

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

VANDALIA CAPITAL II, LLC, et al.,  
Plaintiffs,

v.

Civil Action No. 13-C-570  
Hon. James H. Young, Jr.

DAVID P. PRAY, et al.  
Defendants,

v.

THE WOODS DEVELOPMENT COMPANY, LLC,  
Third-Party Defendant.

**ORDER**

On December 20, 2018 a hearing was held on **Plaintiff's Motion to Quash Subpoenas and for Protective Order and United Bank's Motion to Quash Subpoena ("Motions")**. The Plaintiffs appeared by counsel, Mark R. Staun and Hartley Law Group, PLLC; United Bank appeared by counsel, Floyd E. Boone Jr., William M. Lorensen and Bowles Rice LLP; and the Pray Defendants appeared by counsel, Stephen D. Annand, Jonathon C. Stanley and Robinson & McElwee, PLLC. Also appearing was Shawn P. George as a representative of the Plaintiffs.

Based upon the pleadings, argument of counsel and comments by the Court, all of which are of record and incorporated herein, the Court hereby ORDERS that: 1) the Motions are held in abeyance; 2) responses to all outstanding discovery propounded by the Pray Defendants on the Vandalia Plaintiffs and United Bank are held in abeyance; and 3) the Vandalia Plaintiffs and United Bank are to provide the Pray Defendants promptly with all documents, not already produced, in their possession regarding:

- i) consideration and/or implementation of Vandalia's September 5, 2017 capital call (the "Capital Call");

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KANAWHA COUNTY CIRCUIT COURT

262

- ii) communications between and/or among all Plaintiffs, or with others, regarding consideration and/or implementation of the Capital Call ;
- iii) the draw down by United Bank on September 6, 2017 upon letters of credit and/or other collateral pledged by Vandalia Members (the “Draw Down”);
- iv) the notices and other communications scheduling the meetings leading up to and at which the Vandalia Members voted upon Capital Call;
- v) references to David Pray in any manner in connection with consideration and/or implementation of the Capital Call or the Draw Down;
- vi) the procedures implemented by Vandalia for other capital calls, such as that for property taxes owed on the Weddington property and for the \$55,000 semi-annual payments due from the Vandalia Members to United Bank for accumulated interest; and
- vii) the capital account treatment by Vandalia as to its Members of the amounts taken by United Bank pursuant to its Draw Down (i.e., whether and to what extent the capital accounts of Vandalia Members were increased by such payments).

In addition, once these documents to be produced have been compiled by counsel to the Vandalia Plaintiffs, the documents shall be provided to all Vandalia Member-Plaintiffs, and those Members shall be advised of the categories of materials to be produced set forth in this Order. Those Members shall be then requested to search their personal records, including but not limited to email communications, to determine if there are any additional responsive documents that they have in their possession that have not been included in the materials gathered by their counsel for production and provided to them for review. If those Vandalia Members possess any such additional materials, they shall be provided to their counsel and produced to the Pray Defendants if covered by the permissible areas of inquiry delineated by the Court herein; and in any event, each such Vandalia Member shall execute a sworn Affidavit to the effect that the individual has searched

his/its records and that any such responsive documents have been produced to their counsel.

The Pray Defendants may take at a mutually agreed upon time, the depositions of Stephen B. Farmer (individually and as Vandalia's corporate representative), Andrew A. Payne, III, Shawn P. George, and David P. Ferretti, as qualified below. Counsel for the Vandalia Plaintiffs shall promptly consult with counsel to the Pray Defendants as to which of the dates already set aside by the Defendants' Notices of Deposition filed in this matter are convenient. Counsel shall then promptly confer and arrive at a deposition schedule that will permit these depositions to proceed in an orderly and timely manner, prior to the established discovery cutoff, and affording a reasonable time for each such deposition to be concluded.

In addition to customary background questions and questions addressing the respective roles of these deponents as Vandalia Members in the functioning of the entity, the subject matter of these depositions and the questioning by counsel for the Pray Defendants shall be confined to the communications, events, procedures, determinations, purposes and issues enumerated in subparagraphs *i* through *vii* above. The deposition of Mr. George also will be limited to matters within the topics outlined herein, and further limited to the extent Mr. George reasonably concludes that he is precluded from answering based upon the attorney-client privilege and/or attorney work product doctrine, because Mr. George, as acknowledged by the Pray Defendants, served Vandalia and its Members as legal counsel at various times and in various respects. To the extent Mr. George claims any such privilege in his deposition, he shall explain in the deposition the basis for such claim, without revealing the substance of the information that is being withheld. Further, to the extent any documents are not produced by Mr. George or otherwise not produced by counsel to Vandalia due to a claim of attorney-client privilege or the attorney work product doctrine, or any other claim of privilege, those documents shall be reasonably described and set forth in a privilege log in a customary fashion so that any dispute over the production of these materials can be brought

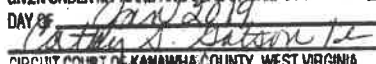
to the attention of the Court in an expeditious and efficient manner.

The objections and exceptions of any party aggrieved by this Order are reserved unto them.

ENTER: 7 day of JAN, 2019.

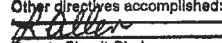
  
HON. JAMES A. YOUNG, JR.  
Circuit Judge – Business Court Division

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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. BATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 9th  
DAY OF Jan 2019  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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Date: 1/9/19  
Certified copies sent to:  
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Deputy Circuit Clerk

M. Staun  
F. Boone  
K. George  
Bus. Ct.