IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RESIDENTS' ACTION COMMITTEE OF COUNTRY CLUB OF THE SOUTH, an unincorporated association,	:	
Plaintiff,	:	**CIVIL ACTION NO.** 2007CV13370
vs.	:	
BOARD OF TRUSTEES of THE COUNTRY CLUB OF THE SOUTH HOMEOWNERS ASSOCIATION, INC.,	:	
Defendant.	:	

COMPLAINT

COMES NOW, the Plaintiff in the above-styled civil action and hereby petitions this Court for declaratory and injunctive relief. In support thereof, Plaintiff shows the Court as follows:

Jurisdiction & Venue

1.

As a Court of Equity, this Superior Court has subject matter jurisdiction to grant the relief requested herein, including the requested preliminary injunction.

2.

Venue for this action is appropriate in this Court because the defendant's principal business location is 9375 Barnwell Road, Alpharetta, Fulton County, Georgia 30022-6832, and all of the parties reside in Fulton County.

Parties

3.

Plaintiff the Residents' Action Committee of The Country Club of the South ("the RAC") is an unincorporated association with standing to pursue this action on behalf of its members. The RAC consists of more than 100 persons who own property in the County Club of the South

and are members of The Country Club of the South Homeowners, Association, Inc. Each member of RAC suffers similar irreparable harm and economic injury by the actions of defendant and each would have separate standing to bring an individual lawsuit challenging the defendant's actions.

4.

This legal proceeding is germane to the stated purposes of the RAC, which include monitoring the actions of the Board of Trustees of The County Club of the South, educating its members regarding the actions of the Board of Trustees which may impact their property and community values and promoting the Country Club of the South in general. Finally, this suit is primarily seeking declaratory and injunctive relief and does not present complicated issues of individual damages. Thus, the relief requested does not require the participation of individual HOA members. Consequently, the RAC has standing under the principles enunciated in *Aldridge v. Georgia Hospitality & Travel Ass'n,* 251 Ga. 234, 304 S.E.2d 708 (1983) and the cases cited therein. Plaintiff therefore is legally competent to bring actions of this nature.

5.

Defendant the Board of Trustees of The Country Club of the South Homeowners, Association, Inc. ("CCSHA") is a non-profit corporation organized in December 1985 pursuant to the Georgia Nonprofit Corporation Code with its principal business located 9375 Barnwell Road, Alpharetta, Fulton County, Georgia 30022-6832. The Board of Trustees is presently being sued only in its official capacity.

6.

Defendant may be served through its agent for service of process, Weissman Nowack Curry Wilco, PC, located at 3500 Lenox Road, Atlanta, Fulton County, Georgia 30326. Defendant is subject to the personal jurisdiction of this Court.

RELEVANT FACTS

7.

In 1985, the Jack Nicklous Development Corporation, a Georgia corporation, ("JNDC") owned certain real property located in north Fulton County, Georgia. JNDC planned to develop some of the property into a country club consisting of a golf course, clubhouse and other recreational facilities and amenities. JNDC planned to develop the remaining property into subdivision lots for upscale residential living. Membership in the country club was not and has not subsequently been a requirement for purchase of a residential lot or house. Over the years, about 50 % of the residents of this subdivision have chosen not to join the country club.

8.

Pursuant to the aforementioned plans, JNDC filed a *Declaration of Covenants, Conditions, and Restrictions for Country Club of the South* ("*the Covenants*") on October 1, 1985 which subjects the real property in the subdivision to the provisions contained in the Declaration, including the formation of a homeowner's association. (Exhibit A, attached hereto). Among other things, *the Covenants* provide: (a) the subdivision and its homeowner's association and the Country Club were to be separate and distinct (Article 1, Section 1.01, Article 2, Section 2.04); (b) any assessments on the homeowners were to be limited to the development and common areas (Article 9, Section 9.01; Article 9, Section 9.03); and (c) a two-third's voting requirement by all residents was to be required in order to amend *the Covenants* and Bylaws (Article 12, Section 12.03).

9.

Pursuant to the aforementioned plans, JNDC also formed the Country Club of the South Homeowners Association (CCSHA), Inc., a nonprofit corporation organized and incorporated under Georgia's Nonprofit Corporation Code, on December 20, 1985 which was to govern the property in the subdivision. (Exhibit B, attached hereto).

10.

Bylaws for the CCSHA were adopted on February 1986 (Exhibit C, attached hereto), and a Board of Trustees was established. Initially, the Board of Trustees had the authority to advise and make recommendations to JNDC, which had administrative authority over the residential area. JNDC retained 100% ownership of the Country Club which included the golf course, clubhouse, tennis and swimming facilities.

11.

In 1995, JNDC relinquished control of the residential subdivision and the Board of Trustees became the governing authority for the residential subdivision. The Bylaws were subsequently amended on December 4, 1995 to increase the number of members on the Board of Trustees from 5 to 9 and to clarify that amendments could be made at any annual, regular or special meeting by the affirmative vote of the property owners holding two-thirds of the total eligible vote of the CCSHA.

12.

In January, 2000, JNDC announced that it had received an unsolicited offer from a private company to purchase the assets of the Country Club. Under the legal agreement establishing the Country Club, the club members as a group had the right of first refusal to purchase the Country Club. Country Club members through individual contributions and the assumption of debt were able to match the offer received by JNDC and purchased the Country Club by mid-2000. A nine-member governing Board of Directors ("Club Board") then assumed the responsibility for club management. Over the next six years, the Club Board paid down none of the original debt and, instead, increased the indebtedness of the County Club with spending to modify the golf course and other club facilities. Member assessments became larger and more frequent and were a contributing factor in the Club's membership decline.

13.

Beginning in 2004, the Board of Trustees of the CCSHA began investigating various methods for having CCSHA bail the Country Club out of its financial difficulties. The Boards of both CCSHA and the Country Club began informal, behind-the-scenes discussions regarding means by which the Board of Trustees of the CCSHA could force the members of CCSHA to assist with the financial difficulties faced by the Club.

14.

In early 2004, the Country Club formed a "Club Liaison Committee" to identify ways to improve the working relationship between the CCSHA and the Country Club. All members of the committee were members of the Country Club. The Club Liason Committee developed a "Community Membership Program" which called for integrating the CCSHA with the Country Club. After studying the "Community Membership Program" and its alleged impact on property values, the Club Liaison Committee endorsed the concept of integrating the two entities.

15.

The Board of Trustees of CCSHA was warned in May 2005 by its legal counsel that a conflict of interest existed between the Board of Trustees for the CCSHA and the Board of the Country Club. The Board of Trustees of CCSHA was informed that, because the vast majority of the members of the Board were also members of the Country Club, the Board of Trustee's decision to help the Country Club would serve their own economic interests in violation of O.C.G.A. § 14-3-860 *et seq.* of the Georgia Nonprofit Corporation Code.

16.

The Board of Trustees was advised that any merger between the CCSHA and the Country Club would directly and financially benefit the members of the Country Club at the expense of

the members of the CCSHA. As such, the proposed actions created clear conflicts of interest and could not be approved by the Board of Trustees or even a committee appointed by the Board. The Board of Trustees was also advised that any merger would create liabilities for the members of the CCSHA, particularly those with no interest in being affiliated with the Country Club

17.

The efforts of the two Boards to merge their respective entities nevertheless continued. In June 2004, the Board of Trustees was advised by counsel to provide the property owners with information regarding the financial condition of the Country Club. The Board was also advised that if CCSHA was the surviving corporation in a merger and assumed title to the Country Club's assets, all members of CCSHA would possess rights to use all of the assets of the Country Club as common property. This, of course, would conflict with the rules of the County Club.

18.

Undeterred, the Board of Trustees of CCSHA proceeded with their plans to merge CCSHA with the Country Club. The President informed the members of the CCSHA in the summer of 2005 through its Newsletter that the Board had endorsed a mandatory Community Membership Program and that, on May 16, 2005, the Board passed a motion to put the Program to vote.

19.

Under the proposed Program, current residents of CCSHA would not be required to join the Country Club, but all new residents would be required to join the Country Club at the membership level of their choice. The Board was advised by legal counsel that the governing instruments of CCSHA would need to be changed to implement the Community Membership Program. Such a revision would require approval of two-thirds of property owners. In order to

garner support for their plans, the Board planned to hold focus groups and town hall meetings among the members of CCSHA and planned to prepare a website and issue mailings.

20.

In June 2005, both the CCSHA Board of Trustees and the Board of the Country Club formally voted to endorse the Community Membership Program. The Board of Trustees of CCSHA took the public position that the Community Membership Program "is not a 'club bailout.'" The CCSHA Board represented to the members of CCSHA that, "[t]he Club is financially sound today and the financial impact on the Club of this proposal is minimal." The members of CCSHA were informed that adopting the Community Membership Program would require a change to *the Covenants* and an affirmative vote by two-thirds of the property owners. The vote was planned for early November but was never held.

21.

Instead, on November 27, 2006, the Board of Trustees finally began to disclose some of the Country Club's financial condition and operational difficulties to the members of CCSHA. However, the Board represented only that the Club's debt was $9.3 million and its annual debt servicing costs was about $650,000. It did not disclose the true and complete financial condition of the Country Club.

22.

The Board of Trustees of CCSHA also represented that the Country Club had devised three options to address its poor financial condition: 1) require substantial assessments of current Country Club members; 2) sell the Country Club to a third party; or 3) merge the Country Club with the CCSHA, and therefore add Club assets to the community's common property. However, the Board of Trustees of CCSHA still did not disclose the known financial condition

of the Country Club, the true cost to each of the members of CCSHA, or the realistic economic impact that such a merger would have on their property values. Likewise, the Board of Trustees did not disclose that members of the Board of CCSHA had already begun discussions and negotiations with the Board of the Country Club to merge the two entities.

23.

In February 2007, the Board of Trustees of CCSHA finally revealed to the members that the Board of CCSHA and the Country Club's Board had been in formal merger discussions. The Board again informed the residents that the merger called for the assumption of $9.3 million debt, and that CCSHA would acquire all the Country Club's assets as common property for the use of all homeowners. In an attempt to avoid liability for their conflict of interest in this proposal, the Board contrived to place a vote for "due diligence" before the members of CCSHA with the expectation that "due diligence" would justify the merger. The Board elected to utilize funds from the CCSHA to pay for the "due diligence."

24.

Notwithstanding the conflict of interest, the Board of Trustees of CCSHA began disseminating misleading and incomplete information regarding what would happen to the property values of the members of CCSHA and the future of the Country Club if the CCSHA did not bail it out of its financial difficulties. The Board of Trustees also began disseminating misleading and incomplete information regarding the potential benefits of a merger of the two entities.

25.

On February 14, 2007, the Board of Trustees of CCSHA sent a letter to the members of CCSHA in which it addressed the intended procedure for the proposed merger and requested that

the members cast a vote for or against proceeding with the "due diligence" process. The letter stated that because the Board members had an interest in the Country Club, a conflict of interest existed which precluded them from authorizing the expenditures for the "due diligence." The letter also provided that because the conflict prevented the Board from acting under their own authority, the members of CCSHA had to make the decision.

26.

However, the Board did not at that time or any subsequent time disclose all of the other relevant information to enable the members to make a prudent and informed choice. Instead, the members were told that, if they voted to approve the due diligence process, the Board would be authorized to perform the "due diligence." Town hall meetings were scheduled for February 15 and 20, and the "due diligence" vote was scheduled for March 12, 2007.

27.

The Board did not disclose all relevant facts to permit the members of CCSHA to make a prudent and informed choice. For example, the Board of Trustees of CCSHA did not disclose that it would retain the authority to conduct the "due diligence" and that such authority included, but was not limited to, selecting the firm to conduct the "due diligence," determining the scope and depth of the "due diligence" and the legal mechanisms for effectuating the proposed merger. In these communications, as in all previous communications, the Board of Trustees did not disclose the true or complete financial condition of the Country Club, the true cost of the "due diligence", or the legal feasibility of the merger.

28.

Before the vote in March 2007, the Board of Trustees of CCSHA continued to disseminate incomplete or misleading information regarding the potential merger and the need

for "due diligence." For instance, the Board utilized the CCSHA website to provide misleading and incomplete information to the members regarding the proposed merger.

29.

Meanwhile, the Board of the Country Club continued to lobby its members, particularly those who were also members of CCSHA, to vote in favor of granting the Board of Trustees of CCSHA the authority to conduct the "due diligence" and use the funds of CCSHA to underwrite the "due diligence."

30.

On March 12, 2007, by a majority of those voting, the CCSHA membership approved the measure to authorize the Board of Trustees to proceed with the "due diligence" efforts. Upon information and belief, some of the members of CCSHA cast their vote in reliance upon the misleading information provided by the Board of Trustees. Upon information and belief, some members of the Board cast votes even though they had conflicts of interest. Upon information and belief, the "due diligence" efforts are expected to cost more than $100,000 from the funds of CCSHA.

31.

Upon information and belief, a recount and audit of the voting was requested following the vote. The Board of Trustees of CCSHA ordered all of the ballots destroyed and thus it is now impossible to ascertain whether the vote was in compliance with the Covenants, Bylaws or Nonprofit Corporation Code.

32.

In an attempt to verify the public representations made by the Board of Trustees regarding the scope of "due diligence planned" and in order to ascertain the financial viability of

the proposed merger, one or more members of CCHSA made a request to the Board of Trustees to inspect and copy the records of the CCSHA pursuant to the provisions of O.C.G.A. § 14-3-1602. While the Board of Trustees produced select records, the Board of Trustees failed or refused to comply with the legal obligations imposed by the provisions of O.C.G.A. § 14-3-1602.

33.

The RAC has attempted in good faith to get the Board of Trustees of CCSHA to voluntarily comply with their legal obligations or at least to change their plans to avoid wasting or dissipating the assets of the CCSHA. However, the Board has refused. Thus, this legal action is necessary.

Count I – REQUEST FOR DECLARATORY RELIEF

34.

Plaintiff hereby incorporates all previous allegations as if set forth verbatim herein.

35.

Plaintiff seeks declaratory relief pursuant to O.C.G.A. 9-4-1 with respect to their rights as members of CCSHA and the power and authority of the Board of Trustees to proceed with its efforts to conduct a "due diligence" regarding a merger between the County Club of the South and the Association.

36.

Plaintiff seeks this Court's assistance to settle and afford relief from the uncertainty and insecurity of the membership of CCSHA with respect to its rights before such rights are further violated.

37.

The *Declaration of Covenants, Conditions, and Restrictions for Country Club of the South* ("*The Covenants*" or "*The Declaration of Covenants*") is one of the instruments governing the operation of the CCSHA.

38.

The Board of Trustees is legally obligated to conduct the affairs of the CCSHA and act in the Board's affairs in accordance with *The Covenants*.

39.

The Covenants provide that the members of the CCSHA, by definition, shall have no rights or obligations with respect to the County Club. Specifically, *The Covenants* define the County Club as follows:

> *(k) "Country Club" shall mean and refer to the course and related club facilities developed by Club in conjunction with and adjacent to the Development, including the eighteen hole golf course, golf driving range, putting green, golf cart paths, tennis courts, swimming pool, clubhouse, tennis and golf pro shops, locker room facilities, food and beverage facilities and other related facilities. Jack Nicklaus Development Corporation of Georgia owns the Country Club and the Country Club is not part of the Common Areas nor is it governed by the provisions of this Declaration except as specifically provided herein. No Owner or Occupant nor the Association shall have any rights in and to, or obligations with respect to, the Country Club except as expressly and specifically provided herein.*

The Declaration of Covenants, Article 1, Section 1.01 (emphasis supplied).

40.

The Covenants provide that the County Club is "a private club and separate and distinct" from the CCSHA. *The Covenants* specifically provide that the County Club "shall not be part of the Common Areas" of CCSHA. *The Covenants* state,

> *The Country Club shall be a private club, separate and distinct from the Association and governed by its own rules, regulations, and requirements. The*

> *Country Club and the Country Club Property shall not be part of the Common Areas, and neither the Association nor any Owner shall have any right or privilege in and to the Country Club or the amenities contained therein, including the right to enter upon or use the Country Club facilities, except under such conditions and requirements as may be established by the Club Owner from time to time.*

Declaration of Covenants, Article 2, Section 2.04.

41.

A merger of the CCSHA and the Country Club would be in conflict with and violate these and other provisions of *The Covenants*.

42.

Any merger of the CCSHA and the County Club would require that *The Covenants* be amended to eliminate these and other provisions of *The Covenants* which conflict with such a merger.

43.

The *Articles of Incorporation of the Country Club of the South Homeowner's Association, Inc.*, ("*The Articles of Incorporation*") is one of the governing instruments of the operation of the CCSHA.

44.

The Board of Trustees is legally obligated to conduct the affairs of the CCSHA and act in the Board's affairs in accordance with *The Articles of Incorporation*.

45.

The *Articles of Incorporation* provide that the CCSHA was organized and is to be operated under the Georgia Nonprofit Corporation Code and *The Covenants*. *The Articles of Incorporation* provide specifically that:

The corporation is organized and shall be operated primarily for the purpose of carrying on the acquisition, construction, management, maintenance, and care of property owned by the Corporation and for such related purposes as may be permitted under the Georgia Nonprofit Corporation Code and that certain Declaration of Covenants, Conditions, and Restrictions for the Country Club of the South.

The Articles of Incorporation, ¶ 4 (emphasis supplied).

46.

The *Articles of Incorporation* of CCSHA also provide that CCSHA is organized as a non-profit corporation and that no part of the net earnings of the Corporation shall inure to the benefit of its Trustees, officers, or other private persons. Specifically, *the Articles of Incorporation* state:

The Corporation shall have all powers necessary to carry out its purposes, including the powers now or hereinafter enumerated in the Georgia Nonprofit Corporation Code. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Trustees, officers or other private persons.... Notwithstanding any other provision of these Articles, the Corporation is not organized and shall not be operated for profit....

Articles of Incorporation, ¶ 7 (emphasis supplied).

47.

If the Board of Trustees is successful in merging the Country Club with CCSHA, part of the net earnings of the CCSHA will inure to the benefit of the Trustees individually and private persons who are members of the Country Club but not members of CCSHA.

48.

Moreover, the Country Club sells merchandise, sells meals to the public and rents its facilities to the public. Upon information and belief, income from those activities will place the tax-exempt status of CCSHA in jeopardy as unrelated business income. In addition, upon information and belief, the individual members of CCSHA may face additional individual tax liabilities as a result their personal ownership interest in the County Club.

49.

Thus, a merger of the CCSHA and the Country Club would be in conflict with and violate *The Articles of Incorporation* of CCSHA.

50.

Any merger of the CCSHA and the County Club would require that *The Articles of Incorporation* be amended to eliminate provisions which conflict with such a merger.

51.

Nothing in *The Covenants* or *The Articles of Incorporation* authorizes the merger proposed by the Board of Trustees. No provision contained in those governing instruments requires or permits the members of the CCSHA to be members of the Country Club or assume or be responsible for the debts and obligations of the Country Club.

52.

The Board of Trustees of the CCSHA knows that it cannot muster sufficient members of the CCSHA to vote in favor of its plan to acquire the debts and liabilities of the Country Club.

53.

Any amendments to *The Covenants* must be approved by members of CCSHA holding "at least two-thirds (2/3) of the total votes in the Association." *The Covenants*, Article 12, Section 12.03(b).

54.

Any amendments to *The Articles of Incorporation* or Bylaws must also be approved "by the affirmative vote of the members holding two-thirds (2/3) of the total eligible vote of the Association." (Amended Bylaw Article 8, Section 8.3).

55.

Presumably, the Board of Trustees of CCSHA hopes to utilize its control over the "due diligence" efforts and the results of those efforts to convince the members of CCSHA to amend *The Covenants* and *The Articles of Incorporation.*

56.

However, the Board of Trustees should not be permitted to expend the funds of CCSHA or participate in any fashion in the "due diligence" efforts to effectuate the merger without first seeking to have *The Covenants* and *The Articles of Incorporation* amended to permit the merger with the Country Club. Otherwise, the actions of the Board of Trustees are an exercise in futility or an unlawful conflict of interest in using the funds of CCSHA to pursue their own economic interests.

57.

Accordingly, the RAC respectfully requests that the Court grant a declaratory judgment adjudicating that:

(a) The actions of the Board of Trustees in pursuing the merger with the Country Club of the South are in direct conflict with *The Covenants* and *The Articles of Incorporation* governing the CCSHA.

(b) Any merger between the CCSHA and the Country Club would require amendments to *The Covenants* and *The Articles of Incorporation* which could only be adopted by the affirmative vote of the members holding two-thirds (2/3) of the total eligible vote of the Association.

(c) Any action of the Board of Trustees in pursing a merger with the Country Club of the South is a conflicting interest transaction in violation of O.C.G.A. § 14-3-860

adopted by the affirmative vote of the members holding two-thirds (2/3) of the total eligible vote of the Association.

62.

As shown in detail above, the actions of the Board of Trustees in pursing a merger with the Country Club of the South is a conflicting interest transaction in violation of O.C.G.A. § 14-3-860 *et seq.*, and therefore the Board of Trustees can take no actions with respect to the merger or due diligence unless and until each Trustee provides full and complete disclosures as required by O.C.G.A. § 14-3-860(4).

63.

As shown in detail above, the actions of the Board of Trustees in expending funds of CCSHA for "due diligence" is an exercise in futility and a dissipation of the funds of CCSHA unless the *The Covenants* and *The Articles of Incorporation* are first amended in order to permit a merger with the Country Club.

64.

With respect to the issuance of interlocutory relief and preserving the status quo, the balancing of the equities and convenience of the parties clearly favors the Plaintiff.

65.

Preventing the Board of Trustees from going forward with the "due diligence" and further actions towards a merger with the County Club of the South will prevent violations of *The Covenants* and *The Articles of Incorporation*. Violations of those governing documents by the Board of Trustees would require future judicial action to prevent or reverse and could not be compensated in damages and thus would constitute irreparable harm.

66.

The granting of injunctive relief for the members of CCSHA will also prevent the dissipation of over $100,000 of CCSHA funds in a patent exercise in futility which would require further litigation in the form of a derivative action brought by the members to recover the funds for the Association. Thus, great harm to the members of CCSHA and further litigation will be prevented by issuing an injunction in favor of the members of CCSHA

67.

The Board of Trustees cannot show that it will suffer any harm as a result of this Court granting an injunction until it is determined whether a merger with the Country Club of the South is legally permitted by the governing documents of the CCSHA, including *The Covenants* and *The Articles of Incorporation.*

68.

Finally, as set forth in detail above, Plaintiff is more than likely to succeed on the merits. The Board of Trustees has long sought and continues to seek to merge the County Club with the CCSHA. Any such merger would be an explicit violation of the governing documents of CCSHA. Accordingly, Plaintiff hereby respectfully requests that the Court grant an interlocutory injunction to maintain the status quo until a final hearing.

69.

Accordingly, the Plaintiff respectfully requests that the Court grant interlocutory and permanent injunctive relief and issue an Order finding and ordering that:

(a) The actions of the Board of Trustees in pursuing the merger with the Country Club of the South are in direct conflict with *The Covenants* and *The Articles of*

Incorporation governing the CCSHA and Plaintiff is therefore likely to succeed on the merits in preventing the consummation of any merger.

(b) Any merger between the CCSHA and the Country Club would require amendments to *The Covenants* and *The Articles of Incorporation* which could only be adopted by the affirmative vote of the members holding two-thirds (2/3) of the total eligible vote of the Association. Therefore, the Board of Trustees is prohibited from taking any action towards a merger with the County Club of the South without first seeking to amend the governing documents of the CCSHA and obtaining the necessary votes.

(c) The actions of the Board of Trustees in pursing a merger with the Country Club of the South creates a conflicting interest transaction in violation of O.C.G.A. § 14-3-860 *et seq.*, and therefore the Board of Trustees is prohibited from taking any actions with respect to the merger or due diligence unless and until each Trustee provides full and complete disclosures as required by O.C.G.A. § 14-3-860(4).

(d) The Board of Trustees is prohibited from expending funds of CCSHA for "due diligence" because it is an exercise in futility and a dissipation of the funds of CCSHA unless and until *The Covenants* and *The Articles of Incorporation* are first amended in order to permit a merger with the Country Club.

(e)

COUNT III: VIOLATION OF O.C.G.A. § 14-3-1602

70.

Plaintiff hereby incorporates all previous allegations as if set forth verbatim herein.

71.

In an attempt to verify the public representations made by the Board of Trustees regarding the scope of "due diligence planned", and in order to ascertain the financial viability of the proposed merger, one or more members of CCHSA made a request to the Board of Trustees to inspect and copy the records of the CCSHA pursuant to the provisions of O.C.G.A. § 14-3-1602.

72.

On April 11 and 12, 2007, Sharon Cook Poorak, a member of CCSHA, made a written request to inspect the records of CCSHA as provided in O.C.G.A. § 14-3-1602. (Exhibits D and E, attached hereto).

73.

Some records were produced, namely only certain minutes of meetings of the Board of Directors and select communications from the Board of Directors to the members of CCSHA. However, the Board of Trustees failed or refused to comply with its legal obligations and produce all responsive records.

74.

Accordingly, pursuant to O.C.G.A. § 14-3-1604, Plaintiff requests that Defendant be ordered to produce all of the requested records and to pay the member's costs (including reasonable attorneys' fees) incurred to obtain the order unless Defendant proves that it refused the documents in good faith

WHEREFORE, Plaintiff prays for the following relief:

1. That process issue as provided by law;

2. That the Court issue a declaratory judgment as requested in Count I above;

3. That the Court issue an interlocutory injunction as requested in Count II above; and an

order requiring Defendant to comply in full with O.C.G.A. § 14-3-1602 and produce all responsive records in its custody or control as requested in Count III;

4. That the Court issue a permanent injunction as requested in Count II above;

5. That the Court find Defendant liable to Plaintiff for its reasonable expenses and attorneys fees;

6. That Plaintiff be granted all other relief that this Court may deem just and necessary.

Respectfully Submitted this 4th day of May, 2007.

COUNSEL FOR PLAINTIFF

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RESIDENTS' ACTION COMMITTEE OF COUNTRY CLUB OF THE SOUTH, an unincorporated association,	:	
Plaintiff,	:	**CIVIL ACTION NO. _____**
vs.	:	
BOARD OF TRUSTEES of THE COUNTRY CLUB OF THE SOUTH HOMEOWNERS ASSOCIATION, INC.,	:	
Defendant.	:	

SUMMONS

TO: BOARD OF TRUSTEES of THE COUNTRY CLUB OF THE SOUTH
HOMEOWNERS ASSOCIATION, INC.
c/o George E. Nowak, Jr., Registered Agent
Weissman Nowak Curry & Wilco, PC
One Alliance Center, Fourth Floor
3500 Lenox Road
Atlanta, Georgia 30326

You are hereby summoned and required to file with the Clerk of Said Court and serve upon Plaintiff's attorney, whose name and address is:

Edmund J. Novotny, Jr.
Baker Donelson Bearman
Caldwell & Berkowitz, PC.
Six Concourse Parkway
Suite 3100
Atlanta, Georgia 30328

an answer to the complaint which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 4 day of May, 2007.

Cathelene Robinson
Clerk of Superior Court

By: _____
Clerk of Court