

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 TO STRIKE DEFENDANT CAROL FRANKHOUSER’S
REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES
AND (OR IN THE ALTERNATIVE) FOR A PROTECTIVE ORDER**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and requests of this Court pursuant to Md. Rules of Civ. P. (“Rule”) § 2-322(e) to strike in its entirety Defendant Carol Frankhouser’s Request for Production of Documents and her Interrogatories for failing to comply with Rule § 1-321(a); and (or in the alternative), pursuant to Md. Rules § 2-403(a)(2), that this Court order Defendants respond to Plaintiff’s Discovery requests first and no less than 17 days prior to Plaintiff responding to Defendant Frankhouser’s discovery requests. In support of his Motion, Plaintiff respectfully refers this Court to his Statement of Facts 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 (as defined in Amended Complaint, at para. I.h).

3. Plaintiff filed and served all Defendants with Interrogatories and Request for Documents ("Plaintiff's Discovery Request") on 8/28/08. No Defendants responded within the time allotted by Md. Rules. On 10/1/08, Plaintiff mailed a good-faith letter to all Defendants requesting a response to Plaintiff's Discovery Request by 10/6/08. No Defendants responded by that date. On 10/10/08—with still no response from Defendants—Plaintiff filed and served on all Defendants his Motion for Sanctions and to Compel Discovery ("Motion to Compel"), to which Plaintiff respectfully refers this Court. As of 10/15/08, still no Defendant has responded.

4. On or about 9/15/08—17 days after Plaintiff's Discovery Request—Defendant Frankhouser served via first-class US Mail upon Plaintiff her Interrogatories and Request for Production of Documents ("Defendant Discovery").

5. Defendant Charing Cross Townhouse Association, Inc. ("Association") and Defendant Carol Frankhouser are both represented by attorney Owen J. Curley (111 S. Calvert Street, Suite 1400, Baltimore, MD 21202, 410-783-6426). Defendants Comanco and Angell are represented by Callahan & Callahan (2133 Defense Hwy, Crofton, MD 21114, 301-261-0005). Upon information and belief, Defendants DeSantis, Marek and Helpa are unrepresented.

6. The Certificate of Service filed and served along with Defendant Discovery—and entitled "Certificate of Discovery"—certifies that no other party to the instant action, excepting Plaintiff, was served; a violation of Rule § 1-321(a). (Exhibit A)

7. The Certificate of Service filed and served along with Defendant Association's Motion to Dismiss for Insufficiency of Service ("First Motion to Dismiss") certifies that no other party to the instant action, excepting Plaintiff, was served; a violation of Rule § 1-321(a). (Exhibit B)

8. The Certificate of Service filed and served along with Defendant Carol Frankhouser's Motion to Dismiss Complaint ("Second Motion to Dismiss") certifies that no other party to the instant action, excepting Plaintiff, was served; a violation of Rule § 1-321(a). (Exhibit C)

9. The above facts show attorney Curley habitually failed and refused to properly serve and notify all parties to the instant action of every such pleading he has filed with this Court.

10. Md. Rules § 1-323 states, "The clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service."

11. Md. Rules § 1-321 states, "Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties."

12. Md. Rules § 2-322(e) permits the Court upon motion by a party "before responding to a pleading," to strike "in its entirety" "any pleading that is late or otherwise not in compliance with these rules."

13. Md. Rules § 2-403(a)(2) permits a party "for good cause shown" to motion the Court for an order of protection from, inter alia, "annoyance, embarrassment, oppression,

or undue burden...” including, “(1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery...(9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.”

ARGUMENT

14. Plaintiff incorporates by reference all paragraphs above as though fully set forth hereinunder.

15. Defendants’ failure and refusal to respond to Plaintiff’s Discovery Request is a continuation of their failure and refusal to inform and disclose material facts and information to Plaintiff, which caused irreparable harm to Plaintiff and is one of the proximate causes of the instant complaint. For example, by refusing to disclose material facts and information to Plaintiff during summer, 2008 Defendants unlawfully removed him as a director and acted throughout that time period as an independently-constituted 4-member Board outside the scope of their fiduciary responsibilities. (see Amended Complaint, at paras. 35.h, k, o; 47.a; 68.g; 74, 75, 79, 100, 103, 150, 157.c.ii, 158.c, n, o; 169, 177, 197, 205, 213, 222, 226, 258, 274, 289.e, g) 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.

16. All Defendants have failed and refused to respond to Plaintiff's Discovery Request. Yet Defendant Frankhouser requires Plaintiff to respond to Defendant Discovery while at the same time withholding material facts and information Plaintiff requires and to which he has a right pursuant to Md. Rules governing discovery.

17. The facts demonstrate Defendant Frankhouser by and through her counsel Owen J. Curley has an established history in the instant matter of failing and refusing to abide by the Md. Rules regarding service of pleadings. Indeed, counsel Curley has failed and refused in every single pleading he has filed and served upon Plaintiff to notify any other party to the instant matter of those pleadings. Plaintiff must presume that Defendants Comanco and Angell, and Defendants DeSantis, Marek and Helpa personally and as individuals, are uninformed of these pleadings. Counsel Curley attempted to represent all Defendants in the Second Motion to Dismiss, although he does not represent any Defendants except Frankhouser and Association. (see Plaintiff's Response and Opposition to Defendant Carol Frankhouser's Motion to Dismiss Complaint, At 5-16, 26-27) These acts materially prejudice and harm Plaintiff's due process rights.

18. Defendant Association, by and through its counsel Owen J. Curley, argues in its First Motion to Dismiss that Plaintiff failed to properly serve the Association. Defendants DeSantis, Marek and Helpa continue to publicly state they have not been served. (Cuevas Affidavit, at 4.x, Exhibit D) In other words, Defendants Association, DeSantis, Marek and Helpa assert they have not been properly and lawfully notified of the instant complaint pursuant to Md. Rules.

19. Yet, Defendants not only are actively prosecuting their defense—clearly indicating they are both fully informed of the instant matter and under this Court's

jurisdiction—but are failing and refusing to provide proper and lawful notice to all parties in the instant complaint pursuant to Rule § 1-321. It seems disingenuous of Defendants Association and Frankhouser to argue lack of proper notification of the instant complaint, while at the same time not only denying other parties the same proper notification of their pleadings and papers, but denying Plaintiff material facts and information to which he has a right.

20. Indeed, Defendant Discovery should not be considered properly filed with this Court because, while the pleading did contain a certificate of service pursuant to Rule § 1-323, it did not certify that all parties to the instant complaint were served, as is required by Rule § 1-321. Not being properly filed, therefore, Defendant Discovery is certainly a candidate for striking in its entirety.

21. Therefore, for the above reasons, Plaintiff respectfully requests of this Court to strike Defendant Discovery in its entirety for its willful, intentional and habitual failure and refusal to serve it upon all parties pursuant to Rule § 1-321.

22. Additionally (or, alternatively as this Court deems proper and just), Rule § 2-403(a) provides that a party may request of the Court protection from “annoyance, embarrassment, oppression, or undue burden or expense” that includes a variety of relief (*supra*, at 13)

23. Plaintiff has suffered, among other things, harassment, annoyance, embarrassment, oppression and undue burdens at the hands of Defendants as is well documented in Plaintiff’s Amended Complaint. Plaintiff continues to suffer these depredations against him with regard to discovery.

24. Plaintiff's core complaint against Defendants regards their willful, intentional and habitual violation of the laws governing the Association; these acts irreparably harmed Plaintiff. Defendant Frankhouser's failure and refusal to serve Defendant Discovery upon all parties—to disclose and inform of material facts and information—is merely a continuation of the deceptive acts and practices that are the proximate cause of the instant complaint.

25. Plaintiff believes it is materially prejudicial to his substantial rights for him to respond to Defendant Discovery while Defendant Frankhouser (and all Defendants) is flouting the Md. Rules regarding discovery. Indeed, Defendant Frankhouser appears to expect Plaintiff to disclose and inform of material facts and information to help in her defense while denying to Plaintiff the same disclosure. This violates the very principle of discovery and, as the Amended Complaint asserts throughout has repeatedly occurred, permits Defendants to deny Plaintiff the same information to prepare with that they possess, to which he is entitled, and thereby irreparably injure Plaintiff. This Court has a compelling interest to prohibit such acts in Defendant Frankhouser's conduct of the instant matter.

26. If this Court grants the instant motion, Plaintiff expects Defendant Frankhouser to re-file her Defendant Discovery. Therefore, in addition (or alternatively) to striking Defendant Discovery in its entirety, Plaintiff respectfully requests of this Court to order, pursuant to Md. Rules § 2-403(a)(2), that Defendant Frankhouser, and all Defendants, shall fully and completely respond to Plaintiff's Discovery Request first; that Plaintiff shall not respond to Defendants discovery requests until no less than 17 days after Defendants' said response.

27. Additionally, this is not the first time Plaintiff has had cause to complain to this Court about Defendants' conduct in the instant complaint. Plaintiff respectfully requests this Court to admonish and sanction Defendant Frankhouser, by and through her counsel Owen J. Curley, to follow the Md. Rules of Civil Procedure regarding discovery.

28. Additionally, Plaintiff requests any and all other such relief this Court deems necessary, proper and just.

WHEREFORE, Plaintiff respectfully requests that this Court grant Plaintiff's Motion to Strike Defendant Carol Frankhouser's Request for Production of Documents And Interrogatories and (or in the Alternative) for a Protective Order.

Respectfully Submitted,

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

REQUEST FOR HEARING

Pursuant to Md. Rule of Civ. P. § 2-311(f), Plaintiff requests a hearing on this matter.

I DO SOLEMNLY SWEAR AND AFFIRM, under penalty of perjury, that the foregoing Plaintiff's Motion to Strike Defendant Carol Frankhouser's Request for Production of Documents and Interrogatories and (or in the Alternative) for a Protective Order 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

Maryland Circuit Court for Anne Arundel County

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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.)	

ORDER

THE COURT, having considered Plaintiff's Motion to Strike Defendant Carol Frankhouser's Request for Production of Documents and Interrogatories and (or in the Alternative) for a Protective Order, it is this _____ day of _____, 2008:

ORDERED, that Plaintiff's Motion to Strike Defendant Carol Frankhouser's Request for Production of Documents and Interrogatories and (or in the Alternative) for a Protective Order is **granted**, as follows: _____

Judge