that that
21 injunction was denied. The Plaintiff would put forth
22 that it was not. And, I think, it was very clearly
23 spelled out in both the Order that the Plaintiff
24 references in its motion for Rule to Show Cause, and
25 also in the record itself, the transcript from that

1 hearing, that Judge Miller granted the Plaintiffs
2 injunction, which is why that meeting didn't take
3 place.

4 As part of that Order, the parties were to get
5 together and set a meeting within 30 days of
6 January 25th. After that hearing took place, the
7 parties spoke -- excuse me, counsel for the defense
8 and counsel for the plaintiff spoke briefly. And
9 determined that we would try to come to an agreement
10 on when that meeting would be held. The very next
11 day the Defendants in this case posted all over the
12 neighborhood and on their community bulletin board,
13 that a meeting was going to be held on February 17th.
14 The Plaintiffs have not agreed to that, the
15 Plaintiffs have not had time to discuss that with the
16 defense's counsel. And in the ensuing day -- few
17 period that followed, there were numerous telephone
18 conversations, email conversations and
19 correspondences back and forth between defense
20 counsel and counsel for the Plaintiff. In which
21 alternating dates were proposed. We have alternate
22 locations that were reserved, that had been reserved,
23 actually, in the future of this date, the 17th, in an
24 effort to give both parties time to, you know, cast
25 its votes, get proxies collected, do all the things

1 that they would ordinarily do to try to get support
2 on their side.

3 And while this communication is going on -- so,
4 I guess, that would have been January the 26th,
5 sometime around the 27th, the Defendants posted on
6 their website another notice of the meeting and
7 language that basically made it sound as if they had
8 been victorious in the litigation and the previous
9 hearing and that they were the board. So, you can
10 see how this might still begin to start causing
11 confusion. If there wasn't already confusion, there
12 certainly was now. I have had communication from
13 members of the association asking me what's going on?
14 I've even gotten telephone threats from members of
15 the association over this. It's gotten very heated
16 and contentious.

17 Then further, at the end of that week, counsel
18 for the Plaintiff and the defense were in
19 negotiations of this letter that we came up with at
20 the January 25th hearing. And we decided, and
21 counsel for the defense very clearly stated that it
22 was his intention to have a letter from both of the
23 attorneys explaining to the membership what's going
24 on, so that everything was clear. And neither was
25 having any, you know, argument or was confused as to

1 who was the board and who wasn't and we were going to
2 come to an agreement as to when the meeting was going
3 to be held.

4 And then over that weekend I got word from my
5 clients that a letter had been sent out by the
6 defense, to the association, telling them what
7 happened at the court hearing on the 25th and
8 noticing this meeting for the 17th. So, our only
9 response for that, because we felt that it would be
10 in violation of Judge Miller's Order, and in bad
11 faith, to notice the second meeting or try to do
12 something to further confuse the issue. Well, it was
13 our only response that we felt was left was to file
14 an injunction.

15 THE COURT: Okay.

16 MR. DODD: And as to the injunction itself--

17 THE COURT: Hold on.

18 MR. DODD: Yes, sir.

19 THE COURT: I think I gotcha.

20 MR. DODD: Okay.

21 THE COURT: You told me enough and I'm reading
22 Judge Miller's Order. And I presume that the Order
23 and Rule to Show Cause relates to not abiding by the
24 terms of Judge Miller's previous Order --

25 MR. DODD: That's correct.

1 THE COURT: -- and communicating and working
2 together to schedule a hearing?

3 MR. DODD: That's correct.

4 THE COURT: Okay, all right. I gotcha.
5 Yes, sir.

6 MR. OATES: Thank you, Judge Stilwell, may it
7 please the Court?

8 THE COURT: Yes, sir.

9 MR. OATES: My name is Ryan Oates, I represent
10 the Defendants in this case.

11 THE COURT: Yes, sir.

12 MR. OATES: And I think that, obviously, the
13 Defendants position is that you should deny both of
14 these motions. And the reason is the Plaintiffs
15 legal analysis misses the mark on these things. But
16 before we get to those technical merits of what it
17 takes for an injunction to issue--

18 THE COURT: Hold on. Don't get technical on me.
19 Did they coordinate with the other side about
20 scheduling the hearing?

21 MR. OATES: Sure, Judge. This is what happened
22 after Judge Miller issued his Order on January 25th.
23 My clients walked out that door and called the venue,
24 okay. They called the venue where the 28th meeting
25 had been schedule and said, Okay, we can't do it on

1 the 28th, we got 30 days to do it.

2 THE COURT: Okay.

3 MR. OATES: Okay. And here's the real rub is
4 that when Judge Miller issues an Order, right, you
5 got to have a meeting within 30 days. Well, the
6 bylaws and acts say you have to give not less than 10
7 days notice, right. So, that's really only a 20 day
8 window.

9 THE COURT: Yeah.

10 MR. OATES: So, they immediately jumped on that,
11 okay. And they had an Order from the Court that said
12 you got to do it within 30 days. They called the
13 venue. The venue where the meeting had been
14 scheduled, where all of the membership had intended
15 and planned to be on that Saturday, only had one day
16 left, it was the 17h, okay. So, they reserved it.
17 What we did immediately after that was come back in
18 here, we talked to Mr. Dodd, Are you available on the
19 17th? That's the only day the venue is opened. We
20 had a meeting in this room right here. Maybe on a
21 different floor, maybe a different courtroom, but
22 that meeting -- that room right there, we had a
23 meeting to talk a little about here's what we're
24 going to do. Are you all available? Can you make
25 that meeting happen? And no one said they were

1 unavailable. Mr. Dodd said he could make it, okay.
2 So, we went ahead and reserved that room, right.

3 Going forward from there -- and all the things
4 that, you know, that are reflected in the record with
5 regard to the letter, we did talk about issuing a
6 joint letter. We did talk about sending a -- an
7 order, a written order, to Judge Miller. Judge
8 Stilwell, throughout the course of the week that
9 followed, every draft that I sent up got rejected
10 because it was unfair. It was too slanted. We
11 couldn't get to an agreement on what the language of
12 the letter should say. We couldn't even -- I mean,
13 at the very end of the next week, when I was about to
14 go out on vacation, I needed to get an order to Judge
15 Miller. I said, Look, what do you want to put in the
16 Order? As long as it's not crazy, I'll agree to it.
17 We just got to get him something.

18 What the Order says, Judge, is that we are to
19 cooperate with the Plaintiff in the scheduling
20 thereof. We have done that. The Order doesn't say,
21 Agreement and consent of the Plaintiff have to be
22 obtained in order to schedule the meeting. What the
23 Order does say is a HOA Community Management and
24 these folks, who are the actual board, and who
25 continue to maintain the association's accounts, will

1 continue to do the association's business because
2 there's contractual liability. There's contractual
3 exposure there if they do not. That's the--

4 THE COURT: All right. Hold on. Hold on. I
5 hear you, too. I hear both of you. Okay. You got,
6 you know, the movable object versus the irresistible
7 force here. You're going to hold your homeowner
8 association meeting on March 10th at 1900, okay.

9 MR. OATES: Judge, if I may, the bylaws of this
10 particular association--

11 THE COURT: I understand what the bylaws say but
12 you just got an Order from the Court.

13 MR. OATES: Okay.

14 THE COURT: Okay. Y'all got some arguments
15 going on, I get it. And everyone is upset with
16 everyone else. March 10th, 1900. And I recognize
17 that the responsible parties have attempted to -- and
18 I'm not characterizing either as a responsible party
19 because I think everybody is being childish, petulant
20 and petty. But the responsible parties have
21 attempted to equip their responsibilities in

22 accordance with the bylaws. And I find that as a
23 matter of fact in the hearing today. Therefore, no
24 liability accrues for any dilatorily or delinquent
25 conduct. I'm just telling you, March 10th, 1900,

1 okay.

2 MR. OATES: Yes, sir.

3 THE COURT: Okay.

4 MR. OATES: And Judge, I'm not being
5 argumentive.

6 THE COURT: Sure.

7 MR. OATES: But these particular bylaws state
8 it's got to be within 60 days, so can I just give you
9 an Order that says all that?

10 THE COURT: Sure.

11 MR. OATES: So we're protected.

12 THE COURT: So you're protected.

13 This protects everybody. All I'm doing is I'm
14 giving y'all a date on the map. Right now, no
15 negotiations. Y'all came to me for a solution, I'm
16 giving you a solution. March 10th, 2017, 1900, okay.
17 You send me an Order and I'll be happy to sign it.
18 And again, that Order can certainly say that the
19 parties have attempted to equip their
20 responsibilities under the terms of the bylaws so
21 that no liability accrues therefrom. Okay. And any
22 delays are a consequence of good faith disputes that
23 has risen between the parties. Okay.

24 March 10th, 2017, 1900.

25 MR. OATES: Thank you, Your Honor.

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MR. DODD: Thank you, Your Honor.

THE COURT: All right, thank you. Y'all have a great day and a great weekend.

(WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of February, 2017.

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

March 22, 2017


APRIL P. HERRON, Court Reporter