

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

CAPTAIN BUZZY'S BEANERY, INC.

Plaintiff,

v.

Case No.:

JOHN WHITWORTH

and

KIMBERLY CHEN

and

KAREN JONES

and

AMY BEEM

and

THE CHURCH HILL ASSOCIATION

and

THE TWENTY-THREE HUNDRED CLUB, INC.

and

JOHANNAS DESIGN GROUP, P.C.

Defendants.

Kimberly Chen
2701 East Broad Street
Richmond, Virginia 23223

Johannas Design Group, P.C.
David Johannas, Registered Agent
3313 West Cary Street
Richmond, Virginia 23221

Karen Jones
2809 East Grace Street
Richmond, Virginia 23223

Amy Beem
209 North 27th Street
Richmond, Virginia 23223

John Whitworth
The Twenty-Three Hundred Club, Inc.
2815 East Grace Street
Richmond, Virginia 23223

The Church Hill Association
Secretary, The CHA
414 25th Street

Richmond, Virginia 23223

COMPLAINT

COMES NOW the plaintiff, Captian Buzzy's ("Buzzys"), by counsel, and for its complaint against the defendants The Twenty-Three Hundred Club, Inc. ("the Club"), Kimberly Chen, John Whitworth, Karen Jones, Amy Beem, The Church Hill Association ("the Association"), and Johannas Design Group, P.C. ("the firm"), avers the following:

1. Plaintiff is a coffee shop located in the Church Hill neighborhood ("the neighborhood") of Richmond, Virginia.
2. Defendant John Whitworth is a resident of the neighborhood and was the secretary of the Association at all times relevant. In addition to being a board member and the treasurer of defendant the Club as alleged below, Whitworth, upon information and belief, is also a prospective partner in a venture near 25th Street which would also sell beer and wine on premises and be a competitor of Plaintiff's.
3. Defendant Karen Jones is a resident of the neighborhood and was at all times relevant a director at-large of the Association.
4. Defendant Amy Beem is a resident of the neighborhood and harbors a personal vendetta against Plaintiff's owner, Bob Buffington.
5. Defendant Kimberly Chen is a resident of the neighborhood who possesses a personal vendetta against Plaintiff's owner, Bob Buffington, because among other things she does not believe Buffington grieved enough when his wife and business partner at Buzzys died of cancer in December 2011 nor that he spent enough time with his wife before she passed, all of which is untrue. Defendant

Chen demonstrated her personal malice towards Buffington when, among other things, she threw a flower pot at his head, resulting in a criminal assault charge being brought against her; this occurred on or about September 14, 2013. Defendant Chen's affection for Buffington's wife was so extreme that she insisted on being provided HIPPA access to her records. On another occasion, defendant Chen barged into the restaurant where Buffington and his wife had been operating a pizza restaurant located at 2824 East Broad Street which was doing business as "Buf's Corner" and insisted that Buffington cease operating the restaurant and spend all of his time with his dying wife; Buffington's wife advised Buffington to continue working at and operating the restaurant.

6. Defendant the Association is a civic neighborhood association with a 501(c)(4) non-profit designation.
7. Defendant the firm is a design firm of which defendant Chen is a principal. Defendant Chen authored and sent tortious e-mails through her professional e-mail account with the firm, holding herself out as Partner and Architectural Historian of the firm; and was acting on behalf of the firm at all times relevant. The firm is vicariously liable for all the conduct of Chen as alleged herein.
8. Defendant the Club is a private non-profit members-only club which serves beer and wine among other things to resident-members of the neighborhood. Defendant the club had a competitive relationship with Plaintiff at all times relevant. Defendant the Club has been struggling financially and its treasurer and board member, defendant John Whitworth, has been attempting to craft a business plan to improve the financial performance of the Club and aggressively recruiting

members. Plaintiff's application for a special use permit to allow Plaintiff to sell beer and wine on premises posed competition to the Club. Whitworth was acting on behalf of the Club at all times relevant as an officer to block Plaintiff from obtaining its special use permit and competing with the Club. Defendant the Club is vicariously liable for the conduct of Whitworth as alleged herein.

9. In February 2013, motivated by the new Starbucks' business model, Plaintiff applied to amend its Special Use Permit "the SUP" to allow it to sell beer and wine and also to remain open an additional hour to become more competitive in the marketplace and increase sales and profits.
10. During the Association's February 6, 2013 meeting of its zoning and planning committee, Board member Jon Ondrak introduced Plaintiff's intended language to acquire a SUP application and the committee voted unanimously to approve it so that Plaintiff could stay open an additional hour and serve beer and wine provided the ABC granted Plaintiff such a license.
11. On February 7, 2013, the Association's Board met and unanimously approved the action of the Association's zoning committee to support the intended language to acquire a SUP application by Plaintiff.
12. During the Association's general meeting on April 16, 2013, the membership of the Association voted to approve Plaintiff's 2004 SUP being modified so that Plaintiff could stay open an additional hour and serve beer and wine provided the ABC granted Plaintiff such a license.

13. On May 24, 2013, Tayne Renmark, the President of the Association at the time, wrote a letter to the Richmond city Planning Commission on behalf of the Association formally supporting the SUP.
14. Plaintiff learned on May 30, 2013 when he stopped by City Hall that the SUP had been placed on the docket for June 17, 2013. The next day, May 31, 2013, Plaintiff posted the required notice of zoning change at his business and place of establishment.
15. On June 5 2013, Tayne Renmark e-mailed Jon Ondrak, Waite Rawls and John Whitworth (secretary@churchill.org) and indicated the SUP applied for by Plaintiff was not intended to increase occupancy or allow for a commercial kitchen even though Plaintiff's SUP application requested all of the restrictions of the 2004 SUP be stricken; however, only an extra hour of being open and the ability to serve wine and beer was sought by Plaintiff. Plaintiff followed city staff's recommendations when applying for the SUP. Plaintiff subsequently modified the SUP to only allow Plaintiff to be open an additional hour and serve wine and beer.
16. On June 6, 2013, John Whitworth e-mailed Renmark and then Association vice president Karen Misbach and others, acknowledging the Association had previously approved Plaintiff for an amended SUP allowing Plaintiff to remain open an hour later and serve wine and beer on premises.

17. On June 17, 2013, Whitworth hand-picked 15 people¹ to support him in appearing before the planning commission and seeking a delay of the planning commission's consideration of the SUP. Whitworth solicited said report based on false information, including that Buzzys was for sale when Tayne Renmark had informed him previously via e-mail that the business was not for sale.

18. On June 17, 2013, the Richmond city planning commission considered Plaintiff's SUP application. Whitworth attended the meeting among other people and misrepresented:

- a. That he had actual and apparent authority to speak on behalf of the Association when he did not have such authority and when the Association had already formally supported the SUP and communicated its support for the SUP to the planning commission;
- b. That the Association's letter supporting the SUP was sent prematurely and he on behalf of the Association's membership requested a 30 day delay of the planning commission's consideration of the SUP so a special meeting could be held. The planning commission asked Whitworth how long it would take for the Association to meet and communicate its position regarding the SUP to the planning commission and Whitworth responded, he would have to hold a special meeting and it would take 30 days to get

¹Upon information and belief, these people were Jennie Dotts, Walter Dotts, Eugenia Anderson Ellis, Michael McPeak, Richard Tarannto, Kristen Taranto, Karen Rankin, Tom Wilds, Sandie Lubbers, Benedict Whitworth, Martha Broughton, Randolph Bell, Paul Broughton, John Johnson, Lee Ann Pickerin, Jane Honnicutt, Bill Pickering, Charlotte Kerr, Jonathon Friedman and Karen Jones. Whitworth claims these people asked him to appear before the planning commission and request a delay of its consideration of the SUP; however, several of these people have said they did not request him to appear before the planning commission or ask for a delay.

back to the commission. The Association's membership did not seek such a delay and Whitworth was not authorized to request a delay on behalf of the Association.

- c. That the Association sought a delay of the planning commission's consideration of the SUP when the Association did not seek such a delay and had already communicated its support for the SUP;
- d. Stated that the Association was scheduling a special meeting to reconsider its position on the SUP when no such meeting had been scheduled or contemplated at that time and where the Association had already formally supported the SUP.

19. After the planning commission meeting on June 17, 2013, the individual defendants rallied a number of people to become members of the Association for the purpose of opposing the SUP application.

20. On June 18, 2013, Chen joined the Association and became a member for the sole purpose of opposing Plaintiff's SUP.

21. On June 18, 2013, ensuing the planning commission meeting, Whitworth sent a blind carbon copied e-mail to a number of people so that no recipient knew who else received the e-mail and misrepresented what he had said and had done at the planning commission meeting. Whitworth utilized his position as the Association's Secretary to create a sense of urgency, encouraging opponents of the SUP, including defendants Karen Jones, Beem and Chen, to combine and organize against it, which they did.

22. On June 18, 2013, Whitworth e-mailed then Association president Karen Misbach and the other members of the Association board, and blind carbon copied Markham, falsely stating that the Association had not previously approved and opposes Plaintiff's SUP to the extent it allowed Plaintiff to serve beer and wine on premises even though the Association had previously formally supported said special use. Whitworth also indicated that, "if we are to try to be the arbiter we need to approach Bob and Kim Chen this afternoon". Neither Whitworth nor the Association had any legal authority to reconsider the Association's prior position on the SUP nor become an arbiter between Plaintiff and a newly joined member, Chen.
23. On June 19, 2013, Lori Markham, the city planner handling Plaintiff's SUP, e-mailed Buffington and thanked Buffington for working with her on the amendments to the SUP which only modified the SUP to allow Plaintiff to remain open an hour later and serve beer and wine on premises, which special uses had already been formally approved by the Association.
24. On June 19, 2013, Beem joined the Association and became a member for the sole purpose of opposing Plaintiff's SUP.
25. On June 20, 2013, Beem e-mailed then Association president Karen Misbach and voiced her strong opposition to the SUP, urging the Association to reconsider its decision to support the SUP. In the e-mail, Beem used the pronoun "us" throughout the e-mail, referring to her and defendants Chen and Karen Jones among others. In the e-mail, Beem makes a number of misrepresentations including:

- a. "In fact all 25 houses surrounding Buzzy's are opposed [to the SUP]";
Beem knew this was not true.
 - b. Implying Buffington intended to sell Buzzys when she knew he did not.
 - c. Implying the Association did "not represent" her or Chen "at all" when it formally approved the SUP when, in fact, neither she nor Chen were members of the Association when it decided to support the SUP.
26. On June 21, 2013, Markham e-mailed John Whitworth and Kimberly Chen regarding the SUP to provide copies of the amendments to the SUP which she had assisted Plaintiff in drafting. This e-mail traffic shows Whitworth and Chen had as early as June 5, 2013 begun communicating with the city in an effort to oppose Plaintiff's SUP amendment, ostensibly on behalf of the Association even though the Association had already approved it; and that they knew the SUP would only allow Plaintiff to remain open an hour later and serve wine and beer on premises, uses which the Association had already previously formally supported.
27. On June 24, 2013, John Whitworth, without Association authority, exchanged e-mails with Lori Markham whereby he lobbied for a delay of the planning commission's consideration of the modified SUP because of the need for "time for public input". Additionally, he falsely stated, "I suspect an approval this evening of the original SUP application would create significant problems within the community". Markham also notified Whitworth during these e-mail exchanges about the SUP that had been filed regarding 101 Pear Street.²

² The SUP regarding Pear Street pertained to a proposed development at 101 Pear Street near the foot of Libby Hill Park. Subsequently, the Whitworth led rogue and hijacked Association unlawfully allocated \$5,000 of the Association's funds to a secret

28. On June 25, 2013, Association president Karen Misbach e-mailed a number of people including Karen Jones stating in pertinent part: "since your e-mails, I have analyzed our by-laws and Robert's Rules and have talked with every Robert's Rules expert I'm aware of amongst us. We have all arrived at the same conclusion: the membership's position regarding the Buzzy's SUP cannot be revisited, reconsidered, rescinded... changed. Simply put, I cannot honor your request for a meeting to revisit this issue because the issue cannot be revisited." The defendants ignored the Association's president's directive, prompting her resignation soon thereafter.

29. On June 28, 2013, due to Karen Jones' persistent request to revisit the Association's position regarding the SUP, then Association president Karen Misbach e-mailed Jones and stated in pertinent part, "if I had a dollar every time a client told me they found an answer they really wanted through the internet... since you seem to be quite entrenched in this, here is my reasoning" and provided a thorough analysis explaining how Robert's Rules of Order and contract law preclude the Association from revisiting its April 16, 2013 formal decision to support the SUP.

30. On June 28, 2013, an Association member e-mailed then Association president Karen Misbach, concurring with Karen Misbach's June 25, 2013 analysis and e-

organization known as RVA river-view associates or advocates to oppose the 101 Pear Street proposed development, leading to the resignation of at least another Association board member. Whitworth refused to acknowledge objections to said allocation of the \$5,000. The May 21, 2013 Association board meeting minutes reflect only that the Association authorized a committee to have joint discussions with developers regarding the scale and use of the parcel of land at Pear and Main, appointing the following members to serve: Waite Rawls, Eugenia Anderson-Ellis, Bill Dinkin, Marion Macdonald and two other members.

mail and stating in pertinent part: "At worst, at a special meeting, this so called "new" matter could only be brought up but would then need to be referred to the Zoning Committee, as is our written procedure, for it to make a recommendation to the membership at a regularly scheduled meeting.... It could not be voted on at that special meeting." The board member also noted a minority of people were "holding the entire membership hostage, for their own malicious intentions." Nevertheless, the defendants continued hijacking the Association and foisting a combined secret agenda upon the Association..

31. On July 5, 2013, defendant Chen sent an e-mail from her professional firm e-mail account to the Richmond city council members attaching a color coded survey indicating the residents of the neighborhood nearby opposed Plaintiff's modified SUP application. In fact, the survey grossly misrepresented the neighborhood residents' position on the SUP. Chen sent this e-mail from her professional e-mail account so it would carry more ostensible credibility and weight as her business partner is a member of the planning commission.
32. On July 5, 2013, after Chen forwarded neighbor Russell Porter a copy of the e-mail and survey she sent to the Richmond city council, he responded, "I am afraid that you have been misinformed. Your statement, 'the green represents households that are opposed to any changes to the 2004 SUP' is incorrect... my own experience while polling was that the major objections to 2013-112 were to the full ABC and full restaurant elements. Respondents were not asked about Mr. Buffington's proposed revisions to 2013-112 which replaced those elements with beer and wine only and coffee shop... I submit that it is only appropriate to say

respondents support or oppose what they were asked about.” Chen replied to Porter’s concerns, “it is a matter of semantics”: Porter responded, “I must say this is more than semantics in my view”. Nevertheless, Chen did not correct the misrepresentations she had communicated to City Council. Chen’s e-mail to City Council from her professional e-mail account and a copy of the color-coded map attached to said e-mail are attached hereto as Exhibit 1. The e-mail falsely and intentionally misleads City Council that 95% of residents surveyed opposed the SUP when, in fact, they did not.

33. Kellman, a principal of the limited liability corporation that owns Plaintiff’s building, conducted an in-depth survey of all the residents within 150 feet of Buffington’s coffee shop and determined that the 15 people who allegedly signed the petition opposing the SUP represented only 30% of the residents within 150 feet of Plaintiff’s business and the other 70% either supported or did not oppose the SUP.

34. On July 16, 2013, the Association held a regularly scheduled meeting where Whitworth, among other things, failed to disclose he had appeared before the planning commission on June 17, 2013 and misrepresented the Association’s formal position at the planning commission at said meeting. The meeting’s agenda did not include consideration of the Association’s formal position on Plaintiff’s SUP or give notice of a vote thereon. The Association’s President, Karen Misbach, stated nothing had changed regarding the SUP modification application since April 2013 and opposed a re-vote on the issue; however, defendants Jones, Chen and Whitworth forced a vote on Plaintiff’s SUP

application. Chen misrepresented that she had told Buffington about the meeting. Buffington did not know about the meeting and was not present to argue his position. The defendants deliberately waited until after most of the members attending the meeting had left before bringing the SUP up for consideration, without a motion being made to add it to the agenda and without a motion to suspend Robert's Rules of Order. A member in attendance raised the issue that consideration of the SUP could not be entertained because such consideration would be inconsistent with Robert's Rules of Order and the Association's by-laws. Board member Karen Jones responded that she had consulted a source in preparation for this meeting and declared that Robert's Rules of Order did not apply to the Association's consideration of the SUP; she refused to disclose her source. President Karen Misbach called for a "straw-man's" poll to determine if the members wished to discuss the SUP issue. Several members objected to the Association's consideration of the SUP but several members were in favor of considering it as the organizers of the opposition to the SUP had organized before the meeting; the meeting was a well-planned ambush by the individual defendants and other staunch opponents of the SUP. During discussion of the SUP, Chen falsely stated Buffington knew about the instant meeting because she had telephoned him that day and talked to him for over an hour. Chen went on to misinform the meeting's attendees that the SUP up for consideration was the original SUP and not the SUP which had been modified to only allow Plaintiff to remain open an hour later and serve wine and beer. Whitworth moved for a vote to deny support of the SUP, Beem and Chen seconded the motion, the question

was never called but a vote was taken. The motion passed according to the defendants.

35. The minutes of the July 16, 2013 meeting indicate the Association's membership had increased by 28 during the past two months for a total of 212. The minutes also reflect Marion McDonald, a member of the RVA River Advocates informed the members the city planning department had informed them on June 24, 2013 that a developer's SUP had been received on June 6, 2013 for a proposed condominium development called "The James on the Bend" and that "the clock is ticking" for the Association advocacy group to provide input on the proposed SUP.

36. On July 17, 2013, defendant Chen e-mailed the planning commission falsely stating the Association did not support the SUP.

37. On July 20, 2013, Whitworth visited concerned Association member Jean McDaniel at her house to explain the 15 member "petition" opposing the SUP application. He made numerous misrepresentations to McDaniel, including that a meeting had been scheduled between Buffington and Chen to discuss ways she and others could help Buffington operate his business. McDaniel indicated she would like to attend the meeting and he adamantly informed McDaniel she could not attend the meeting. In fact, no such meeting had been scheduled. McDaniel informed Whitworth he had violated the Association's by-laws, advocated against the membership's interests clandestinely, that he violated the duties he owed the Association's membership and that he owed the Association's membership a full

- disclosure of his actions. Whitworth responded by walking-out of McDaniel's house without saying another word.
38. On July 21, 2013, McDaniel e-mailed John Whitworth inquiring further about the alleged "15 person petition" supposedly authorizing Whitworth to appear before the planning commission; he never responded.
39. On July 22, 2013, defendant Chen e-mailed Buffington about wanting to get a group together to "help" Buffington with his business. Chen also states, "I have decided to remove myself from this toxic mess because I owe it to Mary Ann [Buffington's deceased wife]. She would have been horrified to see the neighborhood divided over this issue and the level of hatred and dishonesty that are being promulgated". Defendant Chen included these comments to be purposely hurtful and malicious towards Buffington.
40. On July 23, 2013, defendant Beem e-mailed Buffington about getting a group of people together to "help" Plaintiff improve his business. In fact, Beem, Chen and others were plotting to hijack Buffington's business and create internal chaos at Buzzys, forcing it to abandon the SUP. Buffington wisely rejected their offer.
41. During July 2013, defendant Chen contacted Plaintiff's landlord Howard Kellman and said, "I thought you wanted to live here, if you want to live here and be a part of Church Hill, you better make sure Bob [Buffington] stops this". referring to pursuing the SUP.
42. On August 11, 2013, seven Association Board members resigned from the board and as members because of the individual defendants' hijacking of the Association regarding the SUP and its allocation of \$5,000 to the secret society

- organized to oppose the Pear Street SUP among other things. For example, Beem told then President Karen Misbach, "if you're not with us, get out of the way".
43. On August 16, 2013, at a social function, Jean McDaniel overheard Whitworth say, "I have lost 70% of my board". McDaniel responded to Whitworth, "I thought it was the CHA Board, not yours"; Whitworth did not respond.
44. On August 19, 2013, Whitworth posts in the Association's newsletter, "forward any inquiries [regarding anything] to the CHA secretary", which was and remains defendant Whitworth.
45. On August 30, 2013, Whitworth sent a letter to the City Clerk changing the Association's official position on the SUP from "support" to "non-support". Whitworth violated the Association's by-laws when he sent said letter. The Association's by-laws prohibit its formal positions from being changed as they are considered permanent.
46. During September 2013, one of the defendants' neighborhood friends told Kellman that after Bob [Buffington] "is done", it would be nice to have a wine and beer store in the space and indicated such a tenant would be available. Circumstantially, this conversation shows the defendants' goal was to put Plaintiff out of business.
47. On September 4, 2013, the Association held a board meeting without any notice to members.
48. On September 14, 2013, City Council postponed a vote on the SUP until September 23, 2013.

49. On September 23, 2013, City Council postponed a vote on the SUP until October 14, 2013.
50. On September 24, 2013, the Association held a board meeting without any notice to members.
51. During September 2013, Whitworth registered himself as registered agent of the Association.
52. On October 3, 2013, the Association held a board meeting without any notice to members.
53. On October 14, 2013, City Council postponed a vote on the SUP until October 28, 2013.
54. On October 24, 2013, an “attack” ad (“the ad”) against the SUP ran on CNN with Amy Beem's voice. Research reveals the ad was produced by Tim Hawkins, photography Director at CBS 6, who owns a production company with his wife Amanda Hawkins, Hawkdoza Productions. Amanda Hawkins has been quoted in the media, “the group was specific that the video was meant to address the proposed changes at Captain Buzzy's Beanery” and “the group wished to remain anonymous”. Among other things, the ad utilized the Association’s logo without authorization, falsely implying the Association was behind the ad and falsely stating the Association did not support the SUP, among other things. Even though the Association’s vice-president, Geoffrey Cooper, publicly stated the use of the logo in the ad was not authorized by the Association, the Association has not formally addressed or investigated the unauthorized use of the logo. Upon

information and belief, the group included Beem and Chen and the other individual defendants, among others.

55. On October 28, 2013, the misinformed and heavily lobbied City Council voted against the SUP 4-3 even though the majority of Church Hill residents and the pre-hijacked Association supported the SUP.

56. On November 19, 2013, the Association held a membership meeting without publishing any agenda before-hand.

Count I: Tortious Interference with Contract or Expectancy

57. All previous allegations are re-alleged.

58. At all times relevant Plaintiff possessed a reasonably certain expectancy in the special uses the SUP would have provided “the expectancy”, namely remaining open an hour earlier and selling beer and wine on premises. Plaintiff was employing the contemporary Starbucks business model and had the SUP been approved, as it would have been absent Defendants’ collective tortious interference, Plaintiff would have been able to remain open an hour later and serve beer and wine, increasing Plaintiff’s sales substantially as will be proved at trial.

59. Defendants interfered with the expectancy described above via improper methods, by in engaging in independently tortious conduct including defamation, misrepresentation, sharp practices, unethical conduct, deceitful conduct and other such independently tortious improper methods. Specifically, these methods included:

- a. Running a false attack ad against Plaintiff which among other things included the unauthorized use of the Association's logo and which also falsely said the Association had voted against the SUP. among other things;
- b. Appearing at the June 17, 2013 planning commission without actual authority and falsely implying the Association did not support the SUP and seeking to delay the planning commission's consideration of it (Whitworth) among other things as alleged above;
- c. E-mailing neighborhood residents to create a sense of urgency and encouraging them to mount an opposition to the SUP (Whitworth) while disbursing false information;
- d. E-mailing Karen Misbach and copying Markham, falsely stating the Association had not approved the SUP and encouraging her to join as "an arbiter" without any authority whatsoever (Whitworth);
- e. Using false information to rally and organize residents of the neighborhood to oppose the SUP, ignoring the Association's by-laws in the process, even though the SUP had already been formally supported by the Association (all individual defendants);
- f. Urging then Association president Misbach to ignore the Association's by-laws and have the Association reconsider its formal decision to support the SUP, citing false information (all individual defendants);
- g. E-mailing city planner Lori Markham and falsely implying numerous residents and the Association did not support the SUP to the extent it

allowed Plaintiff to serve wine and beer on premises (Whitworth and Chen);

- h. E-mailing all of the members of City Council from her professional e-mail account and falsely stating 95% of residents surveyed on the attached color-coded map opposed the SUP (Chen);
- i. Ignoring the by-laws of the Association and Robert's Rules of Order and forcing a "new" vote by the Association on the SUP without giving notice by placing the matter on the meeting's agenda, after falsely stating Buffington knew about the meeting, after falsely stating the SUP at issue was the original proposed modified SUP and not the SUP amended during June 2013 and after waiting until the end of the meeting when many attendees has left before forcing this vote (all individual defendants);
- j. E-mailing the planning commission without authority and misrepresenting the Association did not support the SUP (Chen);
- k. Contacting Plaintiff's landlord and threatening "if you want to be a part of Church Hill, you better make sure" Plaintiff stops pursuing the SUP (Chen);
- l. Sending a letter to the City Clerk formally changing the Association's formal position on the SUP from "support" to "non-support" (Whitworth);
- m. Engaging in the other conduct alleged herein which tortiously interfered with the expectancy Plaintiff possessed in the right to remain open an hour later and serve wine and beer on premises and the SUP, which SUP would have been routinely approved but for the combined tortious interference of the defendants.

60. Defendants' combined intentional interference by improper methods with the expectancy proximately caused substantial damages to Plaintiff for which it seeks compensatory damages in an amount to be proved at trial.

61. Defendants willfully and wantonly interfered with the expectancy by improper methods and with actual malice and a reckless disregard of the legal rights of Plaintiff; as such, Plaintiff seeks \$350,000 in punitive damages in order to punish these defendants for their conduct and deter them and others from engaging in similarly reprehensible conduct.

Count II: Statutory Conspiracy

62. All previous allegations are re-alleged herein.

63. Plaintiff applied for the SUP and the Association, prior to being hijacked by the defendants, approved and formally supported the SUP through an organized process, consistent with its by-laws.

64. Defendants violated Virginia Code Section 18.2-499 and 18.2-500 ("the criminal conspiracy statutes") and are liable therefore as Defendants combined willfully, maliciously and without lawful justification to injure Plaintiff in its trade and business as alleged above and by combining to tortiously interfere with the SUP and expectancy in the right to remain open an hour later and serve wine and beer on premises. Defendants hijacked the Association and caused the Association to become an accessory to their conspiracy, ignored its by-laws³ and Robert's Rules of Order, organized the July 16, 2013 ambush and through all of the machinations

³ In addition to the unlawful acts taken in derogation of the by-laws, Association meeting are to be taped according to a resolution voted-in by the membership but secretary Whitworth deliberately has not been taping them and his meeting minutes often distort meeting events or omit significant portions of the meetings.

alleged herein, deceived the city planning commission and City Council into believing the vast majority of the neighborhood did not support the SUP and the Association had properly and formally withdrawn its support of the SUP. As a proximate cause of the defendants' deceitful, independently tortious and organized campaign against the SUP, it was denied and Plaintiff suffered and will continue to suffer substantial damages in an amount that will be proved at trial.

65. Under the equitable authority provided under the criminal conspiracy statutes, Plaintiff requests the Court appoint a Special Master to un-hijack the Association and wrest it from the individual defendants' control, declare null and void all of the actions the defendants caused the Association to take which violated its by-laws, oversee new elections and require the Association to report to the Special Master for a period of twelve (12) months to ensure it is adhering to its by-laws. A recent example reflective of the Association having been hijacked is attached as Exhibit 2, a demand letter from resident Jean McDaniel which the Association refused to respond to other than to summarily state it had conducted an investigation and found no wrongdoing.

66. Plaintiff seeks attorney's fees and treble damages over and above their actual damages as permitted under the criminal conspiracy statutes against all defendants, jointly and severally.

WHEREFORE, the plaintiff, Captain Buzzy's Beanery, Inc., by counsel, seeks the equitable relief sought above, compensatory damages against the defendants jointly and severally in the amount of \$3,000,000 plus costs and pre-judgment interest: and punitive damages against the defendants in the amount of \$350,000.

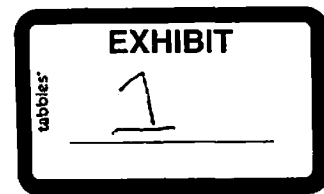
TRIAL BY JURY REQUESTED

Captain Buzzy's Beanery, Inc.,

By Counsel

A handwritten signature in black ink, appearing to read 'D. Hayden Fisher', is written over a horizontal line. The signature is stylized with several loops and a long horizontal stroke extending to the right.

D. Hayden Fisher, Esquire (VSB# 44061)
Fisher Clarke PLLC
P.O. Box 7321
Richmond, Virginia 23221
(804) 340-0285
(804) 482-2725 (facsimile)



From: Kim [mailto:Kim@johannasdesign.com]

Sent: Friday, July 05, 2013 11:04 AM

To: Newbille, Cynthia I. - Council Member; Samuels, Charles R. - Council Member; Hilbert, Chris A. - Council Member; Baliles, Jonathan T. - Council Member; Agelasto, Parker C. - Council Member; Graziano, Kathy C. - Council Member; Mosby, Michelle R. - Council Member; Robertson, Ellen F. - Council Member; Trammell, Reva M. - Council Member

Subject: SUP 2013-112

Honorable Members of City Council,

I wanted to share the following map and information with you prior to your meeting on July 8 regarding the expansion of the SUP for Captain Buzzy's Beanery in Church Hill. The attached map and petitions represent a door to door survey that was conducted by concerned neighbors last weekend and early this week. The black outline demarcates the area that was canvased and the red dots indicate the houses that were on the City's mailing list to receive notification. The green represents households that are opposed to any changes to the 2004 SUP, the two shades of blue represents houses that are vacant or where there was no response, and the white represents houses that either support or were noncommittal.

A total of 85 houses were surveyed and 28 were either vacant or we received no response. Of the 57 houses that responded – 54 were opposed to any changes to the SUP (95%), 1 was in support of changing the SUP and 2 were noncommittal. The results were very similar for the 38 houses that received City notification. Five of the houses in this group are either vacant or we received no response. Of the 33 responses – 30 were opposed to any changes to the SUP (91%), 1 was in support of changing the SUP and 2 were noncommittal.

These statistics represent an OVERWHELMING lack of support by the immediate neighbors who will be the MOST impacted by any changes to the SUP.

We are very happy with the current business model at 2623 East Broad Street – an alcohol free coffee shop – and feel that it has been a tremendous asset to the

community. It has created a unique gathering place that would be destroyed by acceptance of the modification represented in SUP 2013-112. These

modifications would change the character and intensity of business use.

We feel that the 2004 SUP represents a contract between the building owner and the surrounding neighbors. A contract upon which we have based substantial

financial commitments. The 38 houses within 150 feet of Buzzy's represent over \$15 million dollars in assessed value.

We are united in our opposition to the sale of alcohol at this location and feel that it is not necessary for every corner establishment in Church Hill to sell alcohol.

The neighbors respectfully request that you honor the contract represented in the 2004 SUP and reject SUP 2013-112 that is before you and not accept any amendments to this document. We are willing to start over with the business operator and building owner from a clean slate to negotiate changes to the SUP that DO NOT include the sale of alcohol on either a temporary or permanent basis.

Thank you for your time and consideration.

Kim Chen

Kimberly M. Chen, Partner
Architectural Historian

Johannas Design Group
1901 West Cary Street
RVA 23220

804.358.4993 (p) 804.358.8211 (f)



[Neighbor Survey.pdf \(764 KB\)](#)

Opposed to
Ordinance
2013-112

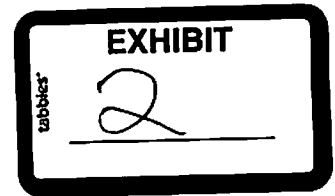


No Response/
Vacant



Within 150'





October 8, 2013

Jean McDaniel
2810 East Grace St.
Richmond, Virginia 23223

REGARDING Misconduct of Board Members of the Church Hill Association

Mr. John Whitworth
Secretary, Church Hill Association
2815 East Grace St.
Richmond, Virginia 23223

Ms. Karen Jones
Director at Large, Church Hill Association
2809 East Grace St.
Richmond, Virginia 23223

Dear Mr. Whitworth and Ms. Jones

As you know, the Church Hill Association is governed by the by-laws of that association and is a membership organization wherein members pay annual dues. First and foremost the officers of the Church Hill Association represent and conduct themselves on behalf of the membership. Under Article XI, Appendix 1 which was implemented by the membership on March 19, 2013, the membership made it very clear what their expectations of their board members are.

Under Guidance Statement for the Board of Directors for the Association:
"The membership expects members and leaders of the Board and of committees scrupulously to adhere to the Association's by-laws and refrain from communicating policy or substantive positions in writing or orally to governmental officials or other leaders unless those statements of position are the express result of consultations with the membership as specified by the by_laws."

Mr. Whitworth with the assistance of Ms. Jones has violated this by-law on several occasions.

Mr. Whitworth you also violated Article VI, Section 2 of the Church Hill Association by-laws which clearly state:

"The President may call a special meeting of the Association upon receipt of a petition signed by 15 members so requesting. The petition shall state the purpose for which the meeting is requested". In your attempt to circumvent the formal position of the membership, you erroneously used this by-law and in the guise of following procedure, twisted it's meaning beyond credulity.

On June 17, 2013 you created a false sense of urgency based on "new information" that you knew was inaccurate. Tayne Renmark, then President of the CHA, had explained to you via e-mail in May that this information was outdated and invalid. Several Board members questioned the veracity of this "new information" and asked you who gave it to you. You were told by several Board members that you did not need to persue this. You ignored the advice of your fellow Board members and the By-laws. Without the knowledge or consent of the Church Hill Association membership you, Mr. Whitworth, with the assistance of Ms. Jones, appeared before the City of Richmond Planning Commission as a Board member of the Church Hill Association and represented nonmembers.

You did not have authority to speak for the Church Hill Association or ask for a thirty day delay. Per Article VIII, Section 1, paragraph 2, only the zoning committee as a body has authority to request from the City a delay, and only in instances of meetings of the Committee of Architectural Review. This authority is not given to the president, nor is it given to you. You did not have authority to state that the Church Hill Association had sent a letter of support on a zoning issue prematurely. You made additional false statements representing the Church Hill Association.

Mr. Whitworth you further violated the Church Hill Association by-laws with the assistance of Karen Jones on July 16, 2013. You and Ms. Jones were duplicitous in bringing forth a vote to reverse a formal position previously approved by the membership. Although Ms. Jones abstained in voting, you Mr. Whitworth reversed your earlier vote and voted with Ms. Chen. You subsequently proffered a letter under your signature revising and reversing the memberships formal position. Under Article IV, Section 3 and 5, you had no authority to do so. You are not and were not then the President of the Church Hill Association. Moreover, the Church Hill Association's by-laws are governed by Robert's Rules of Order and as such are very specific as to how and when a legitimate vote of the Association can and should be overturned. At no time during the meeting of July 16 was a motion made to suspend Robert's Rules of

Order. In fact, Ms. Jones claimed that her research done on this subject in preparation for this meeting allowed this vote to take place. However, the votes of July 16 are factually invalidated by the by-laws own definition of governance.

Mr. Whitworth you are also in violation of Article IV, Section 5 of the Association by-laws. As the Secretary of the Church Hill Association, you are charged with publishing accurate minutes of membership and board meetings. You do not have authority to edit or leave out relevant comments or issues. You have done so on at least two separate occasions, the most egregious of these being the membership meeting of July 16, 2013. You omitted an exchange between Ms. Chen and James Becker. Ms. Chen was asked if Robert Buffington knew about this meeting and the vote to be taken. Ms. Chen stated that she had telephoned him that day and talked to him for over one hour and yes, he knew about the vote. Several other members asked, "Then where is he, if he knew about this he would be here". It was later verified that Ms. Chen had NOT telephoned Mr. Buffington and he DID NOT KNOW about the meeting or vote to be taken that night. You and Ms. Jones did know about this surprise vote because you both worked to arrange it.

You Mr. Whitworth do not have authority to go into the written record and delete documents once they have been published in the Church Hill Newsletter. You have done so on at least two separate occasions.

You, Mr. Whitworth have stated that, "The association is charged with taking into account the interest of all residents, business owners, property owners and members". No where in the Church Hill Association by-laws is this statement found. You, Mr. Whitworth do not have authority to fabricate what the Association is charged with.

Your actions have resulted in the resignations of dedicated members and board members of long standing. The anger and frustration over the perpetuation by you and Ms. Jones of rumors and misinformation that had been proven to be false left no choice. Actions taken by you that affect the membership but which the membership knows nothing about put all members in danger!

I take great offense at the above conduct. I have lived at 2810 East Grace since 1978 and have participated in the Church Hill Association and other civic activities for much of that time. I no longer feel that I can be a member of an Association which disregards its membership and By-laws. I suggest that for the future well being of the Church Hill Association the current Board of Directors closely examine these allegations.

Additionally I suggest the following actions be implemented to provide redress to me, the membership, and the Church Hill Community:

- 1 That Mr. Whitworth and Ms. Jones resign from the Church Hill Association Board of Directors immediatly.
- 2 That Mr. Whitworth and Ms. Jones acknowledge their improper conduct.
- 3 That Mr. Whitworth and Ms. Jones publish their acknowledgement in the CHA Newsletter
- 4 That both Mr. Whitworth and Ms. Jones compensate Jean McDaniel in an amount to be requested of the CHA insurer. By this letter I am filing a formal claim under policy number NOA 1313719 with Wilson Timmons & Wallerstein.

I regret that you have forced this situation to this point. However since I have requested of you several times (in writing) that you make full disclosure of your misconduct and persistant disregard for the Church Hill Association By-laws to the membership, and you have chosen to ignore such request, I see no other recourse. You have taken every opportunity to insure that your conduct does not become public. In Fact, Ms. Jones wrote to me with more than a touch of arrogance that, "your letter to the editor will not be published"! Your silence is indicative of your awareness that your subtreffuge and misrepresentations are completely unacceptable behaviour by Officers of the Church Hill Association.

A response is requested within 15 days of receipt of this letter. Should you fail to respond, I and other like minded members and former members will have no alternative but to consider more serious actions to seek a remedy.

Sincerely
Jean McDaniel

Cc: John Johnson
President, Church Hill Association
2710 East Grace St.
Richmond, Virginia 23223

Mr. Jack Wilson, Sr.
Wilson Timmons & Wallerstein
2570-A Gaskins Rd.
Richmond, Virginia 23238

Policy Number NOA 1313719