

STATE OF VERMONT

SUPERIOR COURT  
Caledonia Unit

CIVIL DIVISION  
Docket No. 224-10-19 Cacv

Calkins vs. Martel et al

ENTRY REGARDING MOTION

FILED

Count 1, Violation of 11A VSA (224-10-19 Cacv)

Count 2, Violation of 11A VSA (224-10-19 Cacv)

DEC 11 2020

Title: Motion to Compel (Motion 7)  
Filer: Kevin Calkins  
Attorney: Claudine C. Safar  
Filed Date: October 21, 2020

VERMONT SUPERIOR COURT  
CALEDONIA UNIT

Response filed on 11/09/2020 by Attorney P. Scott McGee for Defendants  
Reply filed on 11/20/2020 by Attorney Christian S. Chorba for Plaintiff

**The motion is GRANTED.**

The court recognizes that the requirements of 11A V.S.A. § 16.02 (c) must be complied with to prevent baseless and vexatious requests that would detract from the ability of a corporation to function effectively. Plaintiff has sufficiently demonstrated that his discovery requests were made in good faith and for proper purposes and therefore qualify as discoverable on the following bases:

1. In January 2018 he was asked, as a shareholder, to consent to election of Subchapter S status. Granting such consent involves consideration of comparative tax consequences and access to information about the operation of the corporation. He employed an expert accountant to assist him in making the requests. While Karen Martel states that there is no current plan to consider such election, she also states that it may occur in the future after distribution from trusts, which is an event certain to happen. Therefore, the request for information remains relevant, especially since, when he was previously asked to consent, he was asked to do it on short notice.
2. There are issues involving administration of two trusts currently open in Probate Court that call for discovery that apparently overlaps with the discovery requested in this case. The Probate Court has deferred to this court on issues of discovery. There is a reasonable basis for the discovery to occur not only for purposes of this case but so that progress can be made in related litigation in the Probate Court.


3. While normally a request for the highly specific information requested would not be amply supported under 11A V.S.A. § 16.02 (c) by the very broad and general statement that the shareholder wants to gain a "better understanding of CSG's finances and Karen Martel's management of the company," Plaintiff has given supporting content and substance to that statement for the above reasons and in addition by the following specific circumstances cited by Plaintiff in relation to his claim that Karen Martel has used her corporate roles to engage in actions as part of a pattern of intentionally inflicting emotional distress on Plaintiff (Count II) by: ostracizing him from employment by the corporation, refusing to provide information in relation to a proposed Subchapter S election, and refusing to disclose the nature and timing of a planned "liquidity event" of the corporation.

For the foregoing reasons, the Motion to Compel is granted. The court agrees with Plaintiff's interpretation of the broad scope of "accounting records."

Defendants shall provide the requested discovery by January 15, 2021.

The request for attorneys' fees in relation to the motion is deferred at this time.

Electronically signed on December 11, 2020 at 01:38 PM pursuant to V.R.E.F. 9(d).

  
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Mary Miles Teachout  
Superior Court Judge

Notifications:

Claudine C. Safar (ERN 3985), Attorney for Plaintiff Kevin Calkins  
Christian S. Chorba (ERN 9179), Attorney for party 1 Co-Counsel  
Michael J. Marks (ERN 4944), Attorney for Neutral Mediator/Arbitrator/Evaluator Mediator  
P. Scott McGee (ERN 3636), Attorney for Defendant Karen K. Martel  
P. Scott McGee (ERN 3636), Attorney for Defendant Calkins Sand & Gravel, Inc.