

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Patti Searcy Black and)
Lisa Campbell Bracewell,)
)
Plaintiffs,)
)
v.)
)
Blue Ridge Rural Water Co., Inc.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2024-CP-23-

**SUMMONS
(Jury Trial Requested)**

TO: DEFENDANT IN THE ABOVE CAPTIONED CASE:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 20 Center Street, P.O. Box 1519, Travelers Rest, SC 29690, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Robert C. Childs, III
Attorney Bar No.1218
Attorney for Plaintiffs
20 Center Street,
P.O. Box 1519
Travelers Rest SC 29690
(864) 242-9997
Fax (864) 242-9914
Robert@LawyerChilds.com

Date: 05/08/2024
Greenville, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
)	C. A. No.: 2024-CP-23-
Patti Searcy Black and)	
Lisa Campbell Bracewell,)	COMPLAINT
)	(Jury Trial Requested)
v.)	
)	
Blue Ridge Rural Water Co., Inc.,)	
)	
Defendant.)	

The Plaintiffs, complaining of the Defendant above named, alleges:

1. Plaintiffs Patti Searcy Black and Lisa Campbell Bracewell are citizens and residents of the County of Greenville, State of South Carolina.
2. The Defendant Blue Ridge Rural Water Co., Inc. (hereinafter “Blue Ridge”) is a non-profit corporation set up by the South Carolina legislature in 1971 and was chartered pursuant to loans obtained from the U.S. Department of Agriculture to receive public funds to provide water to customers in rural communities.
3. The Defendant is located in Northern Greenville County and does business in the County of Greenville, State of South Carolina.
4. The Defendant is subject to S.C. Code 33-36-10 et. seq. as a nonprofit corporation providing water supply financed by Federal or State Loans (See S.C. Code 33-36-1210).

The Legislative Findings contained in the preamble to S.C. §33-36-10 indicate:

Corporations not-for-profit exist for a public purpose, and the General Assembly declares that corporations not-for-profit must be treated like special purpose districts for purposes of Chapter 78 of Title 15 [the Tort Claims Act], Chapter 56 of Title 12 [governing issuance of permanent license plates], and [s]ections 56-3-780 and 58-31-30(23) of the 1976 Code. Corporations not-for-profit may participate, under the same conditions as afforded special purpose districts, in the State

Retirement System, the State Health Insurance System, state purchasing programs, and [s]ections 1-11-140 and 141 of the 1976 Code. (Emphasis added.)

5. The South Carolina Freedom of Information Act as set forth in S.C. Code Ann. §30-4-10 et. seq. (Hereinafter referred to as “FOIA”.) provides that a public body is subject to its terms.
6. According to the FOIA, a "public body" is defined as any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in §1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. S.C. Code Ann. §30-4-20(a) (2024) (emphasis added).
7. In *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991) the South Carolina Supreme Court considered the status of a foundation linked to the University of South Carolina that had received transfers of funding and real estate on behalf of university projects and research. *Id.* at 401- 03, 401 S.E.2d at 163-64. The court rejected arguments that the foundation's status as a "private corporation" insulated it from the state's FOIA. *Id.* at 403, 401 S.E.2d at 164.

8. The South Carolina Attorney General has long opined that Rural Water Districts set up as non-profits are subject to the Freedom of Information Act. In 2011 the Attorney General stated that the Jenkinsville Water Company was a public body for purposes of the FOIA. Atty. Gen. Op. Aug. 8, 2011, and in 2006 the Attorney General stated that Saint John's Water Company was subject to the act. Atty. Gen. Op. Dec. 28, 2006.
9. Under S.C. Code Ann. § 30-4-30 (A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access.
10. Further, the FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. *South Carolina Dep't of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978). When adopting FOIA, the legislature stated, "it is vital in a democratic society that public business be performed in an open and public manner." S.C. Code Ann. § 30-4-15 (Supp.2000). *Quality Towing v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (S.C. 2001).
11. The Freedom of Information Act was designed to guarantee the public reasonable access to certain information concerning the activities of the government. The act creates the right to such information, specifies the remedy for the enforcement of such right, and also specifically designates the court in which such remedy may be pursued. *Martin v. Ellisor*, 264 S.C. 202, 213 S.E.2d 732 (S.C. 1975).
12. The Plaintiffs are located in the service area and receive their water service from the Defendant and have executed "water users agreements" as a member of the Defendant's non-profit corporation. Each Plaintiff possesses a numbered membership certificate issued

by the Defendant entitling them to vote for the Board of Directors positions, to inspect and copy all written communications to members within the past three (3) years including financial statements furnished for the last three (3) years, and to inspect and copy “the record of members” and names and addresses of its current Directors and Officers. They are also entitled to the most recent report of each type required to be filed with the Secretary of State and all contracts or other written agreements between the corporation and any of its members and all contracts or written agreements between two or more of the members.

13. The Plaintiffs have been concerned about numerous issues of financial management, service standards, working fire hydrants, water line capacity and maintenance, water quality, infrastructure modernization, community engagement, and emergency preparedness for Blue Ridge.
14. In 2023, the Plaintiffs each separated from the other, decided to do their public duty, and run for Board of Directors of Blue Ridge vacancies and were concerned about the methods, practices, and policies used by Defendant in those elections. Those concerns included lack of transparency and included the use of undisclosed proxies that they believed violated the “open and public” manner of doing business requirements of the FOIA, the secret counting of ballots, and the election process in general.
15. According to Blue Ridge, the Plaintiffs did not receive sufficient votes to be elected to the Board of Directors. Due to concerns about how the election was handled and the lack of open and public use of proxies in that election, the Plaintiffs requested the following information:
 - a) All signed waivers of notice executed and delivered before, or after the annual meeting (pursuant with section 2.4);

- b) All quorums definitively established before the annual meeting (pursuant with 2.5);
- c) The resolution fixing a record date for determining members entitled to vote at the annual meeting (pursuant with 2.7);
- d) The record of members appearing on the books of the corporation at the close of business on the record date fixed by the board prior to the election (pursuant with 2.7);
- e) All records, if any, of a person (or his proxy) present at the annual meeting and the number of votes cast by each person (or his proxy) (pursuant with 2.8);
- f) All proxies executed in writing by the member or his duly authorized attorney in fact and filed with the secretary the day of the meeting. (pursuant with 2.10);
- g) All persons, organizations, or entities that held over one proxy to be voted at the annual meeting including the number of proxies they held. (pursuant with 2.10);
- h) All certificates of membership in the corporation are consecutively numbered with the name and address of the person to whom the certificate is issued, the date of the issuance, and the entry of those certifications on the books of the corporation (pursuant to 9.1);
- i) Records of all transferred or canceled certificates (pursuant to 9.1);
- j) All transfers of certificates are made on the books of the company (pursuant to 9.2);
- k) All articles of incorporation and all amendments to them (pursuant to 9.9(2));
- l) All by-laws or amendments to by-laws (pursuant to 9.9(2));
- m) Resolutions adopted by its board of directors creating one or more classes or series of certificates and their relative rights, performances and limitations, if certificates issued pursuant to their resolutions are outstanding (pursuant to 9.9(3));
- n) All minutes of member meetings, generally within the past three years, including the financial statements furnished for the past three years (pursuant to 9.9(4));
- o) All account records of the corporation for the past 10 years;
- p) The record of members (pursuant to 9.9 second section (3));

- q) All electronic bulletins to its members over the past 5 years.
16. On January 14, 2024, the Defendant responded to the request, provided the attached and herein incorporated response. (Exhibit "A").
 17. On February 12, 2024, the Plaintiffs reiterated their requests but this time pursuant to the South Carolina Freedom of Information Act and also specifying that the response to item 2 of "see the minutes" was not sufficient and requested all records that indicated what the quorum was for the meeting.
 18. Also, the Plaintiffs pointed out that the list they provided was not a record of the members but a printout of customers and that a record of members should be maintained. Another list was provided which still provided no information as to the records of members.
 19. Another response to request number 5 for the record of persons present at the annual meeting was not provided and it appears the Defendant does not have a record of everyone who was present and voted or used proxies at the meeting.
 20. The Defendant failed and refused to timely respond to Plaintiffs' Freedom of Information Act request.
 21. The Defendant continues to refuse to fully disclose to the Plaintiffs the information contained on the proxies used in the election.
 22. The Defendant is still unable to produce certificates of membership for their members.
 23. The Defendant has not disclosed an alphabetical list of the names of all its members who were entitled to notice of the annual meeting.
 24. The Plaintiffs should have the right as a member of the corporation and under the S.C. Freedom of Information Act, to see unredacted versions of all documentation and detail possession of the Defendant.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY AND INJUNCTIVE RELIEF)

25. The preceding allegations are incorporated herein by reference as if repeated herein verbatim.
26. §33-31-610 provides,
- [a]ll members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. *Callawassie Island Members Club, Inc. v. Dennis*, 429 S.C. 493, 839 S.E.2d 101 (S.C. App. 2019).
27. The requested information should be disclosed to the Plaintiffs without redactions or withholding certain documents.
28. It is clear that the election was invalid and not properly documented nor was a record of the election properly kept, nor were adequate minutes kept of those meetings.
29. Plaintiffs are informed and believe that they are entitled to declaratory and injunctive relief declaring their rights as members of Blue Ridge, and the rights of Blue Ridge, requiring the disclosure of all the requested information in full, invalidation of all recent elections, invalidating the current sitting Board Members, setting a new election with ballots counted by an independent 3rd party, and ordering Defendant to comply with the statutes and by-laws in the future.

FOR A SECOND CAUSE OF ACTION
(FOIA OPEN MEETINGS AND ACCESS TO RECORDS)

30. The preceding allegations are incorporated herein by reference as if repeated herein verbatim.
31. The Defendant is subject to the South Carolina Freedom of Information Act.

32. The notice of meetings, published agendas, the meetings of the Defendant and the minutes of the Defendant's meetings fail to comply with the South Carolina Freedom of Information Act.
33. The Defendants abridge the South Carolina Freedom of Information Act by failing to vote in public on matters required to be publicly voted upon.
34. The Defendant's minutes abridge the South Carolina Freedom of Information Act
35. The Defendant has made numerous secret decisions, and the South Carolina Freedom of Information Act was enacted to prevent the government from acting in secret.
36. Allowing voting by secret proxy to elect directors violates the "open and public" manner of doing business required by the South Carolina Freedom of Information Act.
37. The response to the Plaintiffs' request for information was not timely and is in violation of the South Carolina Freedom of Information Act.
38. Based upon the Defendant's failure to comply with the Act, the Plaintiffs request invalidation of the election, an order to disclose all the requested information, and an order prohibiting future violations plus attorneys' fees and costs.

Wherefore, having fully plead the Plaintiffs set the relief set forth above and any other relief the Court deems just and proper.

Respectfully submitted;

s/Robert C. Childs, III
Attorney Bar No.1218
Attorney for Plaintiffs
20 Center Street,
P.O. Box 1519
Travelers Rest SC 29690
(864) 242-9997

Fax (864) 242-9914
Robert@LawyerChilds.com

Greenville, SC
Date: May 8, 2024