

Maryland Circuit Court for Anne Arundel County

CHRISTOPHER DAVID MCKEON,)	
)	
Plaintiff,)	
v.)	
Charing Cross Townhouse Condominium, Inc.,)	Case No. 02-C-08-132379 I J
Joseph R. DeSantis,)	
Carol Frankhouser,)	
Kathleen Marek,)	
Michael J. Helpa,)	
COMANCO, INC.,)	
Ruth Angell,)	
Defendants.)	

PLAINTIFF’S MOTION FOR SANCTIONS AND TO COMPEL DISCOVERY

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, pursuant to Md. Rule of Civ. Proc. § 2-432(a) and 2-433, and requests of this Court sanctions against, and an Order compelling Discovery by, all Defendants. In support of his Motion, Plaintiff respectfully refers this Court to his Statement of Facts, Certificate of Good Faith, and Argument, below.

STATEMENT OF FACTS

1. Plaintiff incorporates by reference the entire record of the above-captioned action as though fully set forth herein.

2. Plaintiff’s complaint alleges Defendants failed and refused to comply with a wide variety of the Association’s governing laws, among which include their failure and refusal to inform and disclose to Plaintiff material facts and information relevant to Plaintiff or Defendant Association. Plaintiff was an officer and director of the Association during the relevant time period.

3. Defendants' failure and refusal to respond to Plaintiff's Interrogatories and Discovery of Documents requests is a continuation of their failure and refusal to inform and disclose material facts and information to Plaintiff, one of the proximate causes of the instant complaint. This habit of denying material facts and information to parties that have a right to such information now extends, in the context of the instant matter, to this Court.

4. Defendants were sufficiently served with process and are aware of and understand the complaint against them; four have engaged legal counsel and all are actively defending against the instant action. (see Plaintiff's Affidavit and Motion to Substitute Service of Process, Affirm Sufficiency of Evaded Service of Process and Request for Expedited Summary Relief, paras. 21-25, 30-36; Plaintiff's Response and Opposition to Defendant Charing Cross Townhouse Association, Inc.'s Motion to Dismiss for Insufficiency of Service, paras. 15-25; and Plaintiff's Response and Opposition to Defendant Carol Frankhouser's Motion to Dismiss Complaint, paras. 18-22, 33-35)

5. Pursuant to Md. Rule of Civ. Proc. § 1-321(a), on 8/28/08 Plaintiff served upon Defendants via first-class mail the following papers (hereinafter referred to as "Discovery"):

- 5.1 Plaintiff's Interrogatories to Defendants Comanco and Angell;
- 5.2 Plaintiff's Interrogatories to Defendants Charing Cross Townhouse Association, Inc., DeSantis, Marek, Frankhouser and Helpa;
- 5.3 Plaintiff's Request for Production of Documents to Defendants DeSantis, Marek, Frankhouser and Helpa;

5.4 Plaintiff's Request for Production of Documents to Defendant Comanco, Defendant Angell and Defendant Charing Cross Townhouse Association, Inc.

6. Md. Rule § 2-421(b) and § 2-422(c) state that a response to an Interrogatory or Discovery of Documents request, respectively, shall be served within 30 days after service of the request.

7. None of the Defendants in the instant matter responded to Plaintiff's Discovery requests within the time period specified in Md. Rules.

CERTIFICATE OF GOOD FAITH ATTEMPT

8. Plaintiff does solemnly swear and affirm, under penalty of perjury, he made a good faith attempt to resolve the discovery dispute, pursuant to Rule § 2-431, as follows: Plaintiff sent a letter to each party via first-class mail on 10/1/08 requesting, in good faith, that Defendants provide their responses no later than 10/6/08; otherwise, Plaintiff would seek relief. (Exhibit A)

9. However, Defendants did not provide a response to Plaintiff's Discovery requests by 10/6/08, or even by this filing 10/10/08.

ARGUMENT

10. Plaintiff incorporates as reference paragraphs 1-9 above as though fully set forth hereinunder.

11. One of the complaints against Defendants regards their consistent failure and refusal to inform or disclose material facts and information to Plaintiff, Members and the Association itself (through lawful, open meetings or upon request, for example). Defendants' failure and refusal to respond to Plaintiff's Discovery requests—even after

his good faith attempt to resolve the failure—is another example of Defendants’ willful and obstinant refusal to comply with their duties demonstrated throughout their tenures as directors of the Association, and with regard to the instant matter.

12. Defendants have, or attempted to, willfully and routinely evade service of process. Currently three directors (which includes two officers of the Association) continue to evade lawful mailed service of process. (*supra*, at 4) Defendants Association, DeSantis, Frankhouser, Marek and Helpa have filed no answer to Plaintiff’s complaint.

13. The above-named Defendants’ ongoing, willful and contemptuous failure and refusal to accept service or answer the complaint, and all Defendants’ failure and refusal to respond to Plaintiff’s Discovery requests, are plain examples of stonewalling, obfuscation and bad faith. Defendants’ refusal to respond loudly infers that the revelations of the material facts therein will significantly and substantially erode any defense they may have against Plaintiff’s complaint.

14. This Court has a clear and compelling interest to expeditiously compel Defendants to respond to Plaintiff’s Discovery requests so as to preserve the authority and dignity of this Court, to preserve the deadlines established in the 6/30/08 Scheduling Order, and to preserve the possibility of effective, permanent relief and substantial justice.

15. Defendant Frankhouser served Plaintiff with Interrogatories and a Request for Production of Documents on or about 9/17/08. It would be fair to say Defendant Frankhouser expects and demands a timely response to her discovery. But it would be unconscionable and not in the interest of substantial justice for this Court to fail to compel Defendants to respond to Plaintiff’s Discovery requests while Defendant

Frankhouser—flouting Plaintiff’s own Discovery requests—demands of him a timely response to her own. Even were her failure and refusal to respond to Plaintiff’s Discovery requests not a violation of Md. Rules, such one-sided compliance with Discovery leaves Plaintiff at a material disadvantage and prejudicially affects his substantial rights.

16. Defendants’ willful and intentional failure and refusal to act in good faith with regard to their duties and obligations as parties to the instant action strongly infers their lack of credible defense, and begs this Court for sanctions against them.

WHEREFORE, Plaintiff respectfully requests this Court:

- A. Order Defendants to respond fully, completely and in good faith immediately and without further delay to Plaintiff’s Discovery requests;
- B. Order that Defendants, as the failing parties, shall not oppose Plaintiff’s Discovery requests, nor any individual item therein, but shall fully, completely and honestly answer each and every interrogatory and provide each and every document requested;
- C. In the alternative to the above-requested relief (paras. A, B), and pursuant to Rule § 2-433(a)(3), Render default judgement against Defendants and in Plaintiff’s favor on any or all counts in the Complaint as this Court deems warranted and appropriate, and award Plaintiff any or all relief requested in the Complaint; and Order Defendants shall respond to any or all Discovery requests so required by any remaining triable issues;
- D. Order Defendants shall timely respond to all Plaintiff’s future discovery requests;

- E. Order Defendants shall not motion, nor shall it be granted if they do so motion, for any protective order pursuant to Rule § 2-403 shielding them from any or all discovery by Plaintiff;
- F. Order Defendants shall pay to Plaintiff all costs, fees and other monies spent in compelling them to fulfill Plaintiff's Discovery requests pursuant to Rule § 2-433;
- G. Order sanctions against Defendants as this Court deems warranted and just;
- H. Provide all additional or necessary sanctions or relief as this Court deems warranted.

REQUEST FOR HEARING

Pursuant to Rule § 2-311, Plaintiff respectfully requests that the Court schedule an expedited hearing on the instant motion.

Respectfully Submitted,

Christopher McKeon, Plaintiff, *Pro Se*
1120 Soho Court, Crofton, MD 21114
410-271-7907

I DO SOLEMNLY SWEAR AND AFFIRM, under penalty of perjury, that the foregoing Plaintiff's Motion for Sanctions and to Compel Discovery is true and correct to the best of my knowledge, information and belief.

Christopher D. McKeon
1120 Soho Court, Crofton, MD 21114

CERTIFICATE OF SERVICE

I, Christopher McKeon, Plaintiff, *Pro Se*, do hereby certify that a copy of the foregoing Motion has been served by First Class U.S. Mail, postage paid, this _____ day of _____, 200____, upon the following:

Comanco, Inc., and
Ruth Angell
c/o Thomas R. Callahan
Callahan & Callahan, P.C.
2133 Defense Hwy
Crofton, MD 21114

Charing Cross Townhouse Association,
Inc. and Carol Frankhouser
c/o Owen J. Curley
Niles, Barton & Wilmer, LLP
111 S. Calvert Street, Suite 1400
Baltimore, MD 21202

Joseph R. DeSantis
1001 Shire Court
Crofton, MD 21114

Kathleen Marek
1008 Broderick Court
Crofton, MD 21114

Michael J. Helpa
1007 Broderick Court
Crofton, MD 21114

Respectfully Submitted,

Christopher McKeon
Plaintiff, *Pro Se*
410-271-7907