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Order on Plaintiffs' Motion to Compel (IH RIVERDALE, LLC)

Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IH RIVERDALE, LLC and GEOFFREY NOLAN, Plaintiffs, v. MCCHESNEY CAPITAL PARTNERS, LLC, RIVERDALE CAPITAL INVESTMENTS, LLC, GEORGE MCCHESNEY, NICHOLAS WALLDORFF, MEADOW SPRINGS, LLC, G&I DEVELOPMENT CO., LLC, MCCHESNEY INVESTMENT ADVISORS, LLC, and HOMESTEAD CONSTRUCTION, Defendants.	Civil Action No.: 2003CV73603
MICHAEL MCCHESNEY, Plaintiff, v. IH RIVERDALE, LLC and GEOFFREY NOLAN, Defendants, Third-Party Plaintiffs v. MCCHESNEY CAPITAL PARTNERS, LLC GEORGE MCCHESNEY and NICK WALDORFF, Third-Party Defendants	Civil Action No.: 2004CV83192
IH RIVERDALE, LLC, & GEOFFREY NOLAN Plaintiffs, v. FOUNDRY PARTNERS, LLC, FOUNDRY HOSPITALITY, LLC, & FOUNDRY ENTERTAINMENT, LLC,	Civil Action No.: 2006CV122675

FILED IN OFFICE
JAN 22 2009

Defendants.	)	
	)	

McCHESNEY CAPITAL PARTNERS, LLC,	)	
	)	
	)	Civil Action No.: 2006CV114780
Plaintiff,	)	
	)	
v.	)	
	)	
IH RIVERDALE, LLC	)	
	)	
Defendant and Third-Party Plaintiff	)	
	)	
v.	)	
	)	
RIVERDALE CAPITAL INVESTMENTS, L.L.C., MICHAEL McCHESNEY, GEORGE McCHESNEY and NICHOLAS WALLDORFF	)	
	)	
Third-Party Defendants	)	

ORDER ON PLAINTIFFS' MOTION TO COMPEL

This case is before the Court on Plaintiffs' Amended Motion to Compel, filed December 3, 2008, seeking discovery of the consolidated cases before this Court. After reviewing the briefs submitted on the motion and the record of the case, the Court hereby finds as follows:

Plaintiffs seek five broad categories of documents: (1) financial documents of the Homestead/Foundry entities, (2) financial documents of RCI related to the Phase I final distribution, (3) financial documents of MCP, (4) financial documents of Michael McChesney related to the assignment of the Phase II property to 5 Paces Development, and (5) additional requests related to McChesney Investment Advisors and RCI II. In support of their motion to compel, Plaintiffs submitted the affidavit of Ian Ratner, an accountant, listing the documents that he believes are necessary in order to conduct a forensic accounting of the claims between the parties.

1. **Homestead/Foundry Financial Documents**

Plaintiffs seek financial documents of Homestead Construction Inc. and Foundry Development/Foundry Partners ("Foundry") including construction documents establishing the cost of the project, financial statements, tax returns, general ledgers, aged account receivables, aged account payables, and bank statements.[1] Plaintiffs assert that these documents are necessary for the accountant to determine the return on Plaintiff's investment in Riverdale Capital Investments LLC ("RCI") under the claim that RCI has a $1 million receivable from Homestead, which Homestead invested in Foundry. On December 18, 2008, Defendants offered to produce the 2001, 2002, and 2003 annual financial statements, tax statements, general ledgers, aged account receivables and bank statements of Foundry.[2] Defendants assert that they have already produced certain Homestead and RCI documents evidencing the $1 million receivable. The Court hereby **ORDERS** Defendants to produce the offered documents described above for Foundry and documents evidencing the construction costs of Homestead within fifteen (15) days of the date of this Order.

2. **Financial Documents of RCI Related to the Phase I Final Distribution**

Plaintiffs request certain RCI documents dating from July, 2006, to the present date including financial statements, tax returns, general ledgers, aged accounts receivable, aged accounts payable, bank statements, and documents relating to reserve allocations. Defendants assert that they have produced many of the requested documents. The Court hereby **ORDERS**

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[1] These documents were the subject of an earlier motion to compel (see this Court's October 1, 2007 Order), but the Court declined to rule on the requests for Foundry documents because a motion to dismiss in the Foundry case, 2006CV122675 (the "Foundry Action"), had not yet been resolved. The Court has since denied the motion to dismiss the Foundry Action with regard to Plaintiff IH Riverdale LLC.

[2] Plaintiffs argue in their Reply Brief that the request for "Foundry" documents includes Foundry Hospitality and Foundry Entertainment. Foundry Hospitality and Foundry Entertainment, however, are not discussed by Ian Ratner nor are they list on Exhibit B to his Affidavit. Accordingly, for purposes of this Order, Foundry shall mean Foundry Development and Foundry Partners and shall exclude Founder Entertainment and Foundry Hospitality.

Defendants to produce the requested RCI documents within fifteen (15) days of the date of this Order. To the extent that Defendants have already produced such documents, in lieu of duplicative production, Defendants may file with this Court a written certification that such documents have already been produced.

3. Financial Documents of MCP

Plaintiffs seek additional financial documents of McChesney Capital Partners LLC ("MCP") based in part on the allegation that the $1.5 million loan from Michael McChesney to Meadow Springs LLC was treated as equity in MCP. Defendants refute this assertion and submitted the affidavit of Michael McChesney stating that in 2000 he made a $1.55 million loan to MCP, which was reclassified as an equity contribution during the same time frame in which he made a separate loan of $1.5 million to Meadow Springs. Plaintiffs' requests are hereby **DENIED** except as follows: Defendants are hereby **ORDERED** to produce documentation of the separate 2000 loan to MCP and its reclassification as equity within fifteen (15) days of the date of this Order. Additionally, because MCP is the sole member of Foundry, which this Court has ordered to produce its financial records including tax statements, MCP is hereby **ORDERED** to produce documentation of income received from Foundry within fifteen (15) days of the date of this Order.

4. Financial Documents of Michael McChesney Related to the Assignment of the Phase II Property to 5 Paces Development

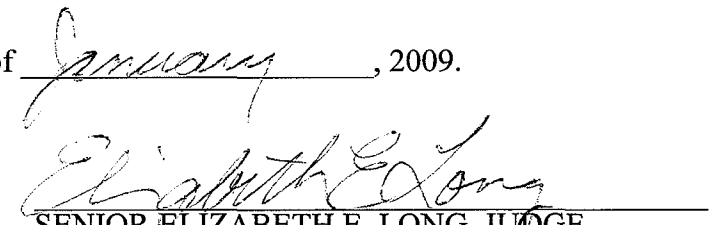
Plaintiffs seek financial documents of Michael McChesney for discovery on the lis pendens related claims he filed against Plaintiffs including accounting records, financial statements, tax returns, bank statements, and documents of receipts and expenditures related to the Phase II property development. The Court hereby **GRANTS** Plaintiffs Motion to Compel and **ORDERS** Defendants to produce all such requested documents from the period of the Phase

II property foreclosure to its assignment to Five Paces Partners/Five Pace Development within fifteen (15) days of the date of this Order.

5. Additional Requests Related to McChesney Investment Advisors and RCI II

The Affidavit of Ian Ratner also requests similar financial documents from McChesney Investment Advisors ("MIA"), an affiliated entity of MCP and Meadow Springs involved in the development of Phase II, as well as RCI II, an entity that engaged in a land swap with Meadow Springs on the Phase II property. Mr. Ratner asserts that these documents are necessary to analyze the construction, financing, and profitability of the Phase II property and to trace the potential diversion of funds from the Phase I project in which Plaintiffs invested. The Plaintiffs did not separately address these requests in their initial Motion to Compel nor did Defendants address these requests in their response. The Court hereby **ORDERS** Defendants to produce documentation of the land swap deal between Meadow Springs and RCI II and documentation of development fees MIA earned on Phase I, Phase II, Foundry, and Homestead developments within fifteen (15) days of the date of this Order.

SO ORDERED this 22 day of January, 2009.



SENIOR ELIZABETH E. LONG, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

MICHAEL MACKE, Plaintiff, v. CADILLAC JACK INC., SMART GAMES GROUP CORP., EUGENE CHAYEVSKY, AND OLEG BOYKO, Defendants.	)	Civil Action No. 2008CV158015

CASE MANAGEMENT CONFERENCE ORDER

The above-styled case was recently transferred to the Business Case Division. Pursuant to the Business Case Division Rules (Atlanta Judicial Circuit Rule 1004, Paragraph 15), the parties and/or their counsel are hereby directed to appear before the Court for a **case management conference** on **February 24, 2009 at 10:00 a.m.** in Courtroom 9J, Fulton County Courthouse, 136 Pryor Street, SW, Atlanta, Georgia 30303. Such case management conference shall only be canceled upon this Court's receipt of notice of a written settlement agreement entered into by the parties.

The parties/counsel should be prepared to discuss (i) the issues of the case, (ii) any pending motions filed with the Court or anticipated to be filed, (iii) outstanding discovery issues, including the need to undergo electronic discovery, (iv) the need for any alternative form of dispute resolution, (v) modifications to the rules under the Civil Practice Act or the Uniform Superior Court Rules as may be applicable to a particular case, (vi) a trial date, (vii) or any other matter the parties deem appropriate. (Atlanta Judicial Circuit Rule 1004(15)). Specifically, the parties/counsel should prepare for the Court a list of outstanding motions, if any, and provide the