

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1071

BRUCE ALLCORN, LEE BOST, ROGER)
CANDO, BILL CHERRY, JAY DECHESERE,)
TOMMY KING, and JOHN TINNEY,)
Plaintiffs,)

v.)

BRADLEY CREEK BOATOMINIUM, INC.,)
Defendants.)

ORDER ON ATTORNEYS' FEES

THIS MATTER comes before the Court following the Court's Amended Order on Motion for Inspection and Motion for Temporary Restraining Order issued on April 21, 2015 ("Inspection Order"), to address Plaintiffs' entitlement to costs, including reasonable attorneys' fees, incurred in obtaining the Inspection Order.

THE COURT, after considering the Affidavit of Matthew B. Davis, Esq., Plaintiffs' Motion for Inspection¹ and the Inspection Order, and other appropriate matters of record, FINDS and CONCLUDES as follows.

1. The procedural and factual background of this matter is more thoroughly set out in the Court's Inspection Order and that background is incorporated herein by reference.

2. In the Inspection Order, the Court concluded that Plaintiffs, members of Defendant Bradley Creek Boatominium, Inc. ("Defendant"), were entitled to a court-ordered inspection of certain books and records of Defendant pursuant to NC. Gen. Stat. § 55A-16-04 (hereinafter, references to the General Statutes will be to "G.S."). Although recounted more fully in the Inspection Order, Plaintiffs entitlement to the Inspection Order was the result of Defendant's withholding of these records as part of an ongoing dispute between the parties.

¹ Verified Application for Court Ordered Inspection of Corporate Records (Mar. 30, 2015).

3. When a court orders inspection of corporate records under G.S. § 55A-16-04, the court "shall also order the corporation to pay the member's cost (including reasonable attorneys' fees) incurred to obtain the order unless the corporation approves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded." G.S. § 55A-16-04(c).

4. As discussed in the Inspection Order, the Court has found that Plaintiffs were entitled to the most recent financial statements of Defendant as a matter of right under G.S. §§ 55A-16-01(3)(5) and 55A-16-02(a). This right does not depend on Plaintiffs making the request in good faith or for a proper purpose. *See id.* Accordingly, as to this request, Defendant could not have had a "reasonable basis for doubt about the right" of Plaintiff to these financial statements and Plaintiffs should be awarded their costs. G.S. § 55A-16-04(c).²

5. As to the requested minutes from Defendant's board meetings, Defendant argued that it had a reasonable basis to doubt that the request was made for a proper purpose and in good faith, as required by G.S. § 55A-16-02(c). However, as noted in the Inspection Order, the request for board meeting minutes was directly tied to the board's request that, at the pending meeting of the membership of Defendant, the membership ratify the actions of the board taken in the previous year. It is axiomatic that, in order to cast an informed vote on such a request, the members must have knowledge of the board's actions.³ Accordingly, Defendant could not have had a "reasonable basis" for doubting that the purpose of this request was proper.

² As also discussed in the Inspection Order, the Court has rejected Defendant's contention that these financial statements were not provided because they were not yet "final." *See* Inspection Order (Apr. 21, 2015) ¶ 14.

³ Additionally, as noted in the Inspection Order, at the hearing on the Motion for Inspection, counsel for Defendant appeared to concede that Plaintiffs had a proper purpose given the agenda for the pending meeting of the membership. Inspection Order ¶ 14, n. 16.

6. Regarding whether the request was made in good faith, Defendant points the Court to the ongoing dispute between Plaintiffs and Defendant concerning matters related to the governance of Defendant. While the record before the Court does show that Plaintiffs were dissatisfied with actions taken by Defendant's board and that Plaintiffs, sometimes aggressively, expressed their dissatisfaction with the remaining membership, the record does not support a finding that Defendant reasonably doubted Plaintiffs' entitlement to these records. Defendant argues that the records were not provided, in large part, due to a concern that the information contained therein might be misrepresented or misinterpreted.⁴ Setting aside that the "mere possibility that a shareholder may abuse his right to gain access to corporate information will not be held to justify a denial of a legal right" to that information, *Carter v. Wilson Construction Co.*, 83 N.C. App. 61, 66 (1986), the Court has already noted that Defendant, too, was engaged in a campaign that has involved "mischaracterizing and misstating the facts to press their position."⁵ Ultimately, after reviewing the record in this matter, including the conduct of both parties leading up to the records request, the Court concludes that Defendant did not have a reasonable basis to doubt Plaintiffs' entitlement to these records.

7. Having concluded that Defendant did not have a reasonable basis to doubt Plaintiffs' right to the requested records, the Court now turns to the reasonableness of the costs and attorneys' fees sought. In support of Plaintiffs' fee application, Plaintiffs submitted an affidavit of Matthew B. Davis, Esq. ("Davis"), Plaintiffs' counsel. Attached to the affidavit were invoices for legal services provided by Davis.

8. The fees sought cover only those legal services, provided at a discounted rate, directly related to obtaining the Inspection Order, and do not include any time incurred in

⁴ See Def.'s Memo. Supp. Mot. TRO and Opp. Mot. Inspection 19.

⁵ Inspection Order ¶ 20.

seeking the requested records prior to preparing and filing the Motion for Inspection.⁶ After thoroughly reviewing the attached invoices, the Court concludes, in its discretion, that the attorneys' fees sought are reasonable given the expedited nature of this proceeding, the extensive briefing involved, and the multiple hearings involved in the Motion for Inspection.

9. Accordingly, the Court finds that Plaintiffs should, pursuant to G.S. § 55A-16-04(c) be awarded their costs, including reasonable attorneys' fees, in the full amount requested.

THEREFORE, IT IS ORDERED that:

10. Plaintiffs' Application for Attorneys' Fees and Costs is GRANTED. On or before June 12, 2015, Defendant shall pay Plaintiffs' costs and attorneys' fees associated with the Motion for Inspection in the amount of \$14,620.16.

This the 27th day of May, 2015.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases

⁶ Davis Aff. (Apr. 27, 2015) ¶¶ 7, 9.