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Order on Motion for Declaratory Judgment (BURTZ STREET REDEVELOPMENT, LLC)

Elizabeth E. Long
Superior Court of Fulton County

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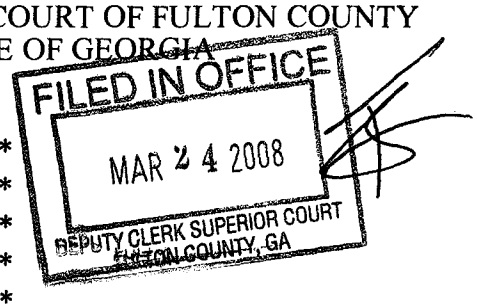
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



BURTZ STREET REDEVELOPMENT, LLC,	*	
Plaintiff,	*	
v.	*	CIVIL ACTION NO.: 2006-CV-124237
CHET JONES, HOUSEDEALS.NET, INC., and CLR DEVELOPMENT GROUP, INC.	*	
Defendants.	*	

ORDER ON MOTION FOR DECLARATORY JUDGMENT

Counsel appeared before the Court on March 18, 2008, to present oral argument on Plaintiffs' Motion for Declaratory Judgment, filed February 4, 2008. After reviewing the record of this case, the briefs submitted on the issue, the oral arguments, the Court finds as follows:

Chet Jones, Housedeals.net, Inc., and CLR Development Group, Inc., the original Plaintiffs, filed this action in 2006 claiming an ownership interest in Burtz Street Redevelopment, LLC ("BSR"). BSR filed a counterclaim seeking declaratory judgment on certain matters and other relief. After a voluntary dismissal by the original Plaintiffs and a realignment of the parties, BSR, now acting as the Plaintiff, brings this Motion for Declaratory Judgment.

As a threshold matter, Defendants challenge Plaintiff's motion as an improperly presented motion for summary judgment. Pursuant to O.C.G.A. § 9-4-1 *et seq.*, this Court's equity jurisdiction, and Georgia case law interpreting a party's rights in equity, the Court finds that Plaintiff's Motion for Declaratory Judgment is properly before this Court. See Al-Madinah Petroleum v. Mahsa, 242 Ga. App. 570, 572 (2000) (refusing to apply the procedural requirements of Rule 6.5 with regard to a motion for declaratory judgment).

BSR and Chet Jones, both individually and through his HouseDeals.net, Inc. and CLR Development, were involved in real estate development, as was, Mr. Batiste, the majority shareholder of Alliance Real Estate Ventures ("AREV"). An Operating Agreement for BSR was executed on August 18, 2006, which included AREV and others, but not Mr. Jones or his companies. An amendment to the Operating Agreement was prepared by Mr. Batiste and signed by Mr. Jones and Mr. Batiste later.

Plaintiffs now move for declaratory judgment that the document purporting to amend the Operating Agreement is void and unenforceable for the following reasons:

(1) BSR Operating Agreement Section 19 requires the consent of all members to admit a new member, which was never obtained.

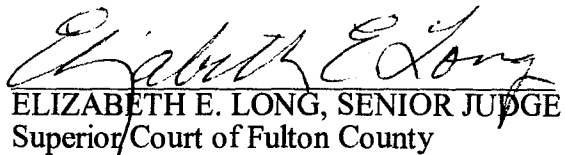
(2) BSR Operating Agreement requires the consent of the majority shareholders to amend the Operating Agreement, which was never obtained.

(3) Chet Jones never provided the contemplated equity contribution necessary to become a member.

At this time there are facts outstanding which must be determined before the Court can rule on this count for Declaratory Judgment.

Motion for Declaratory Judgment is hereby **DENIED.**

SO ORDERED this 24th day of March, 2008.



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

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