

CITY OF SALISBURY, ET AL.

*

IN THE CIRCUIT COURT

Plaintiff

*

FOR WICOMICO COUNTY

v.

*

STATE OF MARYLAND

**THE SALISBURY FIRE DEPARTMENT,
INC., COMPANY NO. 1, ET AL**

*

Defendants

*

Case No. C-22-CV-17-000468

* * * * *
**THE SALISBURY FIRE DEPARTMENT,
INC., COMPANY NO. 1, ET AL**

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* * * * *

**Counter-Plaintiff/ Third-Party
Plaintiff**

*

v.

*

CITY OF SALISBURY

*

Counter-Defendant

*

v.

*

RICHARD HOPPE

*

Third-Party Defendant

*

* * * * *

MEMORANDUM OPINION AND ORDER

I. Background

For more than thirty (30) years, the Salisbury Fire department, Inc., Company No. 1 ("Company No. 1") operated as a "recognized" volunteer fire department, as a part of the Salisbury Fire Department, Inc. ("the Salisbury Fire Department" or "SFD") in the City of Salisbury, Maryland (the "City"). On February 22, 2017, Company No. 1 gave notice that it intended to secede from SFD and the City and operate exclusively outside the City and that it would not be subject to the conditions of the Salisbury

Municipal Code and, in particular, the provisions of Chapter 2.16 within the Municipal Code ("the Fire Code").

The City, on February 23, 2017, accepted Company No. 1's resignation from the Salisbury Fire Department and the City. Thereafter, the City and the Salisbury Fire Department denied Company No. 1 access to the fire station it previously occupied ("Station 1") and refused to allow Company No. 1 to take firefighting apparatus and equipment from Station 1 and out of the City. Company No. 1 thereafter left the City, and the City and its two remaining companies filed a declaratory action against Company No. 1 and others. A full recitation of the procedural history of the case is set forth in the City's Motion for Summary Judgment, filed on June 19, 2020, and the Court adopts the same.

The following motions were filed in this proceeding: 1) on June 18, 2020 Company No. 1's individual directors, officers and members ("the Individuals") filed a Motion for Summary Judgment against the City; 2) on June 19, 2020, Company No. 1 filed a Motion for Summary Judgment against the City; 3) on June 19, 2020, the City, as Counter-Defendant, filed a Motion for Summary Judgment as to Company No. 1's Counterclaim; 4) On July 20, 2020, the City and SFD (as Plaintiffs) filed a joint Motion for Summary Judgment. The four (4) Motions were heard by the Court on September 29, 2020. During the hearing, Company No. 1 raised an issue concerning a document produced previously in discovery, which the City argued to be work product. The Court requested that additional memoranda concerning the said document be submitted by the parties, the Court indicating that said memoranda, together with the aforesaid four (4) motions, would all be taken sub curia. Thereafter, on October 9, 2020, Company No. 1 filed a pleading (number 5 motion to be considered in this Opinion) entitled "Company No. 1's Supplemental Response and Opposition to Motion for Summary Judgment of the City of Salisbury as to Counterclaim and Motion in Limine to Exclude Exhibit 'X' to the City's Memorandum" (hereafter "Motion in Limine"). On October 26, 2020, (after replying to Company No. 1's Motion in Limine) the City filed a "Motion to Strike 'Exhibit X' to Company No. 1's Opposition to City's Motion for Summary

Judgment as to the Counterclaim and Motion for Protective Order," hereafter referred to as "Motion for Protective Order" (number 6 of the motions to be considered in this Opinion).

The Court will first dispose of the Motion in Limine filed by Company No. 1 (motion number 5) and the City's Motion for Protective Order (motion number 6) before taking up the four motions for summary judgment. The Court will deny Company No. 1's Motion in Limine (motion number 5) and will grant the City's Motion for Protective Order (motion number 6). The Court will grant, in part, and will deny, in part, the City's and SFD's Motion for Summary Judgment (motion number 4); will grant the City's (as Counter-Defendant) Motion for Summary Judgment (motion number 3); will deny the Motions for Summary Judgment filed by the Individuals (motion number 1) and Company No. 1 (motion number 2). The respective rulings on said motions, and the Court's rationale therefore, will be discussed in serialim as follows:

II. Company No. 1's Motion in Limine and the City's Motion for Protective Order

On June 19, 2020, the City, as Counter-Defendant, filed a Motion for Summary Judgment as to Company No 1's Counterclaim. The City's Motion is accompanied by an Exhibit labeled "Exhibit X". This "Exhibit X" is a complete spreadsheet which lists the items of property at issue in Company No. 1's Counterclaim against the City and identifies which of those items were gifted to the City. On July 20, 2020, Counter-Plaintiff Company No. 1 filed a Response and Memorandum in Support of Response and Opposition to the City's Motion for Summary Judgment as to Counterclaim of Company No. 1.

Company No 1. had previously received in discovery an incomplete spreadsheet from the City. The City argues that it was inadvertently included in discovery materials supplied by the City to Company No. 1 on April 19, 2019. It was not until March 3, 2020, during the deposition of Chief Hoppes, that the City's attorney, Mr. Cornbrooks, first became aware of the inadvertent disclosure. At that point, Mr. Cornbrooks immediately on the record informed Company No. 1's counsel of the mistake. A letter dated March 19, 2020 was also sent to Company No. 1's attorney, Mr. Bright, by Mr. Cornbrooks, informing

him of the inadvertent disclosure and asserting the City's position that this incomplete spreadsheet was attorney work product, privileged, incomplete, and should not have been produced. Company No. 1 takes the position that the inadvertent disclosure of the spreadsheet constitutes a waiver of attorney work product status and that said incomplete worksheet can therefore be utilized by Company No. 1 in these motions and in the course of the trial. Moreover, Company No. 1 argues in its Motion in Limine, that the City should be denied the right to use the completed version of the spreadsheet in its Motion for Summary Judgment (which the City filed with its motion as "Exhibit X"), at trial, or otherwise. The City on the other hand argues that the attorney-client privilege was not waived and that a protective order be issued, preventing the incomplete spreadsheet from being utilized by Company No. 1.

DISCUSSION

Maryland Rule 2-402(a) states that a "party may obtain discovery regarding any matter that is not privileged ... if the matter sought is relevant to the subject matter involved in the action." Additionally, Maryland Rule 2-402(d) states:

"a party may obtain discovery of documents, electronically stored information, and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative ... only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means."

As well, Maryland Rule 2-402(e)(3) requires that a party that produces information in discovery that is subject of a claim or privilege of protection shall notify each party who received the information of the claim and the basis for it within a reasonable time after that information has been produced. Further, Maryland Rule 2-402(e)(4) provides that disclosure of a communication or information covered by a privilege does not operate as a waiver if the holder of the privilege or work product protection made the disclosure inadvertently, took reasonable precautions to prevent the disclosure and took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

The Court of Special Appeals has adopted a five-factor test to determine if an inadvertent document disclosure waives the document's privilege, to wit:

"(1) [T]he reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of the document production; (2) the number of inadvertent disclosures; (3) the extent of the disclosure; (4) any delay and measures taken to rectify the disclosure; and (5) whether the overriding interests of justice would or would not be served by relieving a party of its error."

Elkton Care Ctr. Assocs. Ltd. P'ship v. Quality Care Mgmt., Inc., 145 Md. App. 532, 545, 805 A.2d 1177, 1184 (2002) (Citing *Sampson Fire Sales v. Oaks*, 201 F.R.D., 351, 360 (M.D.Pa.2001)).

The courts are to make a fact specific case-by-case analysis to determine whether the privilege has been waived. *Id.* "[T]he resolution of disputes arising from inadvertent disclosure of privileged material is fact intensive." *F.H. Chase, Inc. v. Clark/Gilford*, 341 F. Supp. 2d 562, 564 (D. Md. 2004). As stated in *Elkton Care, Supra*, one factor the courts have relied upon in determining whether a disclosure waives the document's privilege is the number of inadvertent disclosures. *See Cont'l Cas. Co. v. Under Armour, Inc.*, 537 F. Supp. 2d 761, 767-68 (D. Md. 2008) (Holding that eight inadvertently produced privileged communications hardly constituted a one-time occurrence and weighed towards finding a waiver of privilege.) Another crucial factor is if counsel acted with reasonable diligence, without unreasonable delay, and within the discovery period after becoming aware that the document was inadvertently disclosed. *See F.H. Chase, Inc. v. Clark/Gilford*, 341 F. Supp. 2d 562, 564 (D. Md. 2004) (Holding that a delay was not unreasonable and did not lead to a waiver when the attorney requested the return of inadvertently disclosed documents 27 days after the inadvertent production. It is notable that the attorney in *F.H. Chase* informed the opposing party on the day he discovered the inadvertent disclosure. The attorney was then granted a Protective Order). In determining whether a party's action constitutes unreasonable delay, the court does not consider the time period between the inadvertent disclosure and the date that the request for the return of the inadvertently disclosed document was sent to plaintiff. *Id.* In *F.H. Chase, Inc.*, neither the attorneys nor the assistants were aware that disclosures had been made at the time of the production. *Id.* Therefore, it would have been impossible for the defendant to try to prevent the problem from reoccurring. *Id.*

This Court notes that the inadvertent disclosure in the instant case was one single spreadsheet. Unlike the numerous inadvertently produced documents in *Cont'l Cas. Co.*, this single failure would weigh against the finding of waiver.

The City inadvertently disclosed the working-draft spreadsheet in discovery materials produced on April 19, 2019. This Court finds that Mr. Cornbrooks, as the City's attorney, was not aware of the error until the time of the deposition of Fire Chief Hoppes on March 3, 2020. Mr. Cornbrooks thereafter immediately notified opposing counsel of the unintentional disclosure at the deposition on March 3, 2020. He then followed up his concern of the inadvertent disclosure in a letter dated March 19, 2020. It is clear therefore, that Mr. Cornbrooks notified opposing counsel immediately when he became aware of the inadvertent disclosure. It is likewise important that the incomplete document is not relevant to the subject matter involved in the action. It is simply an attorney's work product. The relevant document is the complete spreadsheet attached to the City's motion as "Exhibit X". This sheet represents the personal knowledge of former Deputy Chief Gordy and Deputy Chief Smith. The Court finds that justice would not be served by allowing the irrelevant, incomplete spreadsheet, which was disclosed in error, to be utilized by Company No. 1. To the contrary, such a decision would be unfairly prejudicial to the City's case, particularly if the City was unable to utilize the complete spreadsheet in its Motion for Summary Judgment or at trial.

As noted above, the completed version of the spreadsheet was filed as "Exhibit X" to the City's Memorandum in support of its Motion for Summary Judgment on the Counterclaim. Company No. 1 takes the position that this completed spreadsheet cannot be used because it was not produced in discovery. The Court is not persuaded by this argument. It is noted that the Motion containing "Exhibit X", the completed version of the spreadsheet, was filed on June 19, 2020, well before the end of discovery on November 15, 2020. The record is clear that, after Mr. Cornbrooks filed his Motion for Summary Judgment, he supplemented his discovery to formally produce the completed spreadsheet before the end of discovery. For these stated reasons, the Court finds that the City did not waive the

privilege of work product protection for the working-draft spreadsheet inadvertently produced in discovery on April 19, 2019. The Court will therefore deny Company No. 1's Motion in Limine.

The City, as Counter-Defendant, has also filed a Motion to Strike and has requested a Protective Order to prevent Company No. 1's use of the incomplete spreadsheet because it was privileged. Consistent with the Court's reasoning above in holding that the attorney work product was not waived, the Court will grant the City's Motion to Strike and for a Protective Order.

III. Motions for Summary Judgment

A. The City and SFD's (as Plaintiffs) Motion for Summary Judgment.

1. STANDARD OF REVIEW

The Rule governing summary judgment provides that the Court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. Maryland Rule 2-501(f). For the purposes of summary judgment, a material fact is one the resolution of which would somehow affect the outcome of the case. Moreover, in order to proceed at trial, the party opposing the motion for summary judgment must first produce evidence of a disputed material fact which would aid the fact finder in resolving the dispute. *Ragin v. Porter Hayden Co.*, 133 Md. App. 116 (2000). The response to a motion for summary judgment must be supported by evidence that would be admissible at trial. *Injured Workers' Ins. Fund v. Orient Express Delivery Service, Inc.*, 190 Md. App. 438 (2010). Neither general allegations of facts in dispute nor a mere scintilla of evidence will suffice to support the movant's position, there must be evidence upon which the jury could reasonably find for the moving party. *Hams of S. Md., Inc. v. Nationwide Mut. Ins. Co.*, 148 Md. App. 534 (2002). To avoid summary judgment, the nonmoving party must present more than general denials. The nonmoving party must provide detailed and precise facts that are admissible in evidence. *Apptah v. Hall*, 416 Md. 533 (2010).

It is axiomatic that the Court should review the record in the light most favorable to the non-moving party and shall construe any reasonable inference that may be drawn from the facts against the moving party. *Dashiell v. Meeks*, 396 Md. 149 (2006). If no material facts are in dispute, this Court must grant summary judgment. Although granting summary judgment in a declaratory judgment action is the exception rather than the rule, circumstances may warrant the entry of a full or partial summary judgment in such a context. *Messing v. Bank of America*, 373 Md. 672 (2003); *See also Rupli v. South Mountain Heritage*, 202 MD. App. 673 (2011).

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Court has before it the Plaintiffs' Motion, as well as Company No. 1's Opposition thereto. As well, the Plaintiffs, pursuant to this Court's request, have filed a suggested Memorandum Opinion and Order to which Defendant has filed its Response and Opposition, and the Plaintiffs have filed their reply thereto. Having considered all the foregoing, and the record of this case, the Court finds as follows:

a. That Company No. 1 was incorporated on June 20, 1986. Pursuant to its initial incorporation documents, the purpose of Company No. 1 is "To act as a volunteer fire company; to do all acts necessary associated with a volunteer fire company; to preserve and protect lives and property from loss or damage by fire; to provide fire protection on a volunteer basis for the benefit of and in furtherance of the community welfare of Salisbury, Wicomico County, Maryland." The Court finds that this provision provides for the benefit of fire protection within the municipal limits of the City of Salisbury only. The term "Wicomico County" is used to identify the location of the City of Salisbury.

b. That Company No. 1 was recognized as a volunteer fire company in the City of Salisbury and remained an active volunteer fire company in Salisbury from 1986 through February 22, 2017.

c. That on August 9, 2004, the City of Salisbury amended its Municipal Code and adopted Section 16 with respect to the Fire Department and Volunteer Fire Departments.

d. That the 2004 changes to the Salisbury Municipal Code control the withdrawal of

recognition of a volunteer fire company¹.

e. That the 2004 changes to the Municipal Code define a volunteer fire company as "a quasi-public nonprofit corporation recognized by the City as a component of the Salisbury Fire Department."

f. That, prior to the 2004 amendments, all existing volunteer fire companies in the City of Salisbury, including Company No. 1, were advised of the proposed changes. Minutes from meetings of the Trustees and Regular Membership show that during July 2004, Company No. 1 reviewed the proposed changes and responded to the proposed changes. Thereafter, Company No. 1 took no other action to contest the 2004 Amendments to the Municipal Code.

g. That, following the Municipal Code changes in 2004, Company No. 1 retained recognition and continued as a volunteer fire company in the City, subject to the Municipal Code provisions and requirements, for 12 and one-half years.

h. That since the time of the Municipal Code changes in 2004, and until February 2017, Company No. 1 complied with the provisions and requirements of the Municipal Code.

i. That on February 5, 2017, Company No. 1 notified Bob Culver, County Executive of Wicomico County, Maryland, of its intention to separate from the City of Salisbury and the Salisbury Fire Department.

j. That on February 8, 2017, Company No. 1, at a special Trustees Meeting, approved the renting of a new office for the Company.

k. That on February 20, 2017, Company No. 1 at its regular membership meeting approved a motion to withdraw from the Salisbury Fire Department.

l. That on February 22, 2017, Company No. 1 notified the Salisbury Fire Department of its intention to separate as of July 1, 2017.

¹ The Court has already found that the provisions of the Municipal Code are binding on the parties.

m. That on February 22, 2017, members of Company No. 1, including members of its Board of Trustees, appeared at 1100 Beaglin Park Drive, Station 1, Salisbury, Maryland and began to remove property from the City fire station, despite their indication that separation from the City would not occur until July 1, 2017.

n. That on February 23, 2017, the Salisbury Fire Department notified Company No. 1 that the separation would be accepted immediately.

o. That recognition of Company No. 1 was memorialized in section 2.16.020 A of Ordinance 1909 and remained in the Municipal code until Company No. 1's recognition was removed by Ordinance 2442 on October 9, 2017. Section 2.16.020A read as follows:

The Fire Department shall consist of:

- 1. The Fire Chief.
- 2. Career Officers and employees.
- 3. Such volunteer fire companies and volunteer firefighters as are recognized by the City, from time to time, which as of the date of adoption of this legislation are:

- Salisbury Fire Department, Inc – Station #16
- Salisbury Fire Department, Inc., Company No. 1 – Station #1
- Salisbury Fire Company No. 2, Inc. – Station #2

That the 2004 changes control the withdrawal of recognition of a volunteer fire company. Legal recognition of Company No. 1 was not eliminated from the Municipal Code until October 2017 by the City of Salisbury.

p. That as of February 28, 2017, Company No. 1 held financial assets totaling \$324,742.88, as follows:

- i. First Shore Federal County Fund: \$146,089.82 as of statement dated February 28, 2017.

This account was funded as follows:

From 2005 until after Company No. 1 left the City of Salisbury Fire Department in 2017, the City of Salisbury and Wicomico County adhered to an "Agreement Between the City of Salisbury, Maryland and Wicomico County, Maryland for the Delivery of Fire, Rescue, Advanced Operations and Emergency Medical Services" ("Fire Service" or "FSA"). The FSA provided that each year, the County would pay

to each of the City's Volunteer Fire Companies and to the City Fire Department's Special Operations division the same amount that it paid to each volunteer fire department in the County. In exchange, the Salisbury Fire Department provided emergency fire protection to an area outside of the City limits in the Salisbury Fire District and provided Special Operation emergency rescue services throughout Wicomico County. Under both the Municipal Code and the fire service agreement, the City gave the County valuable fire protection services in exchange for funding from the County to do so. The FSA stated that:

The County hereby agrees to pay each of the 3 volunteer fire departments within the City the same amount that it appropriates to each volunteer fire department in the County.

These appropriations are codified in the Wicomico County Code, Chapter 39-1: Appropriations and Conditions. These funds received from Wicomico County were placed into the First Shore Federal County Fund Account. These Funds were the primary source of funds to pay for operational expenses such as large equipment/apparatus, training and gear.

ii. First Shore Federal General Fund: \$29,338.88 as of statement dated February 28, 2017.

This account was funded as follows:

The First Shore Federal General Fund contained monies received from the Lacy Fund and other contributions, such as the "Stamp" Fund and the Shorebirds. Occasionally, County Funds would be transferred into the General Fund to reimburse payments.

The Lacy Fund provided annual income from the Estate of Katharine B. Lacy, Estate No. 10,041 in the Orphans' Court of Wicomico County, Maryland. Company No. 1 and the two remaining volunteer fire companies entered into an agreement with the Community Foundation of the Eastern Shore, Inc., with regard to a bequest from the Estate of Katharine B. Lacy. By a will dated March 26, 1987, Katharine B. Lacy left the residue of her estate unto "The Salisbury Fire Department, Inc., a non-profit Maryland corporation, for its general corporate use and purposes." The name of the beneficiary designated in Ms. Lacy's will did not exactly match any one of the three volunteer fire companies then recognized by the City and, as a result of the confusion, the three volunteer fire companies agreed to share in that legacy.

The agreement of the three volunteer fire companies was memorialized on December 20, 1990 and amended on June 11, 1996. The document was executed on behalf of the three volunteer fire companies by each of their then presidents and by the president of the Community Foundation of the Eastern Shore, Inc. The December 20, 1990 agreement is noteworthy for the statement made in paragraph 3 which indicates:

WHEREAS, the parties identified herein as the Fire Companies have been established to assist in the providing of fire protection and public safety services *in the City of Salisbury, Wicomico County, Maryland*, from time to time. (Emphasis added.)

The Court has already found that this paragraph restricted the use of the "Lacy Funds" to the City Limits of Salisbury.

Other charitable donations to all the Salisbury volunteer fire companies, including Company No. 1, were derived from solicitation letters for charitable contributions known as the Stamp Fund. The letters solicited contributions from the public annually to support volunteer firefighting in the City of Salisbury and the Salisbury Fire District.

The General Fund was utilized by Company No. 1 to pay for non-operational expenses of the company, such as events, stipends, and reimbursements.

iii. First Shore Federal 508 Amoss Fund: \$41,354.26 as of statement dated February 28, 2017. This account was funded as follows:

The Amoss Fund Program required that grants from the fund be used to purchase fire fighting vehicles and these funds were held separately in the First Shore Federal 508 Amoss Fund account. These funds were issued to Company No. 1 pursuant to MD Public Safety Code Ann. §8-102 and were required to be used for limited purposes such as equipment, vehicles, facilities and certain communications equipment.

iv. Wells Fargo Investment Account: \$107,959.92 as of statement dated February 28, 2017.

This account was funded as follows:

The Wells Fargo Investment Account held by Company No. 1 at the time of its separation was an investment/savings account. This savings account was created with unspent funds from the County Fund and donations.

q. That, as of the present time, Company No. 1 has expended most of the identified financial assets despite not having provided any fire service or suppression, or any other service to the City of Salisbury or the Salisbury Fire District since February 20, 2017, and the remaining liquid assets are now valued at \$6,854.78 as follows:

i. First Shore Federal County Fund: \$41.14 as of statement dated December 31, 2019.

Company No. 1 spent \$146,048.68 without approval of the Salisbury Fire Chief, the Executive Board, the Salisbury Fire Department or the City of Salisbury. Although no receipts were provided in discovery for expenditures made after February 22, 2017, copies of cancelled checks were attached to the statements.

Expenditures include, but are not limited to:

- (1) Rental payments totaling \$12,883.69
- (2) Payment to Angela Assadi, CPA, for \$4,073.77
- (3) Payments to Ayers, Jenkins, Gordy & Almand, PA, for legal fees totaling \$10,915.00
- (4) Payment to Painter Volunteer Fire Department in the amount of \$30,000.00 for a fire engine
- (5) Payment to Vienna Ambulance Fund in the amount of \$10,000.00 for an ambulance
- (6) Payment to Witmer Public Safety Group, Inc. in the amount of \$18,889.94 (purpose unclear, check memo states "Sal Fir 38")
- (7) Payments to Corey Polidore totaling \$15,544.04 for line items noted as "operations, equipment, EMS equipment, electric, operational equipment, engine paint and supplies, building and housing/insurance, etc."

The only deposit made to this account after February 2017 was made in December 2017 in the amount of \$137.00 to cover a bounced check. This deposit was transferred from the General Fund.

ii. First Shore Federal General Fund: \$5,953.80 as of statement dated December 31, 2019. Although no receipts were provided in discovery for expenditures made after February 22, 2017, copies of canceled checks were attached to the statements showing expenditures. Expenditures between March 1, 2017 and December 31, 2019 include, but are not limited to:

- (1) Rental and tax payments to SVN Miller totaling \$102,215.37
- (2) Payments to Angela Assadi, CPA, totaling \$1,933.75
- (3) Payments to Ayers, Jenkins, Gordy & Almand, PA, for legal fees totaling \$48,573.03
- (4) Payments to Witmer Public Safety Group, Inc. totaling \$35,251.80 (purpose unclear, check memos refer to invoices)
- (5) Payments to Corey Polidore totaling \$31,109.30 for line items noted as "reimbursements of purchases, furniture, miscellaneous, open house breakfast, CPR cards, base station radio, etc."
- (6) Payments to Atlantic Bingo Supply, Inc. totaling \$29,746.53

Deposits to the General Fund in 2018 included two transfers totaling \$123,394.99 from the Wells Fargo account, which effectively closed the savings account. As noted above, the Wells Fargo account was initially funded with a combination of County Funds and donations, however, since 2004 (when the Municipal Code changed) the only income in this account was due to growth of assets contained therein.

A deposit to the General Fund in 2018 came from the sale of operational equipment and apparatus, to wit: a stretcher which was sold for \$5,850.00. In 2019, Company No. 1 sold a rescue truck and deposited the proceeds into the General Fund. Other deposits to the General Fund after separation were primarily from fundraising activities.

iii. First Shore Federal 508 Amoss Fund: \$841.64 as of statement dated December 31, 2019. On April 30, 2017, Company No. 1 purchased a fire engine for \$40,000.00. The account was further depleted due to monthly bank charges and the cost of copies. None of these expenditures were made with the approval of the Salisbury Fire Chief, the Executive Board, the Salisbury Fire Department or the City of Salisbury.

iv. Wells Fargo Investment Account: \$18.20 as of statement dated March 31, 2020. As indicated above, in 2018 the entire balance of this account was transferred into the General Fund, in two transactions. The account is not closed at this time, due to a small amount of funds remaining in the account which was apparently refunded by the institution.

As noted above, this savings account was created with unspent funds from the County Fund and donations. It should be noted that, subsequent to the 2004 modification of the Municipal Code, Company No. 1 made no additional direct payments to this account, and its growth is due to interest and dividends. Therefore, there is no dispute that, subsequent to the Municipal Code modification, all funds in this account were also subject to the Municipal Code requirements.

r. Company No. 1 agreed, in June 2015, to participate in the purchase of a new command vehicle for the Salisbury Fire Department and, to this date, has not made the agreed payment. Company No. 1, pursuant to its by-laws and rules, voted on the purchase of this vehicle and approved said purchase, with their obligation being one-third of the total cost. Plaintiff, Salisbury Fire Department, Inc. (Station #16) relied upon Company No. 1's promise to pay when it advanced Company No. 1's share of the cost.

s. Prior to February 22, 2017 and since 2004, all equipment and apparatus, as listed on "Exhibit A" attached to Counter-Defendant's Memorandum in Support of its Motion for Summary Judgment, were the sole and separate property of the City of Salisbury.

t. That the Federal Tax Returns, Form 990, signed by the treasurer of Company No. 1, and filed with the Internal Revenue Service, state that the organization's mission or most significant activities were "Firefighting, emergency services, fire prevention for the citizens of Salisbury, Maryland, in order to create a safer community and service those in the community that need help."

Upon passage of the Salisbury City Ordinance 1909 on August 9, 2004, Company No. 1 took no legal action to challenge the validity of the ordinance or its applicability to Company No. 1 as a volunteer fire company that had retained its recognition pursuant to the 2004 ordinance. Company No. 1's failure to take legal action in opposition to said ordinance, and its twelve and one-half year history of operation pursuant to that ordinance constitute acceptance of its terms. Section 2.16.040 B, subparagraph 6 states

that “[t]o retain or obtain recognition, a volunteer fire company must: . . . 6. Use all tax funds received by the volunteer fire company to assist in the operation of the fire department. A volunteer executive board comprised of assistant fire chiefs (volunteer) from each volunteer fire company and their deputy chief (volunteer) shall manage the expenditure of these funds in consultation with the fire chief to assure the expenditure is for fire-fighting and emergency medical response needs of the fire department.” This ordinance dictates that all tax funds received by Company No. 1 were to “assist in the operation of the fire department,” pursuant to the oversight of the Volunteer Executive Board. This Court specifically rejects the argument made by Company No.1 and the individual defendants that they must only use tax funds received to assist in the operation of the Fire Department so long as they wish to retain recognition. The Court specifically finds that, although the terms of the Fire Code do not specifically give ownership of the tax funds received by Company No. 1 to the City, such terms require that all such tax funds inure to the benefit of the City and that all expenditures from such funds be for the fire fighting and emergency medical response needs of the Salisbury Fire Department.

Section 2.16.020 F sets forth the duties of the fire chief. According to subsection 2, the fire chief shall “[c]ontrol, maintain and operate all physical facilities, apparatus, equipment and personal property used by the fire department.” Subsection 5 indicates that the fire chief shall “[e]nsure that no fire department resources are used for the personal gain of individuals, or the public or private corporations or other entities.” These two sections, in conjunction with the Fire Code’s requirement that Company No. 1 shall “use all tax funds received by the volunteer fire company to assist in the operation of the fire department,” establish that the accounts containing tax funds could be used for no other purpose than “the operation of the fire department,” which the Salisbury Municipal Code defines as the Salisbury Fire Department and its recognized volunteer fire companies.

The solicitation letters used by Company No. 1 and the volunteer fire companies establish that the charitable funds could not be used for any purpose other than “protecting the life and property of the residents of the Salisbury Fire District.”

The undisputed facts established that Company No. 1 utilized tax funds dedicated for the use of the Salisbury Fire Department "for a personal gain of . . . [Company No. 1, a] private corporation." It is undisputed that, beginning with its resignation in February of 2017, Company No. 1, immediately began spending tax funds and charitable funds to re-establish Company No. 1, independently from the City of Salisbury and outside of the Salisbury Fire District which was managed and controlled by the Municipal Code and the City of Salisbury's agreement with Wicomico County.

Company No. 1's actions violate both the Municipal Code and the Maryland Business Regulations Article, section 6-101, 6-508 and 6-606. Company No. 1's action constitutes a breach of its legal obligations to obey all laws, as set forth in the Municipal Code and a breach of its fiduciary duty charged with the obligation to properly spend both tax and charitable funds.

The Court will grant Plaintiffs' Motion for Summary Judgment against Company No. 1, but will deny Plaintiffs' Motion against the Individual Defendants. Under the Maryland Code, the Individuals are immune from liability if they act in good faith. The question of good faith is generally not resolvable on a motion for summary judgment but rather should be left to the jury. *Rite Aid Corp. v. Hagley* 379 Md. 655 (2003). The Court deems the instant case to be no exception.

3. EQUITABLE RELIEF TO THE CITY

The Court, in addition to awarding money judgments against Company No. 1, will exercise its equitable powers and appoint a Special Auditor to immediately examine all expenditures that Company No. 1 made, after it separated from the Salisbury Fire Department on February 22, 2017, from tax funds and charitable funds Company No. 1 held prior to its separation on February 22, 2017 (hereafter "Improper Expenditures"). Following this audit, the Special Auditor will file a report with this Court. Once it is determined what equipment and apparatus were purchased with such Improper Expenditures, a constructive trust will be charged upon the same and Company No. 1, as constructive trustee, will be ordered to convey all its right, title and interest in said equipment and apparatus to the City, free and clear from all mortgages, liens and other encumbrances. The Court will then credit the judgment awarded to the

City against Company No. 1 (and any judgments ultimately awarded to the City against any Individuals) in this matter by the net fair market value of such personal property as determined by the Special Auditor.

B. The City of Salisbury's (as Counter-Defendant) Motion for Summary Judgment.

Commensurate with the aforesaid findings of fact and conclusions of law, the Court will grant the City of Salisbury's, as Counter-Defendant, Motion for Summary Judgment and will dismiss, with prejudice, the Counterclaim against the City. The Court has found that none of the property in question (all equipment and apparatus listed on Counter-Defendants' Motion for Summary Judgment "Exhibit A") was the private property of Company No. 1 and that all of the same belonged to the City. Therefore, Company No. 1 suffered no compensable injury at the hands of the City.

C. Company No. 1's Motion for Summary Judgment will be denied.

D. The Individuals' Motion for Summary Judgment will be denied. As discussed above, the question of "good faith" is a question of fact and, thus, should be left for the jury to determine.

CITY OF SALISBURY, ET AL.

Plaintiff

v.

**THE SALISBURY FIRE DEPARTMENT,
INC., COMPANY NO. 1, ET AL.**

Defendants

IN THE CIRCUIT COURT

FOR WICOMICO COUNTY

STATE OF MARYLAND

Case No. C-22-CV-17-000468

* * * * *

**THE SALISBURY FIRE DEPARTMENT,
INC., COMPANY NO. 1, ET AL.**

**Counter-Plaintiff/ Third-Party
Plaintiff**

v.

CITY OF SALISBURY

Counter-Defendant

v.

RICHARD HOPPE

Third-Party Defendant

* * * * *

JUDGMENT

For the reasons set forth in this Court's Memorandum Opinion of even date, it is this

27th day of January 2021, by the Circuit Court for Wicomico County,

ORDERED, that Company No. 1's Motion in Limine is DENIED; and it is further

ORDERED, that the working draft spreadsheet attached to Company No. 1's Response as "Exhibit X", cannot be considered as support for Company No. 1's Response but must be stricken from the record, and the City's Motion to Strike " Exhibit X" to Company No. 1's Response is GRANTED; and it is further

ORDERED, that discovery regarding "Exhibit X to Company No. 1's Response (the incomplete spreadsheet) or regarding any statements on Company No. 1's "Exhibit X" would be improper discovery of privileged and irrelevant material, and the City's Motion for Protective Order is GRANTED; and it is further

ORDERED, that the parties may rely upon, refer to, and introduce into evidence the completed spreadsheet referred to as "Exhibit X" to the City's Memorandum in Support of its Motion for Summary Judgment; and it is further

ORDERED, that judgment be entered in favor of the City of Salisbury against Company No 1. In the amount of \$324,742.88; and it is further

ORDERED, that judgment be entered against Company No. 1 and in favor of the Salisbury Fire Department, Inc. in the amount of \$27,305.13; and it is further

ADJUDGED, ORDERED AND DECREED and Declaratory Judgment is entered to wit; that all property listed on Counter-Defendant's (the City of Salisbury) Exhibit A with its Memorandum in Support of its Motion for Summary Judgment is the property of the City of Salisbury; and it is further

ORDERED, that the Motion for Summary Judgment filed by the City, as Counter-Defendant is granted and the Counterclaim against the City is dismissed with prejudice, and it is further

ORDERED, that the Motion for Summary Judgment filed by Company No. 1 is DENIED; and it is further

ORDERED, that the Motion for Summary Judgment filed by the City of Salisbury seeking judgment against the Individuals (the individual officers, directors, and members of Company No. 1) is DENIED; and it is further

ORDERED, that the Motion for Summary Judgment filed by Company No. 1 is DENIED; and it is further

ORDERED, that the Motion for Summary Judgment filed by the individual officers, directors, and members of Company No. 1 is DENIED; and it is further

ORDERED, that pursuant to Maryland Rule 16-809(b), Mitchell J. Cornwell, ESQ, J.D., CPA of Easton, Maryland shall be appointed as Special Auditor and that he shall immediately undertake an audit to determine all expenditures that Company No. 1 made, after it separated from the Salisbury Fire Department on February 22, 2017, from tax funds and charitable funds Company No. 1 held prior to its separation on February 22, 2017 (hereafter "Improper Expenditures"). In addition to the powers set forth in Maryland Rule 2-543(e) and pursuant to Maryland Rule 16-809(b)(2), the Special Auditor is hereby empowered to (1) appoint, as the Court's Expert, Robert Denise of Oxford, MD; (2) to perform all acts as are requisite and necessary in gathering information including, but not limited to, communicating verbally, in writing, or electronically with persons who, in the sole judgment of the Special Auditor, may be knowledgeable about relevant events, documents, and expenditures; (3) hold such hearings as the Special Auditor, in his sole discretion, deems necessary in the course of the audit; (4) conduct any and all investigations as the Special Auditor deems necessary. Mr. Cornwell, as Special Auditor, shall be compensated at the rate of Three Hundred Fifteen (\$315.00) Dollars per hour and Mr. Denise, as the Court's Expert, shall be compensated at the rate of Two Hundred Fifty (\$250.00) Dollars per hour. The Special Auditor and the aforesaid Court's Expert shall submit invoices in this matter for their fees on a monthly basis, which invoices shall, upon being approved by the Court, be paid by the parties within thirty (30) days of being Court approved. Such approved fees shall be considered court costs. Such fees shall be paid by the City of Salisbury, with a right of contribution, as follows: ¼ from the Salisbury Fire Department, ¼ from Company No. 1, and ¼ from those individuals named personally in this action. Such right of contribution will ripen as of the date of the approval of the fees, and shall be payable to the City within thirty (30) days thereof. If a hearing by the Special Auditor is necessary before his report is filed, the procedure shall follow Maryland Rule 2-543. Following the audit, the Special Auditor shall file a report with this Court to determine the subject of all Improper Expenditures made by Company No. 1. Said audit and report shall be completed and filed with the Court within ninety (90) days of this order, or as otherwise ordered by the Court. Once said report is filed, the Court may impose a constructive trust upon any and all equipment, apparatus, vehicles or other personal property that were purchased by said

Improper Expenditures and Company No. 1 will be ordered to convey all of its right, title, and interest in said assets to the City of Salisbury, free and clear of any mortgages, liens, or other encumbrances. The total of the judgment of \$324,742.88 in favor of the City of Salisbury will be credited with the net fair market value, as determined by an appraisal process adopted by the Special Auditor, in his discretion, of any such assets which are the subject of the constructive trust created hereunder and conveyed to the City; and it is further

ORDERED, that the appraisal costs incurred in the commissioning of appraisals by the Special Auditor shall further be considered court costs, and reimbursement of any court costs paid or the payment of any further fees or costs, may be adjudicated, as equity requires, at the end of this case, which will be determined at a separate hearing.

A handwritten signature in black ink, appearing to be 'A. M. B. Brown', written over a horizontal line.

JUDGE