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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-147

Filed: 1 October 2019

Mecklenburg County, No. 17-CVS-3714

DAVID A. ALMASON, Plaintiff,

v.

SOUTHGATE ON FAIRVIEW CONDOMINIUM ASSOCIATION, INC., a North Carolina non-profit corporation, and BENCHMARK/CAMS, LLC, a North Carolina limited liability corporation, Defendants.

Appeal by plaintiff from order entered 18 September 2018 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 5 June 2019.

*The Law Office of Kenneth T. Davies, P.C., by Kenneth T. Davies, for plaintiff-appellant.*

*Sellers, Ayers, Dortch & Lyons, P.A., by Michelle Massingale Dressler and Robert C. Dortch Jr., for defendants-appellees.*

BERGER, Judge.

The sole issue on appeal is whether the trial court abused its discretion in denying David A. Almason's ("Plaintiff's") request for attorney's fees pursuant to N.C. Gen. Stat. § 55A-16-04. We affirm.

Factual and Procedural Background

Plaintiff owns a condominium in the Southgate on Fairview Condominium Association, Inc. (“Southgate”). Southgate has a Homeowner’s Association (the “Association”), which is governed by a board of directors. The board hired BENCHMARK/CAMS, LLC (“CAMS”) to be the custodian of most Association records. On June 6, 2016, Plaintiff and other members of the Association received an email from the board notifying members of a proposed special assessment to repair roof leaks, maintain the sprinkler system, and clean and repair the EIFS exterior, which was estimated to cost \$165,000.00 and be completed in three phases.

In June 2016, Plaintiff attempted to obtain several corporate and accounting documents from the Association. Plaintiff specifically requested eleven categories of documents for review and copy, which included itemized estimates for the proposed phases of work, warranties, and emails. Dissatisfied with the Association’s responses, Plaintiff filed suit on February 24, 2017 against the Association and CAMS (collectively, “Defendants”), seeking an order allowing inspection and copying of records under North Carolina’s Condominium Act and Nonprofit Corporation Act, and reasonable attorney’s fees and costs incurred. Plaintiff specifically requested that Defendants produce eleven corporate and accounting documents under N.C. Gen. Stat. § 55A-16-01, the North Carolina Nonprofit Corporation Act.

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In response, Defendants argued that they offered Plaintiff “the opportunity to review and inspect the documents required to be provided for inspection” but that Plaintiff had “ignored” their offers. Defendants further contended that Plaintiff demanded that they “produce documents that are not required to be produced under North Carolina law, that would reveal confidential and personal information of other unit owners, and which would serve no useful purpose.”

On July 24, 2017, a hearing on Plaintiff’s complaint was held before Judge Bell in Mecklenburg County Superior Court. After the hearing on July 28, 2017, Judge Bell emailed the parties advising them of his ruling. His email also indicated that he would require Defendants to produce an affidavit that a good faith search was conducted for the missing documents and that they have not been able to locate them or they did not exist. On August 3, 2017, in response to Judge Bell’s email, but prior to the entry of his written order, CAMS produced the affidavit of Ben Rhodes, the general manager for CAMS. The affidavit stated in pertinent part:

I have reviewed [Plaintiff]s “Final Missing Documents Report.” CAMS has conducted a good faith search of the Association’s records in conjunction with the Association, for the documents that [Plaintiff] contends are missing and we have not been able to locate them or they do not exist.

Subsequently, on September 25, 2017, the trial court entered a written order (“September Order”), which included thirty findings of fact and the following conclusions of law:

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5. [Plaintiff] is entitled to inspect and copy the records requested, subject to the limitations provided below, pursuant to the Bylaws of Southgate on Fairview Condominium Association . . . . [Plaintiff] has given the Defendants notice of his demand for such records, his demand was made in good faith and for a proper purpose, and he described with reasonable particularity the purpose and the records he desires to inspect. Finally, the records requested are directly connected with [Plaintiff's] purpose.

6. The Court makes no finding that the Defendants have met their burden of providing that they refused inspection in good faith because they had a reasonable basis for doubt about the right of [Plaintiff] to inspect the records demanded. The Court makes no finding that the Plaintiff has met its burden that his demand was made in good faith and for a proper purpose. The Court reserves ruling on those issues, as set forth below.

The September Order then ordered the following:

4. Defendants shall also produce for the Plaintiff a sworn Affidavit stating that a good faith search has been conducted for the documents Plaintiff contends are missing (as set forth in the Findings of Fact No. 38 herein), and that they have not been able to locate them, or they do not exist.

5. Plaintiff's Motion for Attorney's Fees and costs is denied, at this time. If the Defendants are unable or unwilling to prepare the above Affidavits, a hearing shall be had on the Motion for Attorney's Fees to determine whether the Defendants refused to turn over the requested records in good faith because they had a reasonable doubt about the right of the Plaintiff to inspect the records demanded.

On December 17, 2017, Plaintiff then filed a motion for a show cause order alleging that Defendants should be held in civil contempt for failing to adhere to the September Order and that the court should consider his motion for attorney's fees in

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light of Defendants' conduct. Plaintiff's motion for civil contempt and motion for attorney's fees was heard, and on September 18, 2018 the trial court entered an order denying both motions (the "Order"). In the Order, the trial court found that "Plaintiff has abounded his request for a civil contempt in this matter," denied Plaintiff's motion for attorney fees, and concluded as a matter of law that:

1. There was no violation of the Homeowner's Association's Bylaws or NCGS Chapter 55A or NCGS 47F in Defendant's providing documents to Plaintiff.
2. At all times, the Defendants did act in good faith in producing the documents to the Plaintiff.
3. The Defendants did not refuse an inspection of the records through the Homeowner's Association three-phase project that was the subject of the special assessment.
4. [The September Order] did previously order an inspection and copy of the records. However, to the extent that the previous order is deemed a finding of a refusal to inspect, this Court concludes that the Defendant Homeowner's Association had a reasonable basis to doubt the right to inspect the demanded records to all of the demanded records as it was voluminous.
5. The Defendant Homeowner's Association did comply in good faith with its bylaws regarding the Plaintiff's right to inspect or present him with financial records.

It is from this Order that Plaintiff appeals.

Analysis

Plaintiff contends that the trial court erred when it denied his motion for attorney's fees. We disagree.

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“[T]he general rule in North Carolina is that a party may not recover its attorney’s fees unless authorized by statute.” *Martin Architectural Prods., Inc. v. Meridian Constr. Co.*, 155 N.C. App. 176, 181, 574 S.E.2d 189, 192 (2002) (citation omitted). “Furthermore, recovery of attorney’s fees, even when authorized by statute is within the trial court’s discretion and will only be reviewed for an abuse of that discretion.” *Id.* at 182, 574 S.E.2d at 193. “An abuse of discretion occurs when a decision is either manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.” *Egelhof ex rel. Red Hat, Inc. v. Szulik*, 193 N.C. App. 612, 620-21, 668 S.E.2d 367, 373 (2008) (citation and quotation marks omitted). “[I]n evaluating whether the court abused its discretion, we consider the court’s findings in support of its award. We review these findings to determine whether competent evidence supports them and whether they, in turn, support the court’s conclusions.” *Philips v. Pitt Cnty. Mem’l Hosp., Inc.*, 242 N.C. App. 456, 458, 775 S.E.2d 882, 884 (2015) (citations omitted).

Pursuant to Section 55A-16-04 of North Carolina’s Nonprofit Corporation Act,

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member’s cost (including reasonable attorneys’ fees) incurred to obtain the order unless the corporation proves 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.

N.C. Gen. Stat. § 55A-16-04(c) (2017).

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In the present case, Plaintiff argues that the trial court's findings of fact do not support its conclusion that Defendants refused inspection in good faith because they had a reasonable basis for doubt about Plaintiff's right to inspect the records demanded. We disagree.

In declining to award attorney's fees, the trial court made the following pertinent findings:

11. On April 21, 2017, two months after the lawsuit being filed, counsel for Defendant contacted counsel for the Plaintiff providing documents at that time. The Defendants believed that they were providing the substantial bulk of the requested documents, as they had provided bank statements for 2013 through 2017, including operating and reserve accounts.

13. The April 2017 production was not perfect and there were items that had been not been [*sic*] produced.

14. The April 2017 production and the volume of production indicated that, at the outset the Defendants intended to provide the requested documents.

15. The Court cannot find that the Defendants willfully refused to turn over any of the records related to the assessments or the different phases of repairs for the projects.

16. The Defendant Homeowner's Association was relying on their Homeowner's Association management company, Defendant CAMS, to provide the requested documents and acted primarily at the instruction of CAMS and their legal counsel.

17. At no point did the Defendants ever intend to stonewall Plaintiff in his request for records, as records were

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continually being sought and produced. There were eleven requests that came in, including one after the initial set of documents that were provided in April of 2017, where the records were continually being sought and located throughout the course of this process.

18. Although the documents were not produced in a short amount of time, eventually all the documents were produced.

19. The Homeowner's Association, including its president, never intended to or attempted to hide anything from the Plaintiff in this matter.

20. The Homeowner's Association was acting in conformity with their bylaws and did provide Plaintiff an opportunity to come and meet with them to review what they had. Plaintiff either did not accept the offer or he failed to show up at a meeting specifically to go over the records at the early stage of when information was being requested.

21. The history of the document production, including the engagement of the attorneys and their clients, indicate that the Defendants did act in good faith in providing the requested information.

22. The Defendants had reasonable basis for doubt about the right of Plaintiff to inspect the Homeowner's Association records, or the level of detail being requested in the records. This reasonable basis stemmed from the August 2016 Homeowner's Association meeting and subsequent actions of members and the Plaintiff who inferred that the repairs were being requested due to the Homeowner's Association president wanting or needing her floors to be repaired and the implications that the Homeowner's Association funds were being misspent or misappropriated.

Based on these findings, the trial court concluded that "Defendants did act in good faith in producing the documents to the Plaintiff" and that "the Defendant

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Homeowner's Association had a reasonable basis to doubt [Plaintiff]'s right to inspect . . . all of the demanded records as [they were] voluminous." In support of his argument that the trial court's conclusions were erroneous, Plaintiff contends the trial court "ignored the fact that no affidavits had been submitted as required by [the September Order], and the long-sought estimates were finally produced under Subpoena *duces tecum* to Lonnie Coggins, who had them all the time." Plaintiff appears to specifically take issue with Defendants' delay in turning over the requested estimates as opposed to turning over all of the requested records. However, when looking at the trial court's findings as a whole, its decision not to award Plaintiff's attorney's fees was not so manifestly unsupported by reason.

During the hearing to address Plaintiff's motions to show cause and for attorney's fees, Plaintiff abandoned his request for Defendants to be held in contempt for not producing the ordered affidavits and for not providing Plaintiff his requested documents as required by the September Order. At the hearing, Plaintiff's counsel noted that he did eventually receive all the documents he requested, and abandoned his motion to show cause. The trial court noted his abandonment of the issues in finding of fact 1, and Plaintiff did not appeal from the September Order. While it is true that Defendants only turned over the requested estimates upon receiving a subpoena, the trial court's findings, which were supported by competent evidence,

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reflect that Defendants had a reasonable basis for doubt about what Plaintiff was requesting and whether Plaintiff had a right to inspect the requested records.

At the hearing, Defendants testified that they thought they only had to provide documents enumerated in their bylaws or required by the North Carolina Nonprofit Corporation Act. The president of the Association testified that Plaintiff was offered numerous opportunities to view nearly all of the documents he requested within a reasonable time whether through a special portal or in a private meeting, but that Plaintiff refused all opportunities. The president further testified that Plaintiff's original request for itemized estimates of the special assessment did not exist because the Association only had "ballpark" figures from the project manager. The project manager testified that these figures he provided to the board did not include actual bids from contractors. Plaintiff's own testimony reflects that he only became aware a few weeks prior to the hearing of the difference between the ballpark figures without bids and estimates with bids. The general manager for CAMS testified that his search for the requested documents was limited to Chapter 55A's scope and counsel's direction.

The trial court's findings of fact reflect this testimony. The trial court's findings indicate that since Plaintiff filed suit, the production of documents was not perfect, but that Defendants acted in good faith the entire time. The trial court noted that two months after the lawsuit was filed, "Defendants believed that they were

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providing the substantial bulk of the requested documents, as they had provided bank statements for 2013 through 2017, including operating and reserve accounts.” It further found that “the Homeowner’s Association was acting in conformity with their bylaws and did provide Plaintiff an opportunity to come and meet with them to review what they had. Plaintiff either did not accept the offer or he failed to show up at a meeting specifically to go over the records at the early stage of when information was being requested.”

Its findings also indicate that Defendants received eleven requests and that “the records were continually being sought and located throughout the course of this process.” The trial court also stated that “[a]lthough the documents were not produced in a short amount of time, eventually all the documents were produced.” Moreover, the trial court emphasized that the Association was relying on their management company, CAMS, “to provide the requested documents and acted primarily at the instruction of CAMS and their legal counsel.”

The trial court’s findings of fact are supported by competent evidence and support the trial court’s ultimate conclusion that Defendants acted in good faith and had a reasonable basis for doubt about Plaintiff’s right to inspect the demanded records. Because the trial court’s decision was not manifestly unsupported by reason, the trial court did not abuse its discretion when it denied Plaintiff’s request for attorney’s fees.

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AFFIRMED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).