

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA , CASE NO. 4:06-M-49
 , ELIZABETH CITY, NC
V. , OCTOBER 16, 2006
 .
JONES ISLAND CLUB, INC. .
.....

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE UNITED STATES: BARBARA KOCHER, ESQUIRE
 ASSISTANT U.S. ATTORNEY

 800 FEDERAL BUILDING
 310 NEW BERN AVENUE
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FOR THE DEFENDANT: MICHAEL P. SANDERS, ESQUIRE
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COURT REPORTER: MS. STEPHANIE C. GRAHAM, CVR

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dictation.

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1 **THE COURT:** Jones Island Club, Inc.

2 Is this a corporate entity, a North Carolina
3 business corporation or a not for profit --

4 **MR. SANDERS:** A North Carolina nonprofit
5 corporation, Your Honor.

6 **THE COURT:** Okay. Under Chapter 55(b)?

7 **MR. SANDERS:** Well, I'm not sure. I don't do
8 that type work, which chapter it is.

9 **THE COURT:** Neither do I, but you should know
10 more than I should.

11 **MR. SANDERS:** The Articles of Incorporation
12 are -- or a Certificate of Existence is a part of the
13 discovery, and I can place that into the record if you
14 would like, Your Honor.

15 **THE COURT:** And who do you have here on
16 behalf of that organization?

17 **MR. SANDERS:** Your Honor, I have Mr. Ross
18 Lampe, L-A-M-P-E. If I can approach the clerk, I will
19 give him the identifying information for Mr. Lampe. He
20 lives in Smithfield, and he is President of Jones
21 Island Club.

22 **THE COURT:** And this is a not for profit
23 corporation, so it doesn't have shareholders. It has a
24 board of directors and members but no equity
25 participation?

1 MR. SANDERS: Yes, sir.

2 THE COURT: And owns assets?

3 MR. SANDERS: Owns, I believe, approximately
4 5,000 acres of land in Pamlico County.

5 THE COURT: And it is a not for profit
6 corporation?

7 MR. SANDERS: That is correct.

8 THE COURT: So the only way it can dissolve
9 is to dispose of assets to someone in a not for profit
10 context?

11 MR. SANDERS: I can't answer that. I don't
12 know the answer to that.

13 THE COURT: Well, there's no equity in a not
14 for profit corporation. There aren't shareholders.
15 There are members. Wouldn't that be correct?

16 MR. SANDERS: And a board of directors.

17 THE COURT: But the members don't have any
18 proprietary or equity interest in a not for profit
19 corporation.

20 MR. LAMPE: It's a homeowners' association.

21 MR. SANDERS: I'm sorry. I misspoke. He
22 said it's a homeowners' association as opposed to a not
23 for profit.

24 THE COURT: Oh, okay.

25 MR. SANDERS: I'm sorry.

1 THE COURT: So it is a business corporation?

2 MR. SANDERS: Yes, sir.

3 THE COURT: Is that right; there's equity in
4 it?

5 MR. SANDERS: Well, as to its corporate
6 structure, Your Honor, I don't want to give you
7 anything that is incorrect. I'm not sure. The
8 Articles that I have before me that Mr. Baker provided
9 as part of the discovery, indicate that it is -- the
10 way I read it, it is a nonprofit corporation. Mr.
11 Lampe says it is a homeowners' association.

12 THE COURT: But it has title to 5,000 acres
13 in Pamlico County?

14 MR. SANDERS: Is that correct, Mr. Lampe?

15 MR. LAMPE: It's about 4,000, Your Honor.

16 THE COURT: Four thousand. Well, under
17 anyone's reckoning, that's a valuable asset, right?

18 MR. LAMPE: Under North Carolina condo law,
19 we own it as a homeowner's association, and most of the
20 land is common property for the homeowners'
21 association.

22 THE COURT: So it is wildlife property?

23 MR. LAMPE: That's correct.

24 THE COURT: But it is denominated under the
25 condominium provisions of the law?

1 MR. LAMPE: That's correct.

2 THE COURT: So the members are equity owners
3 in a condominium sense of the fee title of the
4 property?

5 MR. LAMPE: Members each have a condominium
6 ownership in a 100 square foot room. Each one is a
7 common --

8 THE COURT: And the common area is the
9 wildlife area?

10 MR. LAMPE: That's correct.

11 THE COURT: And so they are able to own and
12 dispose of that? They can either sell it back to the
13 group or sell it to third parties?

14 MR. LAMPE: That's correct.

15 THE COURT: Okay. So it is an equity
16 situation. All right. And this gentleman is the
17 president of it?

18 MR. SANDERS: That is correct.

19 THE COURT: And in that capacity he is
20 authorized to enter a guilty plea on its behalf?

21 MR. SANDERS: Yes, sir. The board of
22 directors has met, and they have authorized Mr. Lampe
23 to come and do this on behalf of the corporation.

24 THE COURT: All right. If you will file a
25 Resolution to that effect, that will document it in the

1 record.

2 MR. SANDERS: Yes, sir.

3 THE COURT: And the charge is baiting a
4 hunting area, and the corporation is charged with that.
5 Does the corporation understand that charge?

6 MR. LAMPE: Yes, sir.

7 MR. SANDERS: Yes, sir.

8 THE COURT: And is the representative
9 authorized by the corporation to plead guilty to that
10 charge?

11 MR. SANDERS: Yes, sir.

12 THE COURT: And is the corporation, in fact,
13 guilty through its agents and employees in doing that?

14 MR. SANDERS: Yes, sir.

15 THE COURT: Thank you. You may have a seat.

16 MR. SANDERS: Thank you.

17 THE COURT: I'll hear from the Government.

18 MR. BAKER: Your Honor, this investigation
19 began on or about December 30, 2005 and continued
20 through January 21, 2006. During that period -- this
21 is an aerial photograph of Jones Island. Actually it
22 was not physically an island until the Intracoastal
23 Waterway cut through. It was a marshy peninsula. All
24 this land, including the impoundment, is owned by Jones
25 Island Hunt Club Incorporated.

1 During the investigative period agents of
 2 Fish and Wildlife documented four baited area
 3 strategically located throughout the Jones Island. We
 4 monitored the area for that three week period,
 5 determined that the areas were being baited at the peak
 6 of the hunting activity up to two times a week.
 7 Counting the piles of corn at each one, we estimate
 8 1200 pounds of corn was used at each feeding. That
 9 would be over --

10 **THE COURT:** At each feeding?

11 **MR. BAKER:** At each feeding, yes, Your Honor.

12 **THE COURT:** So over a ton plus -- a half a
 13 ton plus at each site, at each feeding? Or not at each
 14 site?

15 **MR. BAKER:** Total.

16 **THE COURT:** Total. Okay.

17 **MR. BAKER:** So there would be over a ton of
 18 corn put out on this hunting club per week to attract
 19 and maintain the ducks going into that area. Primarily
 20 they were Schaup ducks coming in off the Pamlico Sound.
 21 We monitored the flight patterns of the birds bringing
 22 them past these blue dots, which were the hunting
 23 grounds.

24 **THE COURT:** I'm presuming that there is no
 25 natural habitat that would have attracted the Schaup?

1 **MR. BAKER:** They do have an impoundment. It
2 is not a managed impoundment. Of course the Schaup
3 wouldn't go into a shallow water impoundment anyway.
4 There is very little natural food, nothing to sustain
5 the 500 to 800 Schaupts that we saw going to each of the
6 baited areas.

7 Like I said, these areas were baited up to
8 two times a week, heavily baited on each occasion. We
9 watched it, monitored the activity. We actually have
10 photographs of barge loads of corn going across to the
11 island to maintain this feeding program.

12 The day we took it down there were 18
13 hunters. They were hunting the blinds, of course, the
14 closest to the baited area. We took it down to four
15 members, an assortment of guests, some juveniles. At
16 that point the corporation stepped up, accepted
17 responsibility for purchasing, placing, maintaining the
18 baited areas and the blinds. And that's why we are
19 here today, Your Honor.

20 **THE COURT:** Is this a historical event? Were
21 you able to get any follow-up from your investigation
22 as to the practice over time, or was it something that
23 somebody thought up in the early winter of 2005 for the
24 first time?

25 **MR. BAKER:** My first experience with the club

1 was when I first came to North Carolina approximately
2 20 years ago. At that time the club was brand new
3 under different management, and we had quite a few
4 baited issues at that time. They changed managers.
5 They've been under new administration for at least the
6 last ten. Whatever they have been doing has been below
7 our radar screen until last year, and at that point
8 they were just putting out massive quantities of corn.

9 THE COURT: And this was initially detected
10 with over flights?

11 MR. BAKER: It was routinely -- we found it.
12 We just happened to be in that area. Put the bait drag
13 down, found some and started monitoring it. And if you
14 look at some of the photographs we have, I mean, that
15 much corn, it's hard to hide it. I mean, if you get
16 anywhere near it, you can just see it glow.

17 THE COURT: All right. Thank you.

18 What is the Government's position regarding
19 this?

20 MS. KOCHER: Your Honor, the Government
21 recommends a \$25,000 fine with no attempt at
22 restricting the hunting of this area. It is something
23 we have negotiated with the Defendant, and we both
24 present it to you today.

25 THE COURT: Hum.

1 **MS. KOCHER:** The inherent difficulty in
2 trying to monitor -- either they will sell off
3 membership -- there is no way for us to monitor the
4 hunting activity from the corporate position on this
5 area is why we did that. We did request a higher fine
6 to compensate for that inability.

7 **THE COURT:** Has anyone been charged, any
8 individual been charged in this case?

9 **MR. BAKER:** No, Your Honor. And that was
10 part of our difficulty. We had a combination of
11 members hunting and invited guests, some of which told
12 me -- and I have no reason to doubt -- that that was
13 the first time they had ever been to that property. So
14 we would have a difficult time sorting out who knew,
15 who didn't know. And with the corporation stepping
16 forward, we felt that would be a fair way to resolve
17 it.

18 **THE COURT:** Well, I think I will get a
19 presentence report on it. Certainly one of the
20 punishments that a corporation can incur is probation.
21 Is that not true, Ms. Kocher?

22 **MS. KOCHER:** It is true, Your Honor. The
23 corporation can face up to five years probation.

24 **THE COURT:** And as a condition of probation
25 the Court could bar any hunting activities on the

1 property.

2 MS. KOCHER: It could, Your Honor. That is
3 certainly within the purview and is very common to
4 these baited cases. In this case, given the clean
5 recent history or ten to fifteen years of no
6 violations, we understood from the corporation that
7 perhaps there was new membership, just one or two new
8 members who had brought this type of baiting to the
9 corporation.

10 THE COURT: That sounds so improbable.

11 MS. KOCHER: They had --

12 THE COURT: Schaup don't go in that volume to
13 a place unless it's baited. The idea that a couple of
14 rogue members could have "set it up" and the others
15 just naively go out and knock down birds all day long
16 is preposterous. I mean it had to be something that
17 everybody knew.

18 MS. KOCHER: I didn't mean to imply that the
19 other members wouldn't know by the numbers of ducks
20 what had happened. But the baiting itself came from
21 ideas of this new membership. My understanding was --

22 THE COURT: Well, the blind eye rule.

23 MS. KOCHER: -- the time line the
24 corporation, I have been told, is actually considering
25 changing its bylaws to provide for punishment or

1 ousting of members that get in this type of activity.
2 I don't think that has been able to come to pass before
3 today; is that right?

4 **THE COURT:** That's why we need a presentence
5 report. Because it's just implausible to me that all
6 of a sudden a couple of people join up and snap their
7 fingers and say, let's just throw a couple tons, you
8 know, of corn in here every week during the season and
9 see if it has any effect.

10 **MR. SANDERS:** I don't want Mr. Lampe to be
11 put in that light, Your Honor. I think what Ms. Kocher
12 was referring to is that there was an interview between
13 Agent Baker and a man named Fred Hampton who is the
14 manager of this club, the wildlife manager, if you
15 will, of this club where Mr. Hampton said to Mr. Baker
16 to Mr. Baker's question directly out of the discovery
17 knowing that this club did not have a history of this
18 in any recent years said, have you lost your mind? And
19 Mr. Hampton, who has wildlife enforcement experience
20 before he retired, I think said back to Mr. Baker,
21 well, there have been some changes in the club with the
22 acquisition of a few new members, and that's most of
23 the part of our baiting problem. I think that is where
24 that came from.

25 **THE COURT:** But there were 18 people hunting

1 -- weren't there 18 people hunting?

2 **MR. SANDERS:** And there is no question but
3 that the members of the club knew that there was a lot
4 of bait out there.

5 **THE COURT:** Why would the birds be there when
6 they are nowhere else, and that's a high volume of
7 hunters, and the suggestion that two guys slipped out
8 there with tons at a time of corn and dumped it, it's a
9 flooded area. It's not an easy place to get to and
10 from.

11 **MR. SANDERS:** No question. And, again, I
12 didn't want that to -- for you to think that Mr. Lampe
13 had said something like that or any of the other
14 members of the board because they did not make that
15 comment.

16 **THE COURT:** I'll -- and I'm not resistant to
17 doing what the Government seeks by way of punishment.
18 But the idea that you can buy your way out, you know,
19 let's just throw a little more money on the table and
20 you get to over shoot and over kill is something that,
21 as a sentencing policy, has never been practiced here.
22 It's just a question of money. And that's what it
23 comes down to in this case. If they get to pay -- how
24 much is a membership? If a person walked in today and
25 was otherwise acceptable, would it cost you a hundred

1 thousand dollars or two hundred thousand dollars to
2 become a member, 300,000?

3 MR. SANDERS: Excuse me one second, Your
4 Honor.

5 (Counsel consults with Mr. Lampe.)

6 One hundred thousand dollars.

7 THE COURT: A hundred thousand dollars. And
8 what are there, 20 members?

9 MR. SANDERS: There are a few more than that,
10 33, 34 members.

11 THE COURT: So it has a capitalization just
12 today of three and a half million dollars. Twenty-five
13 grand is chump change for that. I mean, that's just
14 the cost of doing business. They probably have a
15 maintenance due and a charge, an annual charge. Just
16 write that 25 grand into it and spread it around.
17 That's less than a thousand dollars a member. And the
18 ticket -- what would the ticket have been? If
19 everybody got a ticket that was hunting, 500 apiece.

20 MR. BAKER: It would depend on the number of
21 birds killed. Eighteen, probably a minimum of \$500 a
22 hunter.

23 THE COURT: Okay. So that's \$9,000 right
24 there.

25 Well, let's just get a presentence report and

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see where it goes from there.

Thank you.

MR. SANDERS: Thank you very much.

STATE OF NORTH CAROLINA)
) C-E-R-T-I-F-I-C-A-T-I-O-N
COUNTY OF PERQUIMANS)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Stephanie C. Graham, CVR
Court Reporter & Notary Public
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August 2, 2008

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