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Order on Application for Award of Expenses of
Litigation and Attorneys' Fees (BLANFORD
INVESTMENTS)

Melvin K. Westmoreland
Superior Court of Fullton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
DEC 13 2011
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA
[Handwritten Signature]

COPY

BLANDFORD INVESTMENTS, LLLP (Ethel)
B. Prescott, General Partner),)
ETHEL B. PRESCOTT, Individually,)
ETHEL B. PRESCOTT, as Executrix of the)
Estate of VIRGINIA M. BLANDFORD,)
ETHEL B. PRESCOTT, Trustee of the)
STUART BLANDFORD TRUST, WILLIAM D.)
PRESCOTT and SINCLAIR A.)
FREDERICK, III,)

Plaintiffs,)

v.)

MCDONALD INDUSTRIAL VIII, LLC,)
MCDONALD INDUSTRIAL XXI, LLC,)
MCDONALD INDUSTRIAL XXIV, LLC,)
MCDONALD DEVELOPMENT COMPANY,)
and JOHN R. MCDONALD,)

Defendants.)

Civil Action File No.

2011CV200764

ORDER

On December 6, 2011, Counsel appeared before the Court to present oral argument on Plaintiffs' Application for Award of Expenses of Litigation and Attorneys' Fees. Upon consideration of the record in this case including the pleadings, briefs, memoranda of law, affidavits and argument of counsel this Court **DENIES** Plaintiffs' application for the reasons set forth below.


The Court finds that an award of fees and expenses is not appropriate under any of the statutes cited by Plaintiffs. First, under O.C.G.A. § 13-6-11, the Court declines to find that Defendants' conduct amounts to bad faith because the Court considers the dispute over

Plaintiffs' membership a bona fide controversy. Furthermore, because Plaintiffs apparently preferred to resolve the matter through the judicial process, as evidenced by their decision to terminate the settlement negotiations with Defendants and initiate this lawsuit, the Court cannot say that Defendants left Plaintiffs with no choice but to file suit. Accordingly, the factors that support an award of fees under O.C.G.A. § 13-6-11 are not present in this case.

Turning to O.C.G.A. § 9-11-37(a)(4), the Court finds that Plaintiffs were premature in pursuing discovery of documents to which only Members of Defendant LLC's were entitled prior to a determination of whether or not Plaintiffs were Members of certain Defendant LLC's. Accordingly, Defendants' motion for protective order and opposition to Plaintiffs' motion to compel was substantially justified. Thus, Plaintiffs are not entitled to an award of fees under O.C.G.A. § 9-11-37(a)(4).

Finally, because Defendants were willing to negotiate with Plaintiffs over the production of the requested information and therefore, did not refuse to permit the inspection under the express language of O.C.G.A. § 14-11-313(3), the Court declines to award fees under O.C.G.A. § 14-11-313(3).

SO ORDERED this 13th day of December, 2011.


MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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