

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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JERRY PANTELIDIS,	:	August Term, 2000
Plaintiff	:	
	:	No. 3819
v.	:	
	:	Commerce Case Program
THE BARCLAY CONDOMINIUM ASSOCIATION,	:	
Defendant	:	

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**MEMORANDUM OPINION**

Plaintiff Jerry Pantelidis (“Pantelidis”) has filed a motion to compel the production of ballots cast in an election for the council of The Barclay Inc. (“Motion”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order (“Order”) granting the Motion.

**BACKGROUND**

This matter involves a dispute over the election of four councilmembers of The Barclay Inc. held on June 29, 1999 (“Election”). The background in this matter is more fully set forth in the Court’s opinion dated December 8, 2000 (“Prior Opinion”).<sup>1</sup> In the Prior Opinion, the Court overruled the preliminary objections of Defendant The Barclay Condominium Association (“Association”) and ordered that an answer to Pantelidis’s complaint be filed.

Soon after the Court issued the Prior Opinion, Pantelidis sought to discover the ballots cast by members of the Association in the Election (“Ballots”). When the Association objected, the Parties became ensnared in a dispute over the Ballots’ discoverability, and Pantelidis filed the Motion.

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<sup>1</sup> Available at <http://courts.phila.gov/cpcvtcomp/>.

## DISCUSSION

Under Rule 4003.1(a),<sup>2</sup> a party generally is entitled to the discovery of “any matter, not privileged, which is relevant to the subject matter involved in the pending action.” However, Rule 4011(b) bars discovery that “would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party.” This Rule, the Association argues, precludes the discovery of the Ballots.

The Court cannot agree with the Association’s assertion. Under 15 Pa. C.S. § 5508 (“Section 5508”), a member of a nonprofit corporation has a right to inspect “the membership register, books and records of account, and records of the proceedings of the members, directors and such other body” for “any proper purpose.”<sup>3</sup> In a similar vein, 68 Pa. C.S. § 3316 (“section 3316”) of the Uniform Condominium Act provides that “[a]ll financial and other records [of a condominium] shall be made reasonably available for examination by any unit owner . . . .” This right is interpreted liberally. See Goldman v. Trans-United Indus., Inc., 404 Pa. 288, 171 A.2d 788 (1961) (liberally construing right of access to corporate documents).

While no cases address Section 3316, the Commonwealth Court relied on Section 5508 in Shaw v. Hurst, 135 Pa. Commw. 635, 582 A.2d 87 (1990). There, the plaintiff was a member of the Philadelphia Police Home Association (“PPHA”) and sought permission to inspect PPHA’s corporate

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<sup>2</sup> Each Pennsylvania Rule of Civil Procedure is referred to individually as a “Rule.”

<sup>3</sup> A “proper purpose” is defined as “a purpose reasonably related to the interest of such person as a member.” Section 5508(b). The burden of proving that the purpose is improper is on the corporation. Goldman v. Trans-United Indus., Inc., 404 Pa. 288, 290, 171 A.2d 788, 790 (1961) (citing Strassburger v. Philadelphia Record Co., 335 Pa. 485, 6 A.2d 922 (1939)).

records, including its membership list. Although corporate bylaws restricted access to the membership list to protect the safety of police officers, the court concluded that Section 5508 trumped the bylaws and allowed the plaintiff access to the documents in question.

Here, Pantelidis's request is made for a proper purpose, as it is reasonably related to his interest as a member in determining the legitimacy and propriety of the Election.<sup>4</sup> Consequently, Section 5508 grants Pantelidis a broad right to review the Ballots.

The cases cited by the Association to support its claim that production of the Ballots infringes on the right to privacy are inapposite. In Stenger v. Lehigh Valley Hospital Center, 530 Pa. 426, 609 A.2d 796 (1992), the Pennsylvania Supreme Court held that Rule 4011(b) "is merely a codification of this Court's analysis of the constitutional right to privacy and as such provides no more protection than the constitutional right provides." 530 Pa. at 439, 609 A.2d at 803. As the Association has failed to demonstrate that the voters in the Election had a constitutional right to privacy, its arguments cannot be sustained.<sup>5</sup>

Moreover, the Association's reliance on Judge Albert W. Sheppard, Jr.'s order of July 29, 1999 in BDGP, Inc. v. Independent Mortgage Co., January 1999, No. 812 (C.P. Phila.) ("July

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<sup>4</sup> Indeed, Pantelidis's right to corporate documents is even broader because he is a member of the Association's council. See Lewis v. Pennsylvania Bar Ass'n, 549 Pa. 471, 476-77, 701 A.2d 551, 553-54 (1997) (a director of a nonprofit corporation has a broader right to inspect corporate documents under Section 5508 than a member).

<sup>5</sup> The Association acknowledges that the Association's bylaws "do not specifically state that the election is by secret ballot" and that the Ballots do not identify the voter specifically. Association's Memorandum at 3-4. In addition, nothing in the statutes or other documents governing the Association provides for a right to privacy in voting. This appears to negate any potentially reasonable expectation of privacy on the part of any voter.

Order”) is misplaced. The July Order precludes the BDGP, Inc. plaintiffs from seeking the discovery of certain items from the Community Association Management Company, Inc.<sup>6</sup> However, BDGP, Inc. involves tort claims arising from the purchase and development of The Barclay, not the Election. In addition, it is far from certain that Judge Sheppard’s decision was based on the voters’ right to privacy and, as stated in the Prior Opinion, “it is unclear how the July Order or BDGP, Inc. relates to this matter.” Prior Opinion at 5. As a result, the July Order is of no effect here, and the Motion is granted.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: January 18, 2001

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<sup>6</sup> The July Order states that “the plaintiffs are hereby precluded from taking the deposition of, or otherwise seeking discovery from the Community Association Management Company, Inc. relating to the election of the members of the Council of the Barclay Condominium.”

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**ORDER**

AND NOW, this 18th day of January, 2001, upon consideration of Plaintiff Jerry Pantelidis's Motion to Compel Production of Election Ballots Cast in the June 29, 1999 Election of Council Members of The Barclay Condominium Association, and Defendant The Barclay Condominium Association's response thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Plaintiff's Motion is GRANTED. The Defendant shall produce the Election Ballots Cast in the June 29, 1999 Election of Council Members of The Barclay Condominium Association within twenty days of this Order or appropriate sanctions shall be imposed upon the Defendant following application to the Court.

BY THE COURT:

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JOHN W. HERRON, J.