IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

VINAY BOSE, MOMMIES PROPERTIES, LLC, and FH PARTNERS, LLC,	:	
Plaintiffs,	:	CIVIL ACTION FILE
vs.	:	NO. 18CV-1887-1
JOHN RICHARDS, CHATTAHOOCHEE RIVER CLUB HOMEOWNERS ASSOCIATION, INC., and JOHN DOE and JANE DOE,	:	
Defendants.	:	

PLAINTIFF MOMMIES PROPERTIES, LLC'S RESPONSE TO FORSYTH COUNTY'S MOTION FOR PROTECTIVE ORDER

Now comes Plaintiff Mommies Properties, LLC ("Mommies") and responds as follows to Forsyth County's Motion for Protective Order regarding Plaintiff Vinay Bose's Third-Party Request for Production and shows this honorable court as follows:

INTRODUCTION AND FACTUAL BACKGROUND

The speed with which Defendant Forsyth County (the "County") filed a Motion for Protective Order contradicts the County's self-professed claim that it does not want to "shut down" the provision of relevant documents responsive to Plaintiff Vinay Bose's ("Bose") Third-Party Request for Production to the County. The County filed its Motion within five (5) days of sending one letter to Bose, three of which included a weekend and a federal holiday. Moreover, the morning

of the date the Motion was filed, Mommies informed the County that Mommies had also served the same set of Requests for Production of Documents on the County in order to manage the process of narrowing down the request, and to prevent it from being managed and seen as a pro se request. Counsel for the County, Paul Frickey ("Frickey") did not tell counsel for Mommies that his office had already drafted a Motion for Protective Order, which he intended to file that same day, and offered no suggestions whatsoever for compromise regarding the request. Instead, the County rushed to file the Motion for Protective Order as quickly as possible to take advantage of Bose's pro se status before it had to deal with the normal process of limiting the request in discussions with counsel for Mommies.

The facts of this case show that Bose's request was succinct and on point with regard to seeking relevant documents for claims against John Richards ("Richards"), the Chattahoochee River Club ("CRC"), and various John Does who have engaged in a campaign to slander Mommies and Bose for the outlandish purpose of forcing Plaintiffs to make the horse stables an amenity for the Chattahoochee River Club Subdivision (the "Subdivision") using the County as a hammer.

The County and its officials have actively participated in the campaign by the Defendants and is required to produce all

documents relating in any way to discussions and actions that resulted in County Code Inspectors imposing stop work orders at the horse stables, or otherwise assisting Defendants in their quest to force easements on the stables.

Plaintiffs Bose and Mommies own and operate a horse stables and paddocks at the 3450 Bentwood Drive, Cumming, Georgia 30041 (the "Property"). The Developer, who acted through one of its principals, Don Donnelly, built the paddock and stables on the Property and conveyed the Property to Bentwood Stables, LLC in 2000.[1] On the same day Bentwood Stables, LLC recorded title, it sold the Property to Linda Allen. (Complaint, Ex. "B.") Plaintiff Mommies acquired fee simple title to the Property through the Linda Allen chain of title. Plaintiff Mommies granted the Security Documents to Plaintiff FH Partners' predecessor-in-interest in 2005.

After Mommies acquired title, the Developer recorded covenants granting temporary easements for, among other things, trails, and restricting the Property to use as a stables, but that restriction, to the extent it even bound Mommies' Property remotely in the fashion contended by CRC, only lasted through

[1] Many of these facts regarding the dispute are shared in common with a prior case in which another adjacent property owner sued Mommies regarding an easement in an attempt to gain control of the Property, which is on an area of planned expansion of the National Parks Service (the "NPS"), Chattahoochee River National Park. Since the conclusion of the RC Acres matter, the RC Acres tract was conveyed to the Trust for Public Land, which has, or will, convey that tract to the NPS. Accordingly, the Property will sit adjacent to a National Park. Defendants and the County covet Plaintiffs' Property.

and including December 21, 2016. (Complaint Ex. "F," "Agreement Regarding Development.")

Before filing the Petition to Quiet Title, Plaintiffs Bose and Mommies sent a letter to Defendants, contacted them, and attempted to attend a special meeting conducted by Defendant CRC to resolve the matter prior to suit. Plaintiffs also mass-mailed an explanatory letter to the CRC members, only asking them to quitclaim any interest that they might have solely by virtue of that the Agreement Regarding Development. Defendants refused to help clear title, with Defendant CRC electing instead to "stir up the proverbial hornet's nest" by encouraging residents to oppose reasonable requests by Mommies which would allow it to operate an economically viable business on the Property and insisting at a July 5, 2018 public hearing before the County's Board of Commissioners (the "July 5 Public Hearing") that "…[their desire] is for the equestrian center to be a well-managed, safe and accessible amenity available to Chattahoochee River Club and all of Forsyth County residents as outlined in the Trail Easement Agreement…." In response to Plaintiffs' requests, Defendants CRC and Richards aggressively contended they have rights in the Property and are entitled to use the Property. (Complaint Ex. "G.") See also, additional testimony offered at the July 5 Public Hearing.

Defendants told Plaintiffs that the County would cite them and sue them to help CRC in its goal of obtaining control of the Property. See videotaped confrontation with John Richards and John Paximadis. Defendant Richards, a current and/or former officer and director on the board of directors of CRC, stated he wants Plaintiffs to sell the Property. He stated that the CRC has rights to use the Property. These statements were published on message boards and/or Facebook. Defendant Richards further published statements that he will personally sue Plaintiffs to establish access rights to the Property. Defendants instructed one or more of Defendants John and Jane Does not to sign a quitclaim deed to clear up the issue of the covenants.

Defendants intentionally published statements that it would be difficult for Plaintiffs to file suit against all of the members of CRC and instructed neighbors not to sign any quitclaim deeds clearing Plaintiffs' title. (Complaint Ex. "H.") These Defendants exhibited exuberance along with their harassments.

With regard to the County, Defendants CRC and/or one more of the other Defendants contacted Forsyth County officials and federal and state officials with allegations that Plaintiffs are committing local, state, and federal environmental violations. These allegations are false. Defendants made overt, bragging statements to Bose and Mommies that the County would sue them.

Mommies placed three (3) loads of top dressing in a 0.3-acre paddock that has existed at the Property since it was developed with the intent to spread topsoil to restore grass. The Property is zoned Commercial Business District ("CBD") under the Forsyth County Unified Development Code (the "UDC") with a condition of zoning that requires and limits the Property to one single use: a horse farm.

It is nearly axiomatic that horse farms require continued maintenance to preserve the grounds and soil and regenerate growth. Paddocks must be maintained annually to prevent erosion and the damage caused by hooves.

The County is assisting the CRC, a large subdivision with more than 600 voting households in attempting to prosecute Mommies and Bose for the doing exactly what the Property is zoned for – a horse farm – to gain control over the Property and make it an amenity adjacent to the future National Park addition.

This is not a theory of recovery. These are facts. A County Code Enforcement official told Bose that he was acting at the direction of higher County officials. Bose recorded this statement. Defendant Richards told Bose that the County would sue him while insisting the that gates to the horse farm be kept open. Bose videoed this statement.

A locked gate on the stables yard is all that exists to protect the horses -- due to the County's actions in conjunction with CRC. In 2018, Mommies sought permission from the County to add a custodial residence with two (2) units for 24-hour coverage to the stables to protect and monitor the horses for insurance, safety, and humane purposes. At the urging of CRC and other Defendants, the County granted an intentionally small, 800 square foot unit that cannot function for this purpose. The Subdivision is a residential subdivision, but the County and CRC even refused to permit a custodial residence at the Property, which is crucial to use the Property for the one thing it is zoned for.[2]

During his attempts to make an economic use of the Property for a horse farm, Bose sought an amendment of the zoning condition to make it clear that he can add two (2) residential units in the stables to the Property to permit custodians to watch the horses. At the County Board of Commissioners hearing, Bose spoke. In a discussion with the District Commissioner for the district in which the Subdivision is located, she admitted that she had contacted County Code Enforcement at the urging of CRC residents. At that July 2018 hearing on the application to amend the zoning condition, CRC opposed the amendment, and its

[2] Mommies cannot obtain insurance because the lack of a custodian allowed a horse to escape. The horse was killed on Georgia Highway 20.

residents stood up and claimed the reason they were opposing the custodial residence amendment was that they were no longer able to walk the trails, see the wildlife, and enjoy the Property, and under some unknown logic, that the County should not therefore allow the horse farm to have custodial residences.

The foregoing facts are not the only facts that relate to the relevance of the requests for production of documents. In addition to the egregious acts of enforcing a CBD zoning condition for a horse stables, while denying any economic stables use by preventing grassing and maintenance, Defendants called on the County to prosecute Bose and Mommies. The County wittingly used its code enforcement powers to stop work at the Property, issuing multiple stop work orders commencing in December 2017. These acts were for political purposes of its District Commissioner. Bose was forced to file five (5) appeals to the Zoning Appeals Board (the "ZBA") to pursue administrative remedies.

During the process of the ZBA appeal, the ZBA adopted special rules of hearing procedure (referred to as the "Bose Rules") and communicated with the County and its representatives regarding procedures to limit the hearing through emails and correspondence. These acts were taken to please the Defendants, one more of whom appeared at the hearings and assisted the County in denying the appeals. Counsel for the County contacted

the supposedly neutral ZBA prior to the hearing and designed the procedure for it.

The County ZBA appeals all related to Bose's attempts to add top dressing to a 0.3-acre paddocks to provide grass for the horses and to cover utility trenching left by Sawnee EMC, and nothing else more significant. Mommies currently has a pending appeal to superior court of that series of actions with the sole goal of overturning the stop work orders to maintain the Property, which cannot be used for a horse stables, sans grass, with a deep, open, muddy trench. As part of its outrageous disregard for constitutional property rights, the County Code Enforcement Officer laughingly admitted that he had trespassed on the Property, without a warrant, to "gather evidence" that Bose was attempting to grow grass.[3]

After Bose and Mommies challenged the ZBA decisions denying relief from the stop work orders, using the superior court appeal procedure offered by the UDC, the CRC District Commissioner then retaliated by causing the County to contact the Georgia Department of Natural Resources Environmental Protection Division (the "EPD"). Plaintiffs were forced to meet

[3] Among other things, the County also claimed Mommies was required to get a permit from the Georgia Mountains Regional Development Center (the "RDC") for a Metropolitan River Protection Act ("MRPA") permit. The RDC, however, disagrees with the County's contentions and has informed Plaintiffs that MRPA permits are not required to spread topsoil to establish grass at a horse farm in a MRPA zone. The RDC wants property owners to add vegetation. MRPA is designed to increase vegetative cover, not to prevent it.

with the EPD for a detailed inspection of the area. The EPD, however, issued an official report stating that there are no environmental violations at the Property.

The County did not stop there in its efforts to cause the prosecution of Plaintiffs -- for the benefit of the CRC. The County also called on the United States Army Corps of Engineers (the "Corps") and made a further, frivolous request to ask federal authorities to sanction Plaintiffs for attempting to grow grass in an alleged "wetlands area" without a Section 404 Permit. Plaintiffs were again forced to respond to a sequence of federal procedures caused by the County, all in its efforts to assist the Defendants. Plaintiffs had to hire an engineer and a wetlands expert, and were forced to prepare a formal, legal response to the Corps.

The Corps has not taken any action. The Corps will not take any action. The County's allegations to the Corps are without basis.

There is a developing history of the County's misuse of its Code Enforcement powers involving substantially similar acts because the County and its officials believe they are immune for every act. Not coincidentally, the development contractor for the Lanier Golf and Country Club recently filed a similar complaint against the same District Commissioner for causing Code Enforcement to initiate stop work orders, call the EPD, and

call the Corps because residents of the subdivision where a golf course is being developed oppose the development.

ARGUMENT AND CITATIONS TO AUTHORITIES

I. MOMMIES HAS STANDING TO RESPOND TO THE MOTION.

Mommies served an identical request for production of documents to the County. Accordingly, in that the ruling on the current Motion will affect the documents provided to Mommies, Mommies has standing to respond to the Motion.

II. THE COUNTY CANNOT REFUSE TO PRODUCE DOCUMENTS.

It is not surprising the County is aggressively fighting the Bose request as this act matches the history of its acts against Mommies and its principal. The most telling part of the Motion is the argument that the County is not trying to "shut down" the request - there is no question this is exactly what the County is attempting to do because it has admitted there are nonprivileged documents in its possession that comply with the request.

The Complaint asserts causes of action for slander and intentional infliction of emotional distress due to the acts of Defendants in trying to use false reports of criminal activity at the Property for the goal of gaining control of the Property.

The scope of discovery is broad. The courts "should 'keep[ ] in mind that the discovery procedure is to be construed liberally in favor of supplying a party with the facts.'" Bowden

v. The Med. Ctr., Inc., 297 Ga. 285, 291, 773 S.E.2d 692, 696 (2015). "'[W]hether the legal theory upon which the discovery is based is sound' is not the standard for determining whether discovery should be allowed." Bowden, 297 Ga. 285 at 295, 773 S.E.2d at 699 (citing Georgia Civil Discovery § 4.5). Protective orders should not be entered to deny a litigant the right to seek relevant evidence and the "discovery rules are designed to remove potential for secrecy and provide parties with knowledge of all relevant facts to reduce element of surprise at trial." Hampton Island Founders, LLC v. Liberty Capital, LLC, 283 Ga. 289, 297, 658 S.E.2d 619, 626 (2008).

The County's argument that some of the documents are privileged does not permit a blanket protective order. Privilege claims may not be made unilaterally and must be argued with reference to specific documents, their purpose, and the persons that prepared them. "[T]he mere fact that an attorney has drafted or participated in the drafting of a certain document does not mean that the document is privileged." Chua v. Johnson, 336 Ga. App. 298, 305, 784 S.E.2d 449, 455 (2016).

The fact that the County had communications with the ZBA attorney with reference to the stop work orders would not make such documents privileged. The ZBA attorney was the attorney for a neutral tribunal acting in a quasi-judicial capacity. See City of Cumming v. Flowers, 300 Ga. 820, 824, 797 S.E.2d 846, 851

(2017), reconsideration denied, (Mar. 30, 2017) (a ZBA acts in a quasi-judicial capacity when reviewing an application for a variance thereby providing a remedy to superior court through a petition for certiorari to review a ZBA decision). There could be nothing privileged in communications, documents, or emails between the County and the ZBA. The County had no more right to ex parte communications with the ZBA prior to or after the hearing on the appeals of the stop work orders than would one party have to secretly communicate with a court.

In order to assess the claims of privilege, the County may certainly assert privilege, but should be required to create a privilege log with respect to each document to frame the argument. Here, the County seeks a preemptive protective order to prohibit anyone from reviewing the claim of privilege.

The County's contention that it must go through a process of translating and conforming the documents to a producible form because they are buried in government data bases does not permit the County to automatically charge the requesting party.

> So, while a requesting party does not have the right to unrestricted and direct access to a producing party's data compilations, OCGA § 9-11-34(a) allows the requesting party to inspect and copy the data after the producing party has translated the data into a reasonably usable form. And while the requesting party generally must bear the burden of its own inspection and copying, the producing party may be required to bear the expense of producing the documents and, when necessary, translating them into reasonably usable form.

Norfolk S. Ry. Co. v. Hartry, 316 Ga. App. 532, 533-34, 729 S.E.2d 656, 658 (2012).

The fact that Bose previously requested the documents before ever filing suit under an Open Records Act request does not mean the County can charge for its cost of producing the documents in discoverable form. The Civil Practice Act is a different form of procedure for acquiring documents where a lawsuit is pending under broad rules of discovery, O.C.G.A. § 9-11-26, while the Open Records Act contains specific cost allocation procedures. The Civil Practice Act permits non-party discovery. O.C.G.A. § 9-11-34. Furthermore, Mommies is not Bose and did not participate in the prior Open Records Act request. Mommies is entitled to participate in discovery under the same rules as any other litigant. Moreover, the high cost of production is prohibitive, and the County's success in quoting a premium to produce the documents previously deterred the pursuit of the documents. The County does not want to produce the documents and is now using the same high cost of production to attempt to chill the production of documents.

III. THE COUNTY FAILED TO EXERCISE GOOD FAITH IN PURSUIT OF A SOLUTION BEFORE FILING THE MOTION.

The Rules of the Uniform Superior Court required the County to engage Mommies and Bose to narrow the requests prior to filing a motion for protective order. Uniform Super. Ct. Rule

6.4(B). As soon as Mommies' counsel told the County Attorney's office that Mommies had just mailed a mirroring request for production in order to pursue the documents under normal procedure for narrowing requests, and to avoid misunderstandings with a pro se litigant, the County, instead of engaging with Mommies, raced to the court house that same day to file a motion for protective order before discussing the narrowing of production with Mommies. The County did not want to engage in a discussion over what to produce, did not make a limited production under reservation, and did not file a formal objection to specific requests to foster a discussion over what would be produced or what was privileged. Instead, the County filed a general motion for protective order that does not identify a single document that is allegedly privileged and that the Plaintiffs are insisting that the County produce. This is the opposite of good faith and indicates that the County is desperate to obtain an order before the emails, letters, and other documents relating to the dispute with the CRC members are produced.

There was no urgency in this motion. The County could have waited more than five (5) days after first sending a letter to Bose. Two of the intervening five (5) days after the County sent its letter to Bose were a Saturday and a Sunday, and the third day was President's Day. On learning that Mommies would also

seek the documents, the County filed its motion to specifically obtain a ruling without having to discuss the matter of production with Mommies first.

CONCLUSION

Mommies does not insist on the production of privileged documents by the County, however, the County must identify those documents first so that Mommies can have a discussion with the County and dispute the claim of privilege before it is addressed. For example, the mere fact that the County Attorney's office was copied on emails or communications between the District Commissioner and Code Enforcement in prosecuting the wishes of CRC members would not make an email privileged from production. Or, for example, the fact that the County Attorney communicated with the ZBA attorney as to ways to present the defense of the ZBA appeals in a way favorable to the satisfaction of members of the CRC members would not be privileged. At this point, however, there is no way to even gauge the legitimacy of the County's privilege claims because it has sought a protective order with such speed that there has been no opportunity to discuss the claims of privilege.

The imposition of fees and expenses designed to deter the production also should not be allowed. The County has personnel employed whose specific jobs are to produce public documents. The County does not have any private documents. All of the

documents it has are public records, and the fact that it must pay its employees to perform a public function should not be passed on to private litigants who are seeking documents. If the County were a hospital or doctor with documents relevant to a personal injury suit, it would not be permitted to refuse to produce documents unless the litigants paid for the salaries or time of the hospital or doctor's office to perform their jobs of making the patient's records available for copying. The County has no greater right than any other third party to charge litigants for public documents, than any other non-party.

For the foregoing reasons, the Motion should be denied. Instead, the Court should order the County to create a privilege log at its expense regarding documents it claims are privileged and to make all other documents available for inspection and copying. Once the Plaintiffs are able to review the log and see if they agree with the claims of privilege, then the Plaintiffs should be given the opportunity to either accept the claim of privilege, accept redacted documents, or insist on unredacted production. If the County then refuses to produce specific documents under a claim of privilege, Plaintiffs should have the opportunity to assess the matter, and then bring the matter to the Court's attention. The Court could then review the documents in camera, or it could grant a motion for protective order, or a motion to compel, as the case may be. Last, the parties should

only be charged reasonable copy costs or the documents should be made available for inspection -- just as in any other case of document production.

This 25th day of February, 2019.

Respectfully submitted,
TEAGUE & CHAMBLESS, LLLP

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CERTIFICATE OF SERVICE

This is to certify that I have this date served all other parties with the within and foregoing by placing a copy of same in the United States mail with sufficient postage thereon to ensure delivery, addressed to its counsel of record as follows:

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This 25th day of February, 2019.

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