

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

JOSEPH A. SCALISE, EVELYN SCALISE
and JOSEPH C. SCALISE,

Petitioners,

-against-

OAK ISLAND BEACH ASSOCIATION, INC.
and THE BOARD OF DIRECTORS OF OAK
ISLAND BEACH ASSOCIATION INC.,

Respondents.

for an Order Pursuant to Article 78 CPLR,
directing the aforesaid Respondents to
rescind and annul the determination expelling
Petitioners as members of the Oak Island
Beach Association Inc. and for such other
appropriate relief

ORIG. RETURN DATE: NOVEMBER 3, 2006
FINAL SUBMISSION DATE: JANUARY 11, 2007
MTN. SEQ. #: 002
MOTION: MOT D

PLTF'S/PET'S ATTORNEY:
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& HARRISON, P.C.
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DEFT'S/RESP ATTORNEY:
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**FORMER ATTORNEY FOR OAK ISLAND
BEACH ASSOCIATION, INC.:**
BARRY V. PITTMAN, ESQ.
26 SAXON AVENUE - POB 5647
BAY SHORE, NEW YORK 11706
631-665-4477

Upon the following papers numbered 1 to 7 read on this motion _____
FOR CONTEMPT IN AN ARTICLE 78 PROCEEDING

Order to Show Cause and supporting papers 1-3; Answering Affidavits and supporting papers
4, 5; Affirmation and supporting papers 6; Replying Affidavits and supporting papers 7;
it is,

ORDERED that this motion by petitioners, JOSEPH A. SCALISE,
EVELYN SCALISE and JOSEPH C. SCALISE, for an Order, pursuant to
Judiciary Law §§ 753 and 750, finding respondents, OAK ISLAND BEACH
ASSOCIATION, INC. and THE BOARD OF DIRECTORS OF OAK ISLAND
BEACH ASSOCIATION INC., in contempt of court based upon their alleged

continuing flagrant and willful violation of the Amended Order dated January 27, 2006 (Werner, J.), by refusing and failing to provide petitioners and their representatives access to inspect and copy the minutes of the Board meetings commencing from 1998 to the present, and to review all documents pertaining to petitioners including complaints and statements of witnesses, at a mutually agreed time and place, and granting petitioners sanctions, is hereby determined to the extent provided herein.

In this proceeding pursuant to Article 78 of the CPLR, petitioners seek an Order holding respondents in contempt of court for their alleged willful violation of an Amended Order dated January 27, 2006 (Werner, J.), which directed, among other things, that petitioners and their representatives have access to inspect and copy the minutes of the Board meetings commencing from 1998 to the present, and to review all documents pertaining to petitioners including complaints and statements of witnesses, at a mutually agreed time and place. Petitioners allege that on or about April or May of 2006, petitioners' counsel telephoned the attorney for respondents, BARRY V. PITTMAN, ESQ., to request an opportunity for petitioners to inspect and copy the minutes of the meetings and to discuss a financial resolution of the matter. Petitioners allege that Mr. Pittman never responded to their request. By letter dated June 2, 2006, counsel for petitioners reiterated their request for access to the minutes and documents. In response, petitioners allege that on or about August 10, 2006, counsel for petitioners received a letter from WILLIS B. CARMAN, JR., ESQ., on behalf of respondents, which indicated that respondents were in the process of assembling the records, and requested counsel for petitioners telephone him to arrange a convenient date for inspection. Petitioners allege that despite follow-up telephone calls to respondents' counsel, they have not heard back from him, nor has any of the information or records been provided. As such, petitioners have filed the instant application seeking an Order holding respondents in contempt of court, awarding attorneys' fees, and imposing sanctions.

The Court has received an affirmation in response from BARRY V. PITTMAN, ESQ., wherein he indicates that he is no longer the attorney for respondents.

The Court has received an affirmation in opposition from WILLIS B. CARMAN, JR., ESQ., who alleges that by his letter of August 10, 2006, he invited petitioners to schedule a date to inspect the records, but they have made no attempt to contact him either by mail or telephone. Mr. Carman submits that the

records have been available for two and one-half months, and that respondents continue to make the records available for inspection.

In reply, petitioners allege that at no time did they receive any notification that Mr. Pittman was no longer the attorney of record for respondents, either by consent to change attorney or by court order. The Court notes that Mr. Carman's affirmation indicates that he represents respondents on this motion.

In view of the foregoing, petitioners' application is determined to the extent that respondents shall make the subject minutes and records available to petitioners, pursuant to the Amended Order dated January 27, 2006 (Werner, J.), at a time and place mutually agreed to in writing, but in no event shall the inspection occur beyond **March 16, 2007**. If respondents fail to make the minutes and records available for inspection and copying on or before March 16, 2007, petitioners may renew their application for contempt.

The foregoing constitutes the decision and Order of the Court.

Dated: January 29, 2007


HON. JOSEPH FARNETI
Acting Justice Supreme Court