

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

GALLOWAY CORPORATION,
a Virginia corporation,

Plaintiff,

v.

BAY CREEK, L.L.C.,
a Virginia limited liability company,

Defendant.

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D.M. Patton

COMPLAINT

Plaintiff Galloway Corporation, a Virginia corporation ("**Galloway**") for its complaint against defendant Bay Creek, L.L.C., a Virginia limited liability company ("**Bay Creek**"), states:

1. Galloway is a Virginia corporation and contains to hold, subject to the payment obligation of Bay Creek, of a thirty-seven and one-half percent (37.5%) membership interest in Bay Creek Marina and Resort, L.L.C., a Virginia limited liability company ("**BCMR**") which owns a marina and developed and undeveloped condominium parcels north of the Town of Cape Charles, Virginia.

2. Bay Creek is a Virginia limited liability company and owner of a sixty-two and one-half percent (62.5%) membership interest in BCMR.

3. By a Membership Interest Purchase Agreement dated December 15, 2005 between Galloway, Bay Creek, Richard S. Foster and Paul A. Galloway, as amended December 31, 2010 (the "**Purchase Agreement**"), a copy of which is attached as Exhibit A, Bay Creek agreed to purchase from Galloway all of Galloway's then fifty percent (50%) membership interest in BCMR.

4. Bay Creek agreed to pay Galloway the sum of \$7,500,000 for Galloway's membership interest in BCMR, payable at the rate of \$150,000 per one percent (1%) membership interest (each a

“**Membership Interest**”), a minimum of two and one-half (2-1/2) Membership Interests to be purchased each fiscal year by December 31.

5. Bay Creek purchased from Galloway a total of twelve and one-half Membership Interests in the years 2006, 2007, 2008, 2009 and 2010.

6. For the fiscal year ending December 31, 2011, Bay Creek failed and refused to purchase from Galloway the required minimum of two and one-half (2-1/2) Membership Interests for the required price of \$375,000.00.

COUNT ONE

7. Galloway repeats and realleges the allegations of paragraphs 1 through 6.

8. As set forth in the Affidavit attached as Exhibit B, Bay Creek is indebted to Galloway under the terms of the Agreement for the fiscal year ended December 31, 2011 in the amount of \$375,000.00.

WHEREFORE, Galloway demands judgment against Bay Creek in the amount of \$375,000.00 plus its costs in this behalf expended.

COUNT TWO

9. Galloway repeats and realleges the allegations of paragraphs 1 through 6 of this complaint.

10. Under the Agreement, Bay Creek remains obligated to satisfy its payment obligation to purchase Galloway’s remaining thirty-seven and one-half percent (37.5%) interest as a member in BCMR in the full amount of \$5,625,000.00.

11. By failing to make the purchase of the required two and one-half percent Membership Interests by December 31, 2011, Bay Creek breached its payment obligation.

12. At all times, Galloway has been ready and able to assign its remaining Membership Interests as required by the Agreement.

13. Bay Creek is therefore indebted in Galloway in the amount of \$5,625,000.00.

WHEREFORE, Galloway demands judgment against Bay Creek in the amount of \$5,625,000.00 plus its costs in this behalf expended.

GALLOWAY CORPORATION

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