

May 2023 Litigation Report

Board Member: Brad Meneilly Esq.

In response to our motions for summary judgment, filed last month, asking the court to review the evidence and facts as developed in the discovery process over the past four years, and dismiss the cases against us; the Plaintiffs, have filed answers and a motion to have the case continue. Stating that they need more discovery and more depositions are necessary before a trial..... at some unknown point in the future.

The Plaintiffs and their Attorneys [they have now engaged a second law firm] are doing everything they can to keep the lawsuit alive. They have asked the Court **not to hear our Motion to dismiss** as they are, after 4 years, not yet finished with their discovery and depositions. They have not found the “smoking gun” but if the court will give them a few more months or years, they are sure it is out there.

No Court can act on its own to dismiss this, or any, case. Under the Rules of Civil Procedure a Judge can only act on matters brought before the Court; such as our Motion for Summary Judgment, which asks the court, based on Pennsylvania Statutes, to dismiss this suit as the Court does not have the ability to grant the relief the plaintiffs are seeking. Further, after four years of Discovery, based on Pennsylvania Statutes, there is no evidence that the SVDC Boards back in 2017, 2018 and 2019 did anything contrary to Pa.'s Non-Profit Statutes; nor have the Plaintiffs identified any damages to any party or the SVDC.

The Plaintiffs demands remain unchanged; reimbursement of their legal fees which they estimated as of 2/22/23 were \$180,000 and several changes to the Bylaws that they will draft [We have not seen any language].

The Court has scheduled a hearing on our Motion to dismiss for July 5th. I expect the court to consolidate Plaintiffs request for a hearing on their motion into a single hearing.

I would remind everyone, that in June of 2020, Mr. Jenkins stood before the Board and Community and stated that ***“Now that I’m on the Board the lawsuit will be over in 90 days.”*** That statement was uttered over 1000 days ago.

Over the past month there has been of misinformation circulated and “gaslighting” of both my April Litigation Report and Attorney Cascio. To touch on a few.....

First; **Cincinnati Insurance is paying all defense costs.** The SVDC is out of pocket for the \$1,000 D&O Policy deductible and the \$5800 sanction; which we are asking to be returned as Plaintiffs’ counsel misled the Judge as to their service of notice of depositions to former Board members, Bill Blackburn and Billy Blackburn Jr. Further, the SVDC had no duty or ability to compel the Blackburns to give depositions, as they were no longer Board members.

As to forming a “Litigation Committee”. From the time we were first made aware that un-named “Lot Owners” had unspecified issues with the Board at the March 21st 2019 Board meeting, until the suit was filed on April 17,2019 was just **28 days.**

Our Solicitor was directed on March 21st to contact the un-named lot owners' attorney to get more information and report back to the Board at the next Board meeting [April 18th]. Two of the "future plaintiffs" L Cavanaugh and M Jenkins were in attendance as "guests" but made no comment.

In a second letter the Plaintiffs gave the Board 7 days [starting at 5PM on Friday April 5] to respond to their "new" demand that we seat a Special Litigation Committee of "Disinterested directors" [I did not see that letter until late on Monday the 8th]. Seating of a Special Litigation Committee would have precluded any lawsuit from being filed against the SVDC.

Their arbitrary deadline to comply with their demands was Friday April 12th. Their Complaint was signed by the Plaintiffs on April 15th and filed with the Court on the 17th.... the day before "*the next*" Board meeting. As you know, SVDC has a volunteer Board that meets once a month; without any full time Administration commonly found in business corporations. Special Board meetings can be called, but require a minimum of 3 days' notice ; add 2 to 3 days to make the decision and give notice.

So the 28 page Complaint with another 20 some pages of Exhibits was drafted and compiled over the weekend? I think not ; it was all preplanned and timed to entrap the Board into inaction.

Further, their motion asking for an emergency temporary Injunction was filed on April 22 and the hearing was held 3 days later. The Judge rejected their Injunction request ; from the bench.

The actions by the Plaintiffs' Counsel and timing of their letters and complaint were such that the SVDC Board had no time to process their complaints and address their issues, let alone appoint a Special Litigation Committee. A Special Litigation Committee must be made up of "Disinterested Board Members" which could not be determined with the information supplied by Plaintiffs before the Complaint was served.

A new Board was elected at the 2019 Annual meeting May 24th. We/ Attorney Cascio did request the Plaintiffs allow us to empanel a Special Litigation Committee in early June of 2019 to address their issues with the past Board(s) ...which Plaintiffs' Counsel rejected. "Too late!"

The Judge was unable to grant **a motion for Judgment on the Pleading in 2019** as there were "material facts" in dispute. The Pleadings must meet a "Res ipsa loquitur" [it stands on its own] standard for the Judge to act on the Pleadings alone. One example; A general allegation of Conflicts of Interest violation(s) were made by the Plaintiffs, but not enumerated, nor were any facts about the alleged violations provided. So ruling on the question of violation(s) of Conflict of Interest were not "ripe"..... for any ruling..... by any judge.

Finally, there has never been a proposal to, or discussion about arming the lake Safety Patrol as alluded to at last month's Board meeting. Well, a couple years back, I did suggest that we get them "uniform" t-shirts and ball caps w/ "Lake Stonycreek Safety Patrol" on them ; to give the Patrol a more professional look. This was an example of classic "gaslighting"/misdirection to suggest to the Lot Owners that the Board is considering arming the Safety Patrol.