

CHAPTER 6 MOTION FOR COURT TO VACATE ORDER TO DENY REQUEST TO OPEN THE BOOKS AN PAPERS OF THE DAM EAST HOMEOWNER ASSOCIATION. COMMENTS EDITED BY JIM BURNESON TYPED IN BLUE.

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112	FAILED Document CO Arapahoe County District Court 18th Filing Date: Jun 19 2007 7:35PM MDT Filing ID: 15291221 Review Clerk: N/A
Plaintiff: JAMES W. BURNESON v. Defendant: DAM EAST HOMEOWNERS' ASSOCIATION, et al.	<p style="text-align: center;">a COURT USE ONLY a</p> <hr/> Case Number: 07CV874 Div.: 206
MOTION FOR COURT TO VACATE THE ORDER TO DENY REQUEST TO OPEN THE BOOKS AND PAPERS OF THE DAM EAST HOMEOWNER ASSOCIATION FOR INSPECTION BY A MEMBER OF THE ASSOCIATION	

This matter is before the Court on plaintiff's motion to inspect the "books and papers" of the Dam East Homeowners' Association (hereafter "Homeowners' Association"). Plaintiff alleges that he is a member of the Homeowners' Association board, and, as such, is entitled to inspect said organization's books and papers. Several individual defendants are named in the motion, all presumably board members of the same organization.

At the outset, the Court notes that plaintiff failed to file a complaint to initiate these proceedings. A motion is not the proper vehicle for starting a cause of action. See C.R.C.P. 3(a); C.R.C.P. 7(a). In order for a civil action to be properly commenced, a complaint must be filed with the Court, or a Summons and Complaint must be served before the Complaint is filed within 10 days of service. The primary function of a Complaint is to give notice to the defendant of a transaction or occurrence that is the subject of plaintiffs claims. *Wisehart v. Zions Bancorporation*, 49P.3d 1200 (Colo. App. 2002). The fact that plaintiff is proceeding *pro se* is not an excuse for this error.

This error could be corrected since a summons was served on the defendants and the motion can be considered a complaint except the word "Complaint" is not typed in place of the word, "motion." This could be approved at the discretion of this court. There is no law against granting this request. .But this courts purpose is to list reasons to deny this request.

With his motion, plaintiff filed a "civil case cover sheet," which is meant to accompany the initial pleading, the Complaint (when a Complaint is filed). The cover sheet states that it "shall not be considered a pleading" for purposes of C.R.C.P. 11. In a subsequent filing, plaintiff asked the Court to treat his motion as a Complaint. No authority was cited for this proposition and the Court is aware of none. Simply stating that his motion is really a Complaint is insufficient to cure the deficiency in plaintiff's filing.

In any event, plaintiff's request for a Court-ordered inspection of records is devoid of merit. First, plaintiff fails to demonstrate that his motion satisfies all of the requirements imposed by law before the requested relief may be granted. *See, e.g.*, C.R.S. Sections 7136-101 to 7-136-109. The inspection plaintiff seeks applies to certain specific requests, made by specific parties, with respect to specific corporations, under specific circumstances, and only once certain specific conditions precedent have been met. Plaintiff's motion is silent on many of these points. Second, as plaintiff himself concedes, before his motion for inspection pursuant to Sec. 7-136-104 may be granted, he must comply with Section 7-136-102(1). *See* C.R.S. Sec. 7-136-104 (requiring compliance with Sec. 7-136-102(1)). Sec. 7-136-102(1) states that "[a] member is entitled to inspect and copy, during regular business hours at the nonprofit corporation's principal office, any records of the nonprofit corporation described in section 7-136-101(5) if the member gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records." Here, plaintiff has failed to demonstrate that he has complied with this statutory provision.

Judge error. Attachment included with request Plaintiff gave 5 day notice on Defendants required form titled "Notice of Intent Inspect Association Records: Attached to the Motion. It was filed when the single notice of denial was given on the same day April 20, 2007. "Date of request April 20, 2007. Date you or your agent intends to review the records: April 25, 2007." (5 days between request and review the records) The request to see the records was never answer by the Board of Directors. By refusing to answer this request with a yes or no the Board has failed in their fiduciary duties to me a member. My membership can't be questioned since the Defendants never answer the summons and complaint called Motion.

More importantly, the remaining subsections of Sec. 7-136-102 set specific limitations regarding the inspection of records of nonprofit corporations. Here, plaintiff's own motion attaches a document from the Homeowners' Association indicating as recently as April of 2007 that his request for inspection was denied because it was inconsistent "with the standards established by [Sec.] 7-136-102." The Court agrees.

Where is there any documentation that the second request to see the records dated the same date as the first refusal by a Julie Geyer was ever denied? The refusal can't be done by a single director but must be by motion and vote of the board at a scheduled monthly board meeting. The refusal hand written is invalidated since it was not by the board. Articles of Incorporation state the Home owner association is to be managed by the Board of Directors and does not name any one director or officer who has any authority to made decision or give orders by themselves.

Section 7-136-102(3) lists the limited circumstances or standards governing a request for an inspection of a nonprofit corporation's records. Part (b) of that subsection provides that the

inspection demand must be "made in good faith and for a proper purpose." "Proper purpose" is defined in subsection (4) of the same statute as "a purpose reasonably related to the demanding member's interest as a member." [My interest as a member is the criminal complaint filed with the District Attorney for fraud, thief, and other crimes against Plaintiff and the membership. That is enough Good faith is defined in CCIOA.](#)

Also the following rules of CCIOA pertain to this case and Lane knows it but when he wrote this script for you to use to deny my filing he didn't want you to know about the waivers' of all other statutes by CCIOA

[38-33.3-108. Supplemental general principles of law applicable.](#)

The principles of law and equity, including, but not limited to, the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this article, except to the extent inconsistent with this article.

Source: L. 91: Entire article added, p. 1709, § 1, effective July 1, 1992.

[38-33.3-319. Other applicable statutes.](#) To the extent that provisions of this article conflict with applicable provisions in the "Colorado Business Corporation Act", articles 101 to 117 of title [7](#), C.R.S., the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title [7](#), C.R.S., the "Uniform Partnership Law", article [60](#) of title [7](#), C.R.S., the "Colorado Uniform Partnership Act (1997)", article [64](#) of title [7](#), C.R.S., the "Colorado Uniform Limited Partnership Act of 1981", article [62](#) of title [7](#), C.R.S., article 1 of this title, article [55](#) of title [7](#), C.R.S., article 33.5 of this title, and section [39-1-103](#) (10), C.R.S., and any other laws of the state of Colorado which now exist or which are subsequently enacted, the provisions of this article shall control.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 93:** Entire section amended, p. 865, § 41, effective July 1, 1994. **L. 97:** Entire section amended, p. 919, § 18, effective January 1, 1998; entire section amended, p. 764, § 37, effective July 1, 1998.

Editor's note: Amendments to this section by House Bill 97-1237 and Senate Bill 97-91 were harmonized.

BY THESE TWO RULES CITED FROM CCIOA MAKES THE COURT'S QUOTES FROM A NON-PROFIT CORP STATUE MOOT.

[38-33.3-317. Association records.](#)

(1) (a) The association shall keep financial records sufficiently detailed to enable the association to comply with section [38-33.3-316](#) (8) concerning statements of unpaid assessments.

(b) The association shall keep as permanent records minutes of all meetings of unit owners and the executive board, a record of all actions taken by the unit owners or executive board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the executive board in place of the executive board on behalf of the association, and a record of all waivers of notices of meetings of unit owners and of the executive board or any committee of the executive board.

(c) (I) The association or its agent shall maintain a record of unit owners in a form that permits preparation of a list of the names and addresses of all unit owners, showing the number of votes each unit owner is entitled to vote.

(II) Notwithstanding section [38-33.3-117](#) (1) (I), this paragraph (c) shall not apply to a unit, or the owner thereof, if the unit is a time-share unit, as defined in section [38-33-110](#) (7).

(d) The association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), all financial and other records shall be made reasonably available for examination and copying by any unit owner and such owner's authorized agents.

(b) (I) Notwithstanding paragraph (a) of this subsection (2), a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.

(II) Without limiting the generality of subparagraph (I) of this paragraph (b), without the consent of the executive board, a membership list or any part thereof may not be:

(A) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the association;

(B) Used for any commercial purpose; or

(C) Sold to or purchased by any person.

(3) The association may charge a fee, which may be collected in advance but which shall not exceed the association's actual cost per page, for copies of association records.

(4) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:

(a) The request is made in good faith and for a proper purpose;

(b) The request describes with reasonable particularity the records sought and the purpose of the request; and

(c) The records are relevant to the purpose of the request.

(5) In addition to the records specified in subsection (1) of this section, the association shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity;

(b) The declaration;

(c) The covenants;

(d) Its bylaws;

(e) Resolutions adopted by its executive board relating to the characteristics, qualifications, rights, limitations, and obligations of unit owners or any class or category of unit owners;

(f) The minutes of all unit owners' meetings, and records of all action taken by unit owners without a meeting, for the past three years;

(g) All written communications within the past three years to unit owners generally as unit owners;

(h) A list of the names and business or home addresses of its current directors and officers;

(i) Its most recent annual report, if any; and

(j) All financial audits or reviews conducted pursuant to section [38-33.3-303](#) (4) (b) during the immediately preceding three years.

(6) This section shall not be construed to affect:

(a) The right of a unit owner to inspect records:

(I) Under corporation statutes governing the inspection of lists of shareholders or members prior to an annual meeting; or

(II) If the unit owner is in litigation with the association, to the same extent as any other litigant; or

(b) The power of a court, independently of this article, to compel the production of association records for examination on proof by a unit owner of proper purpose.

(7) This section shall not be construed to invalidate any provision of the declaration, bylaws, the corporate law under which the association is organized, or other documents that more broadly defines records of the association that are subject to inspection and

copying by unit owners, or that grants unit owners freer access to such records; except that the privacy protections contained in paragraph (b) of subsection (2) of this section shall supersede any such provision.

Source: L. 91: Entire article added, p. 1756, § 1, effective July 1, 1992. **L. 2005:** Entire section amended, p. 1387, § 18, effective January 1, 2006. **L. 2006:** (2), (3), (4), and (7) amended, p. 1224, § 13, effective May 26.

I have met all the requirements of this rule in my request to see the books including GOOD FAITH. The Bylaws on opening the books for review are still part of the rules that give the members their rights to review the books. CCIOA doesn't overrule HOAs Covenants and Bylaws especially if the HOA was formed before the CCIOA become law. This HOA was formed way before the CCIOA was passed and the membership has never approved coming under CCIOA's rule.

The purpose behind plaintiff's request for an inspection is the "filing of a Felony Complaint with the District Attorney of Arapahoe County naming the Past and Present Board of Directors." Motion at p. 2. In the Court's view, this is neither a "good faith" request nor a demand for a "proper purpose." Plaintiff's petition is expressly made for the purpose of attempting to bring criminal charges against the other members of the board. That cannot possibly constitute "good faith." Further, the request is not reasonably related to plaintiff's interest "as a member" of the board. To the extent plaintiff is correct and the records he seeks to inspect are necessary to support his criminal accusations against the Homeowners' Association present and past board members, either the District Attorney's Office, the Police Department, or another law enforcement agency should certainly have the means to obtain such records as part of a criminal investigation.

HOW CAN YOU AS A JUDGE MAKE THIS STATEMENT? ARE YOU THE JUDGE OR DEFENSE COUNSEL FOR THE DEFENDANTS'? THIS IS A PLOY TRIED BY A DEFENSE ATTORNEY WHICH YOU HAVE NO CLAIMS FROM ANY FILING FROM ANY DEFENSE ATTORNEY EXCEPT THE SCRIPT WRITTEN BY JEFFREY LANE OF PATTERSON, NUSS & SEYMOUR, P.C. EX PARTE. JAMES W, BURNESON MEMBER OF THIS ASSOCIATION SINCE 1972 HAS THE RIGHT TO ASK TO REVIEW THE BOOKS FOR DISCOVERY OF CRIMES COMMITTED BY THE BOARD OF DIRECTORS AND THREE LAWYERS. IT'S THE THREE LAWYERS YOU ARE TRYING TO PROTECT NOT THE PUBLIC. The 18th District exists for the purpose of dispensing justice to the citizens of Arapahoe County not protect the wrongful acts of lawyers for profit.

Nor can plaintiff circumvent the board members' constitutional rights under the law by forcing them to disclose the records he seeks to view. Having made it clear that he has launched criminal accusations with the District Attorney's Office against board members of the Homeowners' Association, plaintiff must allow that organization and other law enforcement agencies to investigate his claims through the appropriate channels.

THERE ARE NO CHARGES ACCEPTED BY THE DA SO THERE ARE NO CONSTITUTIONAL RIGHTS AT ISSUE AT THIS POINT IN THE INVESTIGATION. HOW CAN YOU EXPLAIN THIS STATEMENT AS A JUDGE? YOUR STATEMENTS INFER THAT

THE BOOKS ARE THE PRIVATE PROPERTY OF THE DIRECTORS!!! THE BOOKS ARE THE PROPERTY OF THE ASSOCIATION AND A MEMBER HAS THE RIGHT TO INSPECT THOSE BOOKS FOR ANY WRONG DOING THAT'S THE PURPOSE OF GIVING THE MEMBERSHIP THE RIGHT OF INSPECTION. This inspection is in good faith even if it involves crooked lawyers whose sole interest is stealing money from this HOA.

For all the foregoing reasons, plaintiff's motion for inspection is DENIED; the bench trial plaintiff scheduled after filing his motion is VACATED; the case is DISMISSED; and plaintiff's motion for default judgment is DENIED as MOOT. Entered this 19th day of June, 2007.

ALL YOUR FOREGOING REASONS ARE INVALID AND HAVE NO BEARING ON GRANTING ANY DENIAL TO PLAINTIFF'S REQUEST TO SEE THE BOOKS. THE DEFENDANTS HAVE NOT RESPONDED AND ARE HIDING BEHIND THIS COURT WITH NO JUST REASON OTHER THAN THEY DON'T WANT THEIR CRIMES OPENED TO THE MEMBERSHIP BY OPENING THE BOOKS. ONCE AGAIN THE 18TH DISTRICT COURT DENYS JUSTICE TO PROTECT LAWYERS ACTIONS AGAINST THE MEMBERSHIP.

Wherefore Plaintiff requests this Court to vacate this Order to deny the request to see the books and papers of the Dam East Homeowner Association as requested in the Complaint/Motion as of June 29, 2007. Any date after that and I'm told your court calendar has no openings until after August 2007. If this request is refused this entire motion will be published on the website of www.court-house.com as Chapter 6 Titled "CARLOS A SAMOUR JR. PLAYS THE ROLE OF DEFENSE COUNSEL INSTEAD OF JUDGE. Chapter 25 is dedicated to Mr. Jeffrey Lane wrongful acts starting with ex parte communications with judges before trials.

I will then file for an appeal of this decision with the Colorado Court of Appeals where the court will have no choice but to reverse this courts decision because it is groundless and was prejudice in its ruling when the Judge acted in the role of a defense attorney and not a Judge.

I will also consider rating this court's actions herein on the website www.ratethecourts.com. I will have 5 judges rated on this website from the 18th District Court within the week.

Dated June ____ 2007

Submitted By ,

James W. Burneson Pro Se
12641 E. Bates Cir
Aurora, CO 80014

By _____

Jim Burneson

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Carlos A. Samour, Jr.', enclosed within a hand-drawn oval.

Carlos A. Samour, Jr.
District Court Judge

cc: All Parties

[NOTE: Counsel for the moving party (or the party if unrepresented) is instructed by the Court to serve a copy of this order on any *pro se* party within ten (10) days of receipt.] [The judge served this copy by LexisNexis electronic filing because Lane never filed notice he was representing the Defendant.](#)

CERTIFICATE OF DELIVERY

I hereby certify that on the _____ day of June 2007 I mailed a copy of this **MOTION FOR COURT TO VACATE THE ORDER TO DENY REQUEST TO OPEN THE BOOKS AND PAPERS OF THE DAM EAST HOMEOWNER ASSOCIATION FOR INSPECTION BY A MEMBER OF THE ASSOCIATION** to the addresses follows:

Julie Geyer
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