



AlaFile E-Notice

47-CV-2015-901577.00

Judge: DONNA S. PATE

To: SASSER STEVEN CHARLES
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

HUNTSVILLE AMATEUR RADIO CLUB, INC. V. TIM WILLIAMS ET AL
47-CV-2015-901577.00

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DEBRA KIZER
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MADISON COUNTY, ALABAMA
MADISON COUNTY, ALABAMA
100 NORTHSIDE SQUARE
HUNTSVILLE, AL 35801

256-532-3390



IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

HUNTSVILLE AMATEUR RADIO CLUB, INC., Plaintiff,)))	
V.)	Case No.: CV-2015-901577.00
WILLIAMS TIM, THORSON HEATH, LEWIS JOHN K., WILSON DOSHIA ET AL, Defendants.)))))	

**ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
 COUNT I OF THE COMPLAINT**

This matter comes before the Court on a Motion for Partial Summary Judgment as to Count I of the Complaint filed by the Plaintiff, a Motion to Strike Plaintiff's Motion for Partial Summary Judgment as to Count I of Complaint filed by the Defendants and the Response to the Motion to Strike filed by the Plaintiff. The Court held a hearing on the Motions and Responses on April 22, 2016. After having reviewed and considered the Pleadings filed herein, the evidence presented both in writing and orally, and the applicable law, the Court makes the following Findings of Fact and Conclusions of Law:

1. That no material issue of fact exists as to Count I of the Complaint and the Plaintiff is entitled to judgment as a matter of law.

2. That the Plaintiff ("HARC") was incorporated as a non-profit corporation in Madison County, Alabama on March 14, 2012. Prior to incorporation the Plaintiff had existed as an unincorporated entity for approximately 60 years in the North Alabama and Madison County areas.

3. That HARC is a functioning non-profit corporation with members. It is governed by a Board of Directors and Officers elected by the members of the corporation. The membership meets on a regular basis to conduct the business of the corporation and to plan activities. .

4. On May 28, 2015, John K. Lewis, Doshia Wilson and Heath Thorson executed a document entitled "Articles of Dissolution" which were filed with the Probate Court of Madison County and the Alabama Secretary of State on June 4, 2015 in an attempt to dissolve HARC. The Court finds that these Defendants were not authorized by HARC, its Board of Directors, or its membership to file these Articles of Dissolution

or to undertake any efforts to dissolve the corporation. The Court specifically finds that based on the evidence presented and the admission of the Defendants at the April 22, 2016 hearing, no meeting of the membership or the Board of Directors was held to discuss or authorize a dissolution of the corporation.

5. That on or about July 13, 2015, the Defendants filed with the Probate Judge of Madison County, Alabama. "Articles of Incorporation of Huntsville Amateur Radio Club" in an attempt to incorporate as a non-profit corporation. The Court further finds that this filing was done without the input of the Board of Directors or a vote of the membership of HARC.

6. That on or about July 23, 2015, after learning about the attempted dissolution of the Plaintiff by the Defendants, the duly elected officers of Plaintiff, after a vote of the Board of Directors and the members pursuant to *Ala. Code* §10A-3-7.04 (1975), filed Articles of Revocation of Articles of Dissolution with the Probate Judge of Madison County in an attempt to set aside the Articles of Dissolution filed by the Defendants.

7. That the Articles of Dissolution filed by the Defendants John K. Lewis, Doshia Wilson and Heath Thorson, were not authorized by the Board of Directors or the members of HARC as required by HARC's duly adopted Constitution and *Ala Code* §10A-3-7.01 (1975). The Court specifically finds that the actions of the Defendants in filing these Articles are contrary to HARC's Constitution and Alabama law.

8. That the Plaintiff is the only duly authorized and formed corporation under the name of "Huntsville Amateur Radio Club, Inc" and is entitled to be recognized as such by all persons. The Court further finds that the Plaintiff was never dissolved and continues as an ongoing corporate entity.

9. That the actions of the Defendants in filing the Articles of Dissolution and the Articles of Incorporation were unauthorized and invalid and as such are null and void.

10. That HARC is entitled to the return of all intellectual property, names, logos, social media pages and accounts, stationary, email accounts, and other items identifying or containing the name "Huntsville Amateur Radio Club, Inc," "HARC" or any permutation or abbreviation thereof, from the Defendants.

11. That the issues presented herein are controlled by the provisions of *Ala Code* §10A-3-7.01 (1975).

Based on the above and forgoing findings of fact and conclusions of law, the Court hereby **ORDERS, ADJUDGES** and **DECREES** as follows:

1. That the Plaintiff is the duly formed, authorized and existing corporation bearing the name "Huntsville Amateur Radio Club, Inc." and is entitled to all rights that

result from its incorporation and formation.

2. That the actions of the Defendants in filing the “Articles of Dissolution” on June 4, 2015 and the “Articles of Incorporation” on June 13, 2015 were not authorized by the corporation, its board of directors or its membership and are therefore invalid and the Court finds them to be null and void and without legal effect.

3. That the Defendants shall, within ten (10) days of the date of this Order, notify the Probate Court of Madison County and the Alabama Secretary of State of this Order and shall take all steps necessary to withdraw or otherwise invalidate these documents.

4. That the Plaintiff was never legally dissolved and has continued as a going concern despite the efforts of the Defendants.

5. That the Defendants shall immediately cease and desist from all use of the name “Huntsville Amateur Radio Club, Inc”, the abbreviation “HARC” or any other identifying name or abbreviation that in any way suggests that they are the Plaintiff or in any way affiliated with the Plaintiff.

6. That the Defendants shall, within five (5) days of the date of this Order, surrender all credentials, including, without limitation, all passwords, logins, user names, and administrative login information, for all social media sites that have been set up or seized by the Defendants, including, but not limited to, all Facebook, Yahoo and Twitter pages or accounts and any email repeater accounts in the name of Plaintiff or any abbreviation thereof. It is further **ORDERED** that the Defendants shall not post anything additional to any social media accounts related to the Plaintiff and shall not remove or delete any previous posts to said accounts whether made by Defendants or not. The Defendants shall provide all passwords and credentials to counsel for the Plaintiff.

7. That the Defendants shall, within ten (10) days of the date of this Order, notify the Internal Revenue Service of the entry of this Order and shall immediately cease all attempts to obtain a federal tax identification number, or similar number, or to seek a determination of a status as non-profit corporation designated under Section 501(c)(3) of the Internal Revenue Code in the name of the Plaintiff or any similar name. The Defendants shall not take any further efforts to seek or cause the revocation of the federal tax identification number or 501(c)(3) status already issued to the Plaintiff. The Defendants shall also within ten (10) days of this Order contact the Federal Communications Commission, the United States Patent and Trademark Office, and any other governmental or regulatory agencies they may have contacted, and advise them of the entry of this Order and cease all attempts to have any licenses or call signs of Plaintiff transferred to them or any organization they are a member of, and to obtain any trademarks or copyrights which in any way relate to Plaintiff or its name.

8. That the Defendants shall, within ten (10) days of the date of this Order,

return to Plaintiff all intellectual property, stationary, stickers and other documents containing the name of the Plaintiff or any abbreviation thereof. The Defendants may return these items to the office of Plaintiff's counsel.

9. Defendants shall, within five (5) days of the date of this Order, provide to counsel for Plaintiff all keys or entry codes to any Post Office Boxes, whether through the United States Postal Service or a private service, which they have opened, or assumed control of, in the name of Plaintiff. Defendants shall take all such efforts as are required to remove their name from any authorization cards or documents for such boxes and shall cooperate with the transfer of all such boxes to the Plaintiff.

10. That the Defendants shall immediately surrender all bank accounts in the name of the Plaintiff to the Plaintiff and shall take all steps as may be necessary to remove their names from the accounts and add the Plaintiff or its designated officers. The Defendants shall not collect any cash or negotiate any checks or credit card transactions which they may receive in the name of the Plaintiff. The Defendants shall also immediately cease solicitation of any donations or contributions or any kind or type in the name of the Plaintiff. In the event Defendants shall receive any such funds, they shall immediately upon receipt transfer them to Plaintiff.

11. Nothing in this Order shall prevent the Plaintiff from advising any governmental or regulatory agency, any person, or entity of the entry of this Order and requesting any relief which may be available to it under this Order.

12. That all other claims presented in the Complaint, including any claims by the Plaintiff for an award of attorney fees, shall remain set for trial on May 31, 2016.

DONE this 3rd day of May, 2016.

/s/ DONNA S. PATE
CIRCUIT JUDGE
