



## CCI vs HSVPOA Hearing

### Description

#### CCI vs HSVPOA Summary Judgment Hearing 6/19/19

Written by Cheryl Dowden

**Preface:** I am not an attorney and the following is just my opinion on what transpired in the courtroom. The hearing was fast-paced and the subject matters were mixed in with each other, so it was difficult for the layman to follow all the arguments. The points were all very well presented, but the case is complicated and the issues are interrelated to each other. I have attempted to separate the issues and talk about what transpired with each one. Here goes:

#### And so it began

It was another hot and muggy afternoon in Central Arkansas. But it was not just another day for Hot Springs Village Property Owners' Association and Cooper Communities.

**CCI** attorneys and HSVPOA attorneys exchanged arguments on June 19, 2019, in the Saline County Courthouse, where The Honorable Robert Herzfeld, Fourth Division, presided over the proceedings which lasted approximately one hour. The hearing was well-attended by approximately 35 property owners.

Sitting at the large table in a circle, facing the judge sat Clay Stone and John Baker, of Mitchell, Williams, Selig, Gates & Woodyard. Both Stone and Baker were representing the Hot Springs Village Property Owners' Association. Tom Weiss, ex HSVPOA Board Chairman sat to the right of Mr. Baker.

Continuing counterclockwise, sat Brian J. Reis of Legacy Law Group and Richard T. Donovan of Rose Law Firm, both representing Cooper Communities, Inc. (CCI) Also, seated at the table was William Kennedy, lead counsel for CCI. The attorneys that presented the arguments were Mr. Baker for **HSVPOA** and Mr. Donovan for CCI.

Summary judgment was requested, and this is what happened:



### **CCI v HSVPOA Hearing Scales of Justice & Gavel**

After the introduction of the ‘players’ sitting at the table, there were brief technical issues with the court reporting system. The court reporter addressed this issue and the hearing proceeded smoothly and lasted approximately one hour.

### **The issues before the court**

Five main issues, in my opinion, were argued during the hearing:

1. Is the statute used in the argument constitutionally vague? (more on this below)
2. Does CCI have a “proper purpose” to request the information they requested?
3. Does CCI have a right to know the compensation package of the CEO?
4. Does CCI have a right to not only view the member list and contact information but also does this include the right to photocopy or photograph this information?

5. Should a summary judgment be granted?

**1. Is the statute used constitutionally vague?**

The case cited was Davis v Smith. This had to do with the termination of parental rights. Judge Herzfeld said there were different degrees of vagueness between Parental Rights, Business Rights, and Criminal Rights. The Davis v Smith case used the word “proper”. The word “proper” in the Davis v Smith case was used in regard to whether the parents, in this case, had the obligation to provide a “proper” home for their child(ren).

CCI’s attorney said the Davis case is “apples”, with this case being “oranges”. The statutes involving economic regulation are subject to the least strict vagueness test. The court rationalized that in those types of statutes the vagueness test should be least strict.

Judge Herzfeld said the Davis case is talking about fundamental parental rights which have a higher standard for vagueness. The reason the word “proper” is used is so that someone doesn’t use the information for nefarious reasons.

**Judge Herzfeld denied the motion to declare the statute constitutionally vague.**

**2. Does CCI have a “proper purpose” to request the information they requested?**

The HSVPOA claimed CCI may have wanted the information for “disingenuous” reasons. HSVPOA claimed CCI sent out flyers stating the CEO had “high” compensation.

CCI claimed they did not want the members’ contact information for nefarious purposes. (One example of nefarious purposes would be to sell the contact list.) CCI claimed they needed the members’ contact information in order to protect their rights as they wanted to be on a level playing field with the POA in future elections. CCI agreed they did have a member list, but it was “cobbled together” and not complete. CCI claimed they need the full list with contact information to be able to contact the HSVPOA property owners for future elections.

CCI claimed the HSVPOA wants to have a monopoly of communication with the members. CCI claimed it was clear what the HSVPOA motivation was; there was not a level playing field; the HSVPOA “ran out the clock”.

Judge Herzfeld asked the HSVPOA attorney if the HSVPOA thought CCI was going to sell the information to somebody.

The HSVPOA Attorney said, “that is not in dispute, at least not yet”.

The HSVPOA claimed that giving up member addresses and emails is against everything Hot Springs Village Property Owners has stood for. The corporation is supposed to protect the safety and security of the property owners. The HSVPOA gave Cooper a whole room full of records. When you ask for personal information this is opening the door to the Avon Lady and the Boy Scouts wanting this information.

Judge Herzfeld said, “as long as the Boy Scouts are members”.

The HSVPOA attorney said, “If the Boy Scouts were members, you would need to look at their motivation”.

HSVPOA claimed CCI already had the member list and contact information and that CCI had already mailed flyers/postcards to the members.

Judge Herzfeld said communication was done through snail mail, which is not the most cost-effective method of communication. Emails cost less. Mailing 10,000 letters cost a lot more than sending 10,000 emails.

The HSVPOA attorney said he supposed it was so but he didn’t know that.

Judge Herzfeld stated it was common knowledge that snail mail is less expensive.

CCI did a survey of the law of all 50 states. Every state has a statute which allows for a shareholder to inspect the books and records of corporations if it is for a proper purpose. None of the cases detail the standard of propriety or who’s perspective it should be. None of the statutes have ever been found to be unconstitutional.

CCI said “proper purpose” has been common law in the USA for more than 100 years. [Fletcher’s Cyclopedia of Corporate Law](#) has many, many pages of cases that interpret what is a proper purpose.

HSVPOA claimed there were cybersecurity reasons why the member list and contact information should not be released. CCI claimed this information would be just as safe with them as it is with the HSVPOA.

**Judge Herzfeld did not rule on whether CCI had a “proper purpose” to request the information.**

### **3. Does CCI have the right to know the compensation package of the CEO?**

HSVPOA claimed that releasing information on the compensation package of the CEO could be harmful to the association and that the request of this information was for spite. HSVPOA claimed CCI had mailed out flyers stating the CEO received “high” compensation.

HSVPOA claimed the staff/workers may start “nitpicking” each other regarding their wages and it puts the HSVPOA at a disadvantage when they are hiring future employees if salary information is common knowledge.

CCI claimed it is common for shareholders to inspect the compensation packages of executives.

HSVPOA attorney said they do not release the compensation information of their employees. Judge Herzfeld said other corporations do. HSVPOA attorney said the HSVPOA is not a public company.

Judge Herzfeld said other corporations release compensation information.

The POA attorney said the POA is not a public company.

Judge Herzfeld asked if the HSVPOA attorney was saying the members do not have the right to the compensation information?

The HSVPOA attorney said the members don't have a right to see this. They can see the budget every year and the annual IRS form 990 and the total number of employees. This is not a "transparency world like Europe".

**Judge Herzfeld did not rule on whether CCI has a right to see the compensation package of the CEO at this time.**

**4. Does CCI have a right to not only view the member list and contact information but also does this include the right to photocopy or photograph this information?**

The HSVPOA said that "inspect" does not mean inspect and copy. Inspecting the records is not the same as copying the records.

CCI said refusal to allow copying of the records would render the statute meaningless in today's word. There is a large volume of documents here and it is common sense that inspect includes the right to copy.

The judge asked if CCI was allowed to bring a calculator into the room or a pen and paper. The HSVPOA's attorney said they were not told they could not bring a calculator.

**5. Should a summary judgment be granted?**

The last issue was should summary judgment be granted?

**A decision was not rendered on this as the other issues must still be decided.**

In conclusion, Judge Herzfeld ruled on the first issue and promised he will ponder the other issues and will get back "relatively quickly compared to what you are used to." Judge Herzfeld gave his appreciation to the attorneys for their hard work and to the audience for caring about their community.

Written by [Cheryl Dowden](#), June 22, 2019

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lynn

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