



P A D U L A B E N N A R D O L E V I N E  
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April 20, 2017

**VIA EMAIL (jk@dkslaw.net)**

James N. Krivok, Esquire  
Dicker, Krivok & Stoloff, P.A.  
1818 Australian Avenue South, Suite 400  
West Palm Beach, Florida 33409

***Re: Manfred Brecker of Delaire Country Club, Inc.***

Dear Mr. Krivok:

As you know, this law firm represents Manfred Brecker and Anne Brecker. We have discussed with you the issue of Mr. Brecker's right to access certain documents relating to Delaire's Treasurer's recent statements relating to Delaire's purported increase in administrative charges. Attached hereto is a draft copy of the Complaint the Breckers intend on filing if Delaire refuses to allow the Breckers access to inspect and copy certain records on or before May 3, 2017.

Specifically, the Breckers are requesting the right to inspect and copy the following documents:

- (1) Any and all relevant corporate records demonstrating the manner in which Delaire's administrative charges purportedly increased significantly due to the litigation involving the Breckers and Delaire;
- (2) Any and all relevant corporate records reflecting Delaire's administrative charges for 2015 and 2016;
- (3) All records which support Delaire's position that: (a) its total legal expense in 2015 was \$72,588.00, of which \$48,239 was associated with the Brecker/Delaire legal dispute; and (b) its total legal expense in 2016 was \$41,423, of which \$30,361 was associated with the Brecker/Delaire legal dispute;
- (4) All records as described in Fla. Stat., § 617.1601(5);
- (5) All records as described in Fla. Stat., § 617.1602(2) that relate to Delaire's administrative charges for 2015 and 2016, and/or relate to Delaire's legal expenses for 2015 and 2016; and

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- (6) Any other books and records relevant to a determination Delaire's administrative charges for 2015 and 2016, and its legal expenses for 2015 and 2016.

The Breckers stand by ready to inspect and copy (if necessary) the records at a reasonable time and place anytime on or before May 3, 2017. However, at the very least, the aforementioned records need to be made available for the Breckers inspection and copying by May 3, 2017.

Delaire's refusal to allow the Breckers access to the aforementioned records, as it is required to pursuant to Chapter 617, Florida Statutes, will result in the Breckers filing the attached lawsuit and seeking all of its attorneys' fees and costs in connection therewith.

Regards,



STEPHEN J. PADULA  
For the Firm

SJP/ljh  
Enclosure

cc: Manny and Anne Brecker (w/ enc.)

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO.

MANFRED BRECKER and ANNE BRECKER,  
Individually,

Plaintiffs,

vs.

DELAIRE COUNTRY CLUB, INC., a not-for-profit  
Florida corporation,

Defendant.

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**COMPLAINT FOR DECLARATORY RELIEF AND APPLICATION  
FOR SUMMARY ORDER TO INSPECT CORPORATE RECORDS**

Plaintiffs, Manfred Brecker and Anne Brecker (Mr. and Mrs. Brecker individually, and the Breckers collectively), sues the Defendant, Delaire Country Club, Inc., a Florida corporation (Delaire), and for his cause of action declares and avers as follows:

1. This is an action for declaratory relief pursuant to Fla. Stat., § 617.1604, as well an application for a summary order to inspect records, and costs, including reasonable attorney's fees.
2. Venue is proper in Palm Beach County, Florida in that the Defendant's principal office is located in Boca Raton, Palm Beach County, Florida.
3. Manfred Brecker and Anne Brecker, are citizens and residents of Palm Beach County, Florida, over the age of eighteen (18) and otherwise *sui juris*.
4. Delaire, is a Florida corporation with its principal place of business in Palm Beach County, does business in Palm Beach County, and otherwise is within the jurisdiction of this Court.
5. The Breckers are members of Delaire.

6. At Delaire's 2017 annual meeting, the Treasurer made a representation that Delaire's administrative charges increased significantly due to a recently-resolved litigation between the Breckers and Delaire.

7. The following day, March 14, 2017, Mr. Brecker tendered a letter requesting the financial details on the aforementioned representation.

8. Delaire failed to provide a reasonable explanation why the Treasurer of Delaire made such a purportedly false representation to the entire Delaire community.

9. Since such time, Mr. Brecker has made additional requests for the aforementioned information; however, Delaire continues to refuse to provide the same to the Breckers.

10. Delaire responded with its total legal expense for 2015 and 2016, and the amounts purportedly associated with the Brecker/Delaire litigation, but has not provided or allowed Mr. Brecker the right to inspect and copy any backup to support the figures.

11. Section 617.1601, Fla. Stat., provides, in pertinent part, as follows:

Corporate Records –

(5) A corporation shall keep a copy of the following records:

- (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (c) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;

- (e) Written communications to all shareholders generally or all shareholders of a class or series within the past 3 years, including the financial statements furnished for the past 3 years under s. 607.1620;
- (f) A list of the names and business street addresses of its current directors and officers; and
- (g) Its most recent annual report delivered to the Department of State under s. 607.1622.

12. Section 617.1602, Fla. Stat., provides as follows:

Inspection of records by shareholders. –

- (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in s. 607.1601(5) if the shareholder gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy.
- (2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy:
  - (a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1);
  - (b) Accounting records of the corporation;
  - (c) The record of shareholders; and
  - (d) Any other books and records.
- (3) A shareholder may inspect and copy the records described in subsection (2) only if:
  - (a) The shareholder's demand is made in good faith and for a proper purpose;

- (b) The shareholder describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and
- (c) The records are directly connected with the shareholder's purpose.

13. Section 607.1604, Fla. Stat., provides as follows:

Court-ordered inspection. –

- (1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) or (4) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.
- (2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with s. 607.1602(2) and (3), may apply to the circuit court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.
- (3) If the court orders inspection or copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney's fees, reasonably incurred to obtain the order and enforce its rights under this section unless the corporation, or the officer, director, or agent, as the case may be, proves that it or she or he refused inspection in good faith because it or she or he had a reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded.

14. For all of the above-described reasons, on April 19, 2017, the Breckers made a formal demand upon Delaire, pursuant to Chapter 617, Florida Statutes. A copy of the April 19, 2017 correspondence is attached hereto as *Exhibit "A."*

15. In the same April 19, 2017 demand, the Breckers, by and through their legal counsel, tendered a draft of this Complaint, and more formally advising of the Breckers' intent to commence legal proceedings in order to inspect the records in the event that Delaire refused to

allow the Breckers to inspect the pertinent records on or before May 3, 2017.

16. As a result of the concerns the Breckers expressed to Delaire as described herein, the Breckers compliance with Chapter 617, Florida Statutes' requirements, and Delaire's refusal to allow the Breckers access to the pertinent records, the Breckers are entitled to inspect all records described in Fla. Stat., §§ 617.1601 and 617.1602(2).

17. The Breckers properly demanded access to all of the relevant records in good faith and for the proper purpose of investigating their concerns.

18. The Breckers described with reasonable particularity their purpose and the records they desired to inspect.

19. The records demanded are directly connected with the Breckers' purpose.

WHEREFORE, Plaintiffs, Manfred Brecker and Anne Brecker, demand judgment against the Defendant, Delaire Country Club, Inc., to include but not be limited to the following:

- (A) A declaration that the Breckers are entitled to inspect and copy all of the relevant records sought herein;
- (B) A summary order to inspect and copy the following records:
  - (1) Any and all relevant corporate records demonstrating the manner in which Delaire's administrative charges increased significantly due to the litigation involving the Breckers and Delaire;
  - (2) Any and all relevant corporate records reflecting Delaire's administrative charges for 2015 and 2016;
  - (3) All records which support Delaire's position that: (a) its total legal expense in 2015 was \$72,588.00, of which \$48,239 was associated with the Brecker/Delaire legal dispute; and (b) its total legal expense in 2016 was \$41,423, of which \$30,361 was associated with the Brecker/Delaire legal dispute;
  - (4) All records as described in Fla. Stat., § 617.1601(5);
  - (5) All records as described in Fla. Stat., § 617.1602(2) that relate to Delaire's administrative charges for 2015 and 2016, and/or relate to Delaire's legal

expenses for 2015 and 2016; and

- (6) Any other books and records relevant to a determination Delaire's administrative charges for 2015 and 2016, and its legal expenses for 2015 and 2016.

(C) An award of costs, including reasonable attorney's fees, pursuant to Fla. Stat., § 607.1604(3), reasonably incurred to obtain the order and enforce their rights under this section.

Dated this \_\_\_\_ day of May, 2017.

Respectfully submitted,

**PADULA BENNARDO LEVINE, LLP**

Attorneys for Plaintiffs

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