DEPOSITION OF MICHAEL FRISBEY

January 26, 2023

IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

MICHAEL FRISBEY and wife, JAMIE FRISBEY,)
Plaintiffs,) NO. 215799
vs.)
SALEM POINTE CAPITAL, LLC, MICHAEL AYERS, and RARITY BAY COMMUNITY ASSOCIATION, INC.,)
Defendants.)

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS SALEM POINTE CAPITAL, LLC, and MICHAEL AYERS:

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- Appearances continued -

ON BEHALF OF RARITY BAY COMMUNITY ASSOCIATION, INC.:

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Also present:

Jamie Frisbey
Michael Ayres

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1 S T I P U L A T I O N
2 The deposition of MICHAEL FRISBEY, called as a
3 witness at the instance of the Defendants, taken
4 pursuant to all rules applicable to the Tennessee Rules
5 of Civil Procedure by notice on the 26th day of
6 January, 2023, at the law offices of Kizer & Black
7 Attorneys, PLLC, 217 East Broadway Avenue, Maryville,
8 Tennessee, before Holly A. Klinger, Licensed Court
9 Reporter and Registered Professional Reporter, pursuant
10 to stipulation of counsel.
11 It being agreed that Holly A. Klinger,
12 Licensed Court Reporter and Registered Professional
13 Reporter, may report the deposition in machine
14 shorthand, afterwards reducing the same to typewriting.
15 All objections except as to the form of the
16 questions are reserved to on or before the hearing.
17 It being further agreed that all formalities
18 as to notice, caption, certificate, transmission,
19 et cetera, including the reading of the completed
20 deposition by the witness and the signature of the
21 witness, are expressly waived.
22
23
24
25

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1 (The deposition commenced at 9:02 a.m.)
2 MICHAEL FRISBEY,
3 having first been duly sworn, was examined and
4 testified as follows:
5 EXAMINATION BY MR. RUSSELL:
6 Q. Will you state your name, please, sir?
7 A. Michael Dawn, D-A-W-N, Frisbey.
8 Q. Mr. Frisbey, I'm Adam Russell. We met
9 before, I believe.
10 A. Absolutely.
11 Q. I'm going to start with a little bit of
12 background from you. Where were you born and raised?
13 A. Nashville, Tennessee.
14 Q. And did you go to college anywhere?
15 A. Yes.
16 Q. Where did you go?
17 A. My freshman year, I went to Auburn
18 University. Graduated, transferred from there back to
19 the University of Tennessee. Graduated there in 1969,
20 and got my master's degree from Cal State -- California
21 State College system, out in California. Got that in
22 1975.
23 And have a real estate license -- had --
24 they are retired -- real estate licenses in the state
25 of New York and in the state of Tennessee.

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1 Q. And as far as your -- I don't want to go
2 through every job you've ever had, but kind of give me
3 an idea of, kind of, your professional experience.
4 A. Okay. Vice president of marketing for
5 Russell Corporation out of Alexander City, Alabama. I
6 was vice president for Champion Products. The Champion
7 brand that you see on sports shirts and stuff, we
8 created that. We were the first ones to start doing
9 that.
10 Q. Doing the branding?
11 A. The branding. Yeah, that was my
12 background: Branding, licensing. Went from Champion
13 to Russell and created the Russell Athletic brand that
14 you still see today. So that was my background there.
15 The last corporate job I had was with
16 Propper International out of St. Charles or St. Louis,
17 Missouri. Big defense contractor.
18 Q. And what were you doing there?
19 A. I ran one of their divisions. Started it
20 and built it up and then ran it. In 2001, started my
21 own company, which is Government Suppliers and
22 Associates.
23 In 2004, we became a prime vendor to the
24 U.S. Department of Defense, and to this day, we still
25 are a prime vendor to the U.S. Department of Defense.

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1 Q. And what was the name of that? I'm
2 sorry. Government --
3 A. Government Suppliers and Associates.
4 Q. And is that a company that you owned?
5 A. Yes.
6 Q. Do you still own it?
7 A. Yeah. Jamie and I do.
8 Q. And Jamie is sitting here beside you?
9 A. That's her (indicating).
10 Q. Okay. How long have y'all been married?
11 A. Oh, Jesus. 22 years. Do the math real
12 quick. Right? Something like that. We met in
13 St. Louis.
14 Q. And when you said you started Government
15 Suppliers, is that, you mean you founded the company?
16 A. Correct.
17 Q. How many employees did it have?
18 A. We have independent contractors, but we
19 are -- we've got contracts with the Army; Air Force
20 Security Assistance Command, AFSAC; GSA, General
21 Services Administration.
22 We are represented in 15 allied countries
23 around the world with agents that represent us to their
24 particular ministry of defense.
25 Q. Have you ever served on -- well, not

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1 including the CAI -- we'll call it the CAI, the
2 Community Association. So when I use the word CAI --
3 A. Have I served on HOAs before? Yes.
4 Q. Let me back up. Have you ever served on
5 any boards other than the CAI?
6 A. Yes.
7 Q. Tell me about that.
8 A. Well, I was on -- I've been on several
9 boards for the HOAs in communities I've lived in during
10 my work career. I worked in California, Denver,
11 Upstate New York, Alabama, that kind of thing.
12 Charity boards: United Way, some food
13 pantries. That's about it. Church boards. I mean,
14 you know.
15 Q. So when you say you've been on other HOA
16 boards, have you ever been on any in the state of
17 Tennessee?
18 A. Yeah. For multiple years, I was on the
19 HOA board at Foothills Pointe, right across the lake.
20 That's how come I'm so familiar with Rarity Bay
21 development. We lived over there for, what, 15 years?
22 MS. FRISBEY: Uh-huh.
23 BY MR. RUSSELL:
24 Q. Foothills Pointe. That's a neighborhood
25 here in -- is that in Blount County?

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1 A. No. That's Loudon County. Foothills
2 Pointe was Loudon County.
3 Q. Okay. And when did you first move or buy
4 property in Rarity Bay community?
5 A. 2013.
6 Q. And did you buy a lot, or did you buy a
7 home?
8 A. Bought a lot.
9 Q. And that was in 2013?
10 A. Right. And we designed the house
11 ourselves, contracted, had it built, and moved in in --
12 THE WITNESS: Help me out -- April of
13 '15.
14 BY MR. RUSSELL:
15 Q. So you built the home on the lot that you
16 purchased in 2013?
17 A. Correct.
18 Q. And do you still live in that home?
19 A. Yes.
20 Q. What's the address?
21 A. 550 Cormorant, C-O-R-M-O-R-A-N-T, Drive.
22 Q. Do you have any other homes or...
23 A. Not now. We sold all of them.
24 Q. Okay. Does anybody live there other than
25 your wife?

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1 A. No. Three dogs. Does that count?
2 Q. Maybe. Okay. So you've brought a
3 lawsuit against Salem Pointe Capital, LLC; Michael
4 Ayers; and the Rarity Bay Community Association?
5 A. Correct.
6 Q. If I refer to Salem Pointe Capital as
7 LLC, can we be on the same page with that?
8 A. Sure.
9 Q. All right. Would you agree that LLC is
10 the declarant for Rarity Bay?
11 A. Yes.
12 Q. All right. One of the -- I guess we had
13 a hearing in this case back, I don't know, several
14 months ago.
15 A. June.
16 Q. In June where you provided some
17 testimony, right?
18 A. Uh-huh.
19 Q. Yes?
20 A. Yes. I'm sorry. I forgot. I can't nod
21 and I can't go huh-uh.
22 Q. I'll try my best to prompt you.
23 A. Yeah. I'm sorry.
24 Q. Prior to testifying in that trial, had
25 you ever given testimony in any type of hearing or

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1 court case?
2 A. Yes. Multiple times.
3 Q. In what capacity?
4 A. Well, as a government contractor, been
5 called before Congress on several occasions, testified
6 before Congress about issues with the defense industry,
7 questions that they had, small businesses, things of
8 that nature.
9 Been through a couple divorces. I
10 testified there. Testified in some federal government
11 cases where the federal government brought
12 counterfeiting actions against companies.
13 Q. Have you ever been a party to a lawsuit,
14 other than this one, and the divorces?
15 A. A party?
16 Q. Meaning, have you ever been a plaintiff?
17 Have you ever sued or been sued?
18 A. No. No.
19 Q. Okay. So this lawsuit here that we're
20 talking about today is the first lawsuit that you ever
21 filed that's not a divorce?
22 A. Correct.
23 Q. All right. Well, obviously, one of the
24 issues here is about you being on the board and so I
25 want to ask you some questions kind of leading up to

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that.

A. Sure.

Q. I believe you testified during the hearing that one of the reasons you ran for the board was because you felt like the Rarity Bay community was being controlled by the declarant.

A. That's correct.

Q. All right. What do you mean by "controlled by the declarant"?

A. He does not -- the community board, in my opinion, should be representing the residents of Rarity Bay. That should be their primary focus. And that board should be concerned with the 600 homes, approximately, that are worth over $800 million in that community, and that's who the board should report to.

And after Salem Pointe Capital and Rarity Bay Partners brought the assets out of receivership, initially the partnership controlled the board with their own appointees. When the partnership between the two of them dissolved -- or is dissolving, I guess whatever the case may be now -- Salem Pointe Capital literally has tried to control the board of the community with its own appointees, until the judge ruled that all members of the board had to be elected, not appointed.

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Michael has continued to try to control the board.

Q. So when you're talking about control, you mean -- just to clarify, you're saying the control would be the appointment of board members by LLC or the partnership?

A. Correct.

Q. Rarity Bay Partners?

A. Correct.

Q. Okay.

A. Or hand-selected residents that support his beliefs.

Q. Okay. What would you -- what do you mean by "his beliefs"? And, again, we're talking about LLC. I get it. Michael Ayers is kind of the principal and the named face, but to be clear, we're talking about the LLC.

What do you mean the "beliefs"? "His "beliefs"?

A. Well, he, obviously, bought the assets of the community, or his part of it, to create a profit-making business for the LLC. And he bought the country club and the golf course and, if I'm remembering correctly, somewhere around 11 condominiums and about 19 lots.

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Q. Okay. Well, the purchase of assets in the running of a business, I'm a little confused on what that has to do with beliefs. You said he's appointed people who follow his beliefs or agree with his beliefs. And what do you mean "his beliefs"?

A. His beliefs. Okay. I think he believes that, as declarant, he should have the ultimate authority over how the community is run, what it does, how it invests its money.

Does that -- did that answer your question?

Q. Well, it's -- if that's your answer, then sure. You testified that -- one of the things you testified to in the hearing was that declarant turned the Design Review Board -- I might refer to it as DRB -- into a "cash cow," and I think you said most of the money derived was going into his income.

A. That's correct.

Q. What's your basis for your statement that the declarant turned the DRB into a "cash cow"?

A. Okay. You have to look at the community association. The community association is responsible for maintaining the community's infrastructure, its roads, its sewer systems, it's electrical systems, and those are aging.

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I think our community is something around 25 years old, okay. The only source of income that the community has now is the annual community assessment. That's it. And so the more expensive that infrastructure, it all becomes, the more expensive that assessment becomes every year.

The one thing, when the community was run by the community from '12 to '15, that it had as a potential source of income was the Design Review Board. When Michael took that over, he took any of the income that was associated with the community out.

Q. Is it your understanding that the Design Review Board is a profit-generating function of the CAI?

A. Is it -- say that again.

Q. Sure. You're talking about the income that comes to the Design Review Board and I believe you said during 2012 to 2015, that that income went to the CAI, is that correct?

A. Correct.

Q. Is there a -- have you seen any of the documents pertaining to how the Design Review Board was created?

A. I'm not sure I know how to answer your question. Try asking it another way.

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Q. What's your understanding of how the Design Review Board is supposed to function?

A. Okay. The Design Review Board is supposed to be an adjunct of the CAI board. Its responsibility is to maintain the architectural and design standards and limitations for all of the buildings, all of the homes that are built in Rarity Bay.

So that function is what he now controls. It used to be called the Architectural Review Board when it was a part of the original community development. He changed the name of it, after he bought the assets, to the Design Review Board.

Q. How do you know he changed the name of it?

A. How do I know he changed -- well, it went from Architectural Review to Design Review Board and the community didn't change the name, that I'm aware of.

Q. When did that happen?

A. I'm guessing somewhere after he bought it. 2015.

Q. As we sit here, do you know exactly when the name was changed?

A. No, I do not.

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Q. All right. What sources of funds -- let me rephrase it. What monies does the Design Review Board receive?

A. Okay. As it is currently structured, there are two components to it. The first component is approximately $6,400 that a resident buying a new house in the community will pay and that $6,400 is broken down into basically three components:

The first component comes back to the community and it's $1,800 and that goes into supporting the sewer reserves and the sewer system.

Q. So there's $1,800 of that $6,400 that is supposed to be used for the infrastructure?

A. Yes. That's correct. For the sewer and the sewer reserves.

Q. All right. And does that money go to infrastructure?

A. Yes.

Q. All right. And that's --

A. State law, I think, requires that.

Q. That's still the case?

A. Yes. Then there is a thousand dollars that comes back of the 6,400 that is sent to the CAI and that money is to help pay for the time that the CAI representatives spend managing and following up on,

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however you want to say it, the various homes that are being built by multiple contractors in the community.

Q. And is that money, the thousand dollars, still going to the CAI?

A. Correct.

Q. All right.

A. The balance of those monies are the profit that goes back to Michael Ayers, Premier Resort Management.

Q. And how do you know that?

A. Because that's the difference that goes back. That's what they pay. That's what comes back to CAI. Stays with Premier Resort Management.

Q. Are there any funds that are refunded to the homeowner upon completion of the built?

A. Out of that 6,400, no. There is a second set of funds that they pay, which are the construction deposits, and those construction deposits vary in amount based on the size of the square footage of the home.

There are currently three breakdowns: If a home is under 5,000 square feet, I believe it is $5,000. I usually write stuff down, so I don't have my notes in front of me. Then, if it's over 5,000 square feet and under, I think, 6,000 square feet, it's

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$7,500. And if it's over 6,000 square feet, it's $10,000.

And that is, in effect, the security deposit that is deposited with Premier Resort Management and held onto by them until they are issued a certificate of occupancy.

And once the certificate of occupancy is issued and Premier Resort Management says that they have built the house in compliance with the design guidelines that Premier Resort Management approved back in the beginning, they are supposed to get that money back, less any fines or penalties that there might have been assessed during the building process.

Q. To your knowledge, does -- is that occurring? In other words, are the homeowners getting that money back less any fines or fees?

A. Not in a timely fashion.

Q. What's your basis for that?

A. RJ's construction report that he issues every month. For example, right now, there are 15 homes that are under final review and I asked RJ specifically, I said, "What does that mean? Who is reviewing them?"

And he said, "They are under review by Premier Resort Management." And I said, "Okay." And

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if you go back and look at those 15 homes -- I quoted this yesterday at a board meeting, so there will be a copy of it someplace -- but there are three homes that the residents moved into, one in May and two in June of '22, and they still have not gotten their deposits back.

Q. How do you know that?

A. Because I asked them.

Q. Who are those people?

A. There are three residents.

Q. What's their names?

A. I don't remember them.

Q. You don't remember the residents' names?

A. No.

Q. But you asked them if they have been paid back?

A. I asked Ronny if they had been paid back.

Q. I'm sorry. You asked who?

A. Ronny. RJ.

Q. Who is RJ?

A. RJ and Ronny are the two CAI employees that are responsible for overseeing the construction of the homes during the building process.

Q. And who employs those folks?

A. The CAI. Well, rephrase that. They were

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supposed to work under the CAI. They were currently paid by Premier Resort Management as a part of the community services agreement that was signed in 2015 by John O'Brien and Salem Pointe Capital.

Q. Okay. And would -- to your knowledge, when you talked about the three components and one of those being the profit, would you agree that that profit would probably go to pay these people who are doing the services, like Ronny and RJ?

A. No, it does not.

Q. How do you know that?

A. The thousand dollars is the only money that comes back. If you do the math, I think it leaves about 3,620 bucks, or 25 bucks, as profit that is kept by Premier Resort Management.

Q. Well, how do you know that the profit that you say is kept by Premier Resort isn't used to pay the employees? You just -- I think you just testified that Ronny and RJ get paid by Premier Resort.

A. Premier -- excuse me. Rephrase that. Premier Resort Management processes the payroll for the 13 employees that work for the CAI.

Q. When you say "processes the payroll," what do you mean?

A. I'm sorry?

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Q. You said, "processes the payroll." What do you mean by that? They pay them? Premier Resort pays them?

A. Premier Resort Management writes their checks. They are supposed to be, as I understand it, employees of the community association.

Q. But --

A. Because of the community services agreement that was signed in '15, Premier Resort Management actually does the payroll functions for those employees and charges the CAI a fee for doing that.

Q. Okay. Now, are you aware of a man named Steve Lucas who works for Denark?

A. Yes. He is the one member that lives in the community as a resident. Talked to him on several occasions and he is one of the persons or the one main person that does the review of the homes and constructions and he does it on a volunteer basis. He's not paid.

Q. And you called Mr. Lucas and asked him questions about the Design Review Board and his role, is that right?

A. Correct.

Q. And you asked him if the Design Review

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Board was hindering the development, is that true?

A. No, I didn't ask that.

Q. You didn't ask him if the Design Review Board was hindering the development in the Rarity Bay community?

A. No.

Q. Did you ask him where the fee structure came from?

A. Probably.

Q. Did he tell you that it originally came from Mike Ross, who was the original developer of the community?

A. Well, Mike Ross ran the DRB when he was there, so, yes.

Q. So the fee structure that you've talked about here, these three components, are you aware that that's been in place before LLC's purchase of the assets?

A. Some of the time, yes.

Q. Okay.

A. For the three years that they ran as a community, they handled it.

Q. Who handled it?

A. The community itself. Ours was the last house approved by the community association.

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Q. Okay. The three residents you talked about not receiving their -- or I think you said it's not being timely distributed, the deposit. Have you heard --

A. That's just my opinion.

Q. Okay. Have you heard from those three residents? Have they complained or have you heard anything about that?

A. Specifically have they complained to me, no.

Q. All right. Let's look at -- you stated that after the LLC bought the assets, that Mr. Ayers created the Design Review Board, changing it from the Architectural Review Board, is that correct?

A. Well, he didn't create the Review Design Board. He just took it over.

Q. Okay. Have you seen these master declarations?

A. On the community?

Q. Yes, sir.

A. Yeah.

MR. RUSSELL: Let's make this Exhibit 1, please.

(Exhibit 1 - Master Declaration of Covenants, Conditions & Restrictions.)

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BY MR. RUSSELL:

Q. Have you reviewed these, the master declaration, attached as Exhibit 1?

A. I've read them a couple times.

Q. You have?

A. Yeah. I've got a copy of these.

Q. Do you know if it makes any reference to the Architectural Review Board?

A. Yeah, I believe it did. I don't have my glasses.

THE WITNESS: Do you have an extra pair?

MS. FRISBEY: I don't. You can use those.

THE WITNESS: Yeah, I don't remember the exact sections of it, but, yes, there is a reference in here to it.

BY MR. RUSSELL:

Q. Check page 12.

A. Architectural Standards. Yeah, there it is. 8.1. 8.5, yeah. Okay. Yeah, I remember those.

Q. Okay. And do you see in Section 8.2 where they have what they call design guidelines?

A. Uh-huh.

Q. Yes?

A. Yes. Correct.

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Q. Have you ever read the design guidelines?

A. Yes. Got a copy of them.

Q. Is it your understanding that the Design Review Board follows the design guidelines for the purposes of approving new proposed --

A. Yeah. Houses, square footage, the style of the home, the building materials that are used in it, what the setbacks are, yes.

Q. Okay. Let's look here at -- in your -- excuse me. Now, would you agree that, at least when it comes to your goal, your goal would be to have the declarant removed from the community?

A. I believe there's no need for a declarant role in the community, correct. I believe the residents of the community can and should manage their own community.

Q. So would you agree that your stated goal would be to remove the declarant from the community?

A. Yes.

Q. And why do you believe that the community doesn't need a declarant?

A. Because the design guidelines, the CC&Rs, the governing documents of the community, would then require a 67 percent vote of all of the residents in the community to change any of those documents or

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guidelines.

It's the 600-plus residents that live there that should control it. Therefore, they ought to vote on anything that they believe needs to be changed. So, yes, I totally agree. I think the community can manage itself.

Q. How would the community deal with the need -- or let me back up. Would you agree that there are, there is still, you know, developed land in Rarity Bay?

A. No. There is no undeveloped land in Rarity Bay.

Q. Would you agree that it's not fully developed?

A. No, I would not.

Q. So there's no land that hasn't been built on?

A. There are lots that have not been sold. All of the virgin lots that were originally part of the -- was it Tellico Lake Properties --

Q. Yeah.

A. -- the original owners? All of those lots have been sold and resold multiple times. There are no virgin lots in Rarity Bay --

Q. Okay.

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A. -- that I'm aware of.
Q. So the raw land that we'll talk about here in a little bit that the LLC has platted out, are you saying that that land should not be developed?
A. That land should not be developed. There is a -- he's welcome to develop it if he wants to. It's not developed right now. There are no -- in Phase 17, there are no roads, no sewers, no electrical. There's no infrastructure. It's just grass.
Q. Okay. Is it your position that the LLC doesn't have the right to develop that land and put in the infrastructure?
A. They have a right to do it if they want to and pay for it.
Q. Okay. Going back to this master declaration, Exhibit 1, can you point to anywhere in there where there's a reference to the Architectural Review Board or committee?
A. Well --
THE WITNESS: Let me borrow your glasses again.
BY MR. RUSSELL:
Q. You may want to keep those.
A. Okay. Are you at 8.2, which is the architectural review itself? And it says DRB, Design

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Review Board.
MS. DAVIS: Are you going for the different name?
THE WITNESS: I mean, I'm not sure the difference between architectural review and --
MR. HALE: It's a totally different board that's provided for in the master declaration, the Design Review Board. There is no such thing as an architectural review committee except by way of a resolution that was adopted.
MS. DAVIS: So a different name, same function.
THE WITNESS: Same function.
MR. HALE: Yes. But it talks about who's in charge of it in the master declaration, I think, pretty clearly.
BY MR. RUSSELL:
Q. Well, that's what I was going to ask you. If there was any specific reference in the Architectural Review Board. Section 8.2 of the master declarations talk about the declarant retains the right to appoint all members.
If you can -- go to Section 8.2.
A. I've got it. I've read it.
Q. So you'd agree the master declaration

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provides that the declarant retains the right to appoint all members of the Design Review Board who shall serve at the declarant's discretion?
A. Yeah.
Q. All right. And that was certainly the way it was before LLC purchased the assets?
A. That is correct.
Q. Okay.
A. But when the property was -- how do I say this? Before it was bought out of receivership, it was controlled by the community and a court-appointed receiver.
Q. Sterling Owens?
A. Sterling Owens.
Q. And so Mr. Owens signed over, I guess -- well, let me ask. Did Mr. Owens sign over the duties of oversight of the Design Review Board to the CAI?
A. Yes.
Q. And was that --
A. Not only physically signed over but the community representatives ran the Design Review Board.
Q. Okay.
A. For three years.
Q. At Mr. Owens' directive?
A. Yes.

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Q. All right. Did you ever serve -- have you ever served on the Design Review Board?
A. No.
Q. Do you know if Mr. Owens ever amended the master declaration?
A. I physically do not know that he did any amendments to the master. I don't know the answer.
Q. Okay. So are you -- have you ever seen a document called the Fifth Amendment?
A. Yes.
Q. Are you aware that Mr. Owens is the one that executed that Fifth Amendment to the master declaration?
A. I would have to go back and read who signed it, but I will take your word for it.
Q. Okay. Let's talk about your -- we talked a little bit about your running for the board, but tell me why you wanted to run for the CAI board.
MR. RUSSELL: Mr. Ayers just walked in here, for the record.
BY MR. RUSSELL:
Q. Can you give me your reasons for wanting to run for the CAI board?
A. To represent the residents of the community.

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Q. In what way?
A. Again, I'm not sure I know how to answer that question. Whatever was important to the community is what the board should be doing. How they spend their money on -- how they manage their money on roads and infrastructure and things that they're interested in, addressing concerns that the residents have, or questions that the residents have, anything to try to help the community grow and expand.
Q. And when you ran for the board, did you have any type of -- was there, like, a forum or something where you would campaign, or how did that work?
A. The only thing that I'm aware of is they have a meet-the-candidates night or day when all of the candidates that are running for the board have a chance to stand in front of the community residents and tell them what they would like to see if they were elected to the board, and the residents have a chance to ask them questions and get comfortable with them on whether or not they agree with them being on the board.
Q. And what would have been your platform or your goals that would have, you know, been unique to you versus another candidate?
A. I wanted to see the community responsible

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for voting on any new amenities that might be installed in the community to make sure that the residents -- at least, I think one of the statements that I made was that any new amenities should be voted on by the community and must be approved by at least 51 percent of the residents before the community should spend any money on them.
Q. All right. So you wanted the residents to vote on any new amenities?
A. Absolutely.
Q. And was that not already happening?
A. No. It was not, in my opinion.
Q. Okay. Can you give me an example?
A. The greenway which, by the way, I think is ultimately a good amenity, but the greenway -- again, I don't have my notes in front of me -- the greenway was not voted on by the community as a whole.
It was merely approved by the board and installed and I think there were less than -- there was one survey done. I think there were maybe 100 or so people that commented favorably on it, or whatever.
But the point is, if you've got 600 homes in the community, if you're going to spend a half million dollars of the community money, it should be the responsibility of the board to make sure that the

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community understands exactly how much money they are proposing to spend, exactly what it's going to be, and if 51 percent of those residents that live there think it's a good idea and they vote for it, great.
But if only 30 percent of the people think it's a good idea, you don't do it. You don't spend money on it until the majority of the residents believe something is worthwhile.
Q. Okay. So what you're talking about is the community approving the CAI's spending of funds for amenities, is that right?
A. Correct.
Q. All right. And as a board member, how would your role -- how would you play a role in that? In other words, if the board is the one that is the -- I guess the decisionmaker for the CAI, are you saying the board should take a poll of the residents and have a vote?
A. Absolutely.
Q. Okay.
A. I mean, the board is a non- -- it's a nonprofit. It is a volunteer board. We're not paid to be there. Our job is to listen to our residents, first and foremost. That is our primary -- in fact, that's our primary responsibility.

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To report to the residents, to listen to what they're interested in, and follow through on their requests.
Q. Okay. Other than this greenway, are there any other amenities that you're referring to?
A. Well, there was conversation about wanting to do a pavilion as an additional amenity for the community. Again, if that's something the community wants, then it ought to be put up for a vote by the community. And if the community wants it, 51 percent of the people vote for it, that's fine.
Whether I personally as a board member agree or disagree is irrelevant. My job as a board member is to present, we've got X number of people that are interested in this particular amenity. Here's what it's going to cost. Here's what we think it might look like. Here's what we expect the expenses to be on that amenity over X number of years, the life of that particular amenity.
This is where we think we would put it or this is what we think we would do with it. Do you agree? And if you agree, we have an annual meeting once a year. Vote on it. Here's what's on the ballot. We're going to vote on a pavilion. We're going to vote on a dog park. We're going to vote on a widget farm,

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1 whatever it happens to be, and if 51 percent of the
2 residents think that's a good idea, then I'm a hundred
3 percent behind it.
4 That's what the board does and that's
5 what the board should be working on.
6 Q. Okay. Well, if 51 percent of the
7 residents believe that the declarant should still be in
8 control of the community, would you agree with that?
9 A. If 51 percent of it did, yeah.
10 Absolutely.
11 Q. Okay. Have you ever taken a poll of the
12 community to determine whether or not they are in favor
13 of having a declarant?
14 A. There was a series -- excuse me, there
15 was a series of meetings held where that was discussed
16 and a number of residents signed petitions believing
17 that they would prefer to be self-governed as opposed
18 to governed by the declarant.
19 Q. How many residents signed that petition?
20 A. 560-something, 570 people. I don't have
21 my notes in front of me.
22 Q. Do you have that petition?
23 A. No, I do not have possession of it.
24 Q. You don't have possession of it?
25 A. No.

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1 Q. Do you know who does?
2 A. No.
3 Q. Have you ever seen it?
4 A. Yes.
5 Q. How did you see it?
6 A. Saw individual pages of it when meetings
7 were held within the community where residents that
8 were interested in that signed a petition to say, yes,
9 we want to be self-governed.
10 Q. Where is the -- you don't know where the
11 petition is located?
12 A. No, I do not.
13 Q. Where were you when you saw it?
14 A. At the CAI.
15 Q. And you don't know who has possession?
16 A. Or the CAC. Sorry. Bad choice of words,
17 Community Association Center.
18 Q. You don't know who has possession of that
19 petition?
20 A. No, I do not.
21 Q. Who showed it to you?
22 A. It was there at the CAC to be signed by
23 the people that attended the meetings.
24 Q. You mean, like it was on a board? Or
25 what do you mean, "it was there"?

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1 A. Well, it was on a table, I guess. On the
2 bar. On the bar at -- have you been to the CAC?
3 Q. Yes.
4 A. Okay. You got that big room at the back
5 and there's a little bar where the kitchen area is.
6 Q. Do you recall what the questions were or
7 what the petition said?
8 A. Not offhand. Not right now.
9 Q. What is your recollection of what it
10 said?
11 A. Something to the effect of "Would you
12 like the community to be self-governing?"
13 Q. Do you know who put that together?
14 A. Specifically, no.
15 Q. Did you actually count the number of
16 people who signed it?
17 A. I've been told exactly how many people
18 signed it. I've seen multiple pages of it.
19 Q. Did you count the number?
20 A. Myself, no.
21 Q. Who told you?
22 A. I don't remember exactly who told me the
23 numbers. It's been told multiple times. It's 560 or
24 70 people.
25 Q. It's been told multiple times by you?

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1 A. Different residents that were responsible
2 for the petition and keeping track of it.
3 Q. Can you name their names?
4 A. No.
5 Q. Okay. Because you don't remember?
6 A. Correct.
7 Q. Okay. When was this?
8 A. Oh, geez. There were a series of
9 meetings. It wasn't, like, there was one meeting.
10 There was a series of community meetings held at the
11 CAC where the ideas of whether or not the community
12 needed a declarant or whether it should be
13 self-governing were presented.
14 I don't remember. There were a bunch of
15 those meetings.
16 Q. Can you give me a general time frame?
17 A. '21. 2021, 2022.
18 Q. Okay. Now, you were removed from the
19 board by LLC, is that right?
20 A. Correct.
21 Q. And do you believe --
22 A. Well, I was removed by -- no. Let's
23 rephrase that.
24 Q. Okay.
25 A. Michael Ayers told the board that they --

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that he was removing myself and Crystal Pate and that occurred -- that notice occurred at an organizational meeting on March the 1st.

There was a disagreement over whether he had the right to remove me or not, because I believe that Tennessee law had been violated, that Tennessee law trumps the Sixth Amendment.

Q. Do you have any training as an attorney?

A. She's right there.

Q. So -- and I don't want to get into attorney-client stuff, but your basis is because of what you learned from counsel?

A. Correct.

Q. All right. Do you believe you were removed because of your publications and e-mails to the community?

A. I've never been told why I was removed.

Q. Okay. Well, I believe you testified in your hearing earlier that you thought it was because of your publications to the community in Rarity Bay News. Does that --

A. That was a speculation, yes.

Q. All right.

A. I've never been told that.

Q. And Rarity Bay News is something that you

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publish and you draft, is that right?

A. It was until I got back on the board and I quit after I got back on the board. I did it as a community newsletter.

Q. And why did you quit when you got back on the board?

A. Because as a board member, I felt like the communications should be coming from the board about things in the community.

Q. But before you were on the board, you felt like the communications should be coming from you?

A. No. I felt like the community board wasn't sending anything out to the community --

Q. Okay.

A. -- about the -- the community has been embroiled in multiple lawsuits for multiple years and the board was not sending anything out to the community regarding those lawsuits.

Q. When you say "sending anything out," what are you -- what are you talking about? Do you think there should be something that -- like a weekly newsletter, or what do you mean?

A. No. Again, this is a personal opinion, okay.

Q. Uh-huh.

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A. But if the community is involved in litigation, I think that it's the CAI's responsibility to send out copies of that litigation to the community, along with any rulings, findings, evidence, whatever, so that the residents of the community are aware of what is occurring.

Q. Do you think --

A. Because ultimately they are having to pay for it.

Q. Well, you would agree that the rulings and filings are all public record, correct?

A. Yes. But a lot of people simply do not go down and do that.

Q. Well, do you know whether or not they're interested in doing so?

A. I'm sorry?

Q. Well, in other words, you say, well, you know, you think the CAI should be sending out information, updates on the lawsuits, and lawsuit papers, and that sort of thing.

A. Correct.

Q. Anyone that has an interest in the lawsuit can go to Monroe County and get the papers, right?

A. A lot of residents started asking people,

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"Gee, I wish this information were available. I wish somebody would send it out." I started Rarity Bay News because residents asked for the information and nobody was doing it.

Q. Do you -- the things that you put in Rarity Bay News, are they true and factual?

A. Yes. They are copies of the transcripts. Every time I sent something out, I attached to it the actual transcript so that they could read for themselves what was stated in either the deposition, or the court records, or anything, and I did generally a little summary over the front of it that would say, "Here are the key findings on page 1, 2, 3, line 7, 8, and 9."

Q. Okay. And the information that's in the Rarity Bay News articles, is it only -- is your only source of that information the court papers?

A. Is the only source of information the court papers?

Q. Yes, sir.

A. I think that's what -- the majority of the articles I wrote were on the court papers, yes.

Q. All right.

A. I did do an article on the Design Review Board.

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Q. Let me --

MR. RUSSELL: Let's go ahead and make this the next exhibit here.

(Exhibit 2 - E-mail correspondence.)

BY MR. RUSSELL:

Q. Do you recognize what I've shown you as -- we've marked as Exhibit 2? Do you recognize that document?

A. I'm reading it. This was a response I wrote to an e-mail that I received. I'm looking for the original e-mail.

Q. You wrote this e-mail here on the --

A. This e-mail I wrote, yes.

Q. And it is written to Amy and Michael Ayers, is that right? It's addressed to them. It says, "Amy," comma, "Michael," comma?

A. Yes, sir, that's correct.

Q. Is there also a reason you would copy John Wood and Pete Misslin?

A. They were two of the people that were making presentations to -- excuse me, to the community about becoming self-governing.

Q. Okay. Go to the second page of Exhibit 2, please.

A. Second page of what?

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Q. Exhibit -- well, it's Exhibit 2. Go to the second page of that document.

A. Okay. I'm assuming it's the one where my signature is on it? Is that what you're calling it?

Q. Yes, sir.

A. Okay.

Q. You see the first paragraph at the top? It's starts with "Summarized."

A. Yes.

Q. It says, "The declarant fired our community board in 2015."

A. Yes.

Q. What's your basis for making that statement?

A. Speaking literally to the board members that were fired.

Q. And who was that?

A. Bart Whitman was the head of the board at that particular point in time.

Q. Are you -- when you say they fired the community board, what do you mean by that?

A. That's what I was told. They were fired. They were relieved of their responsibilities.

Q. Okay. So you don't have any firsthand knowledge of what happened to the community board in

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2015?

A. Do I have any firsthand knowledge? I was not on the board in 2015.

Q. So you're writing that based on what somebody has told you?

A. Who was the president of the board at that time, yes.

Q. Okay. What if what Mr. Whitman told you was untrue?

A. I would write a retraction.

Q. Have you ever followed up to determine whether or not the community board was actually fired by the declarant?

A. Yes.

Q. With who?

A. With Bart.

Q. All right. You ever have any other sources other than Bart?

A. I'm trying to think who was on the board at that particular point in time. I've spoken with Pete Misslin. I've spoken with John Wood. I've spoken with Michael Guido. I've spoken with a number of residents in the community.

Q. Did those people, Mr. Wood and Mr. Misslin, tell you that the board was fired in 2015?

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A. Yes.

Q. And then you say -- you go on to say, "Then forced through Amendments 6 and 7."

A. That's correct.

Q. What's your basis for your statement that the declarant forced through Amendments 6 and 7?

A. When Amendment 6 was originally presented to the board, as I understand it, the community objected to it. I read Amendment 6. We were living in the community when Amendment 6 was filed. I read it. I was totally opposed to it at that particular point in time, as were a number of people in the community.

The partnership of Salem Pointe Capital, now Salem Pointe Capital and Rarity Bay Partners now, back then I believe it was Salem Pointe Capital Holding Partners, something to that effect, wanted it approved. The board refused.

There were negotiations back and forth. The board was ultimately reinstalled and Bart signed off on it after some extended protracted negotiations over that.

Q. And when you say -- is the basis of this from Mr. Whitman?

A. Yes.

Q. So you've learned all that from Bart

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1 Whitman?
2 A. Well, I've learned that from him and
3 other residents, correct.
4 Q. Anyone else other than Mr. Whitman or
5 Mr. Misslin or Mr. Wood?
6 A. Not that I can remember right now.
7 Q. Okay. So when you say "forced through
8 Amendment 6," let me ask you this. Were you aware that
9 Rarity Bay Partners required Amendment 6 as part of its
10 closing on the transaction to purchase the assets?
11 A. Yes.
12 Q. You were aware of that?
13 A. Well, I know that that's one of the
14 things they wanted and that was being opposed by the
15 community.
16 Q. Have you ever communicated that to the
17 community, that Rarity Bay Partners was the one that
18 insisted on Amendment 6 being executed?
19 A. It was not Rarity Bay Partners that
20 wanted it. It was the joint ownership of the
21 partnership that wanted it.
22 Q. How do you know that?
23 A. Look who signed Amendment 6.
24 Q. Well --
25 A. Who signed Amendment 6?

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1 Q. That's not what I'm asking, though.
2 A. That's my answer.
3 Q. You said it was -- I'm asking you where
4 you got the information for your statement?
5 A. The signature line on Amendment 6.
6 Q. Okay. So your testimony that the LLC
7 wanted Amendment 6 is because they signed it?
8 A. Yes.
9 Q. Okay.
10 A. They filed it. They wrote it.
11 Q. Where do you get your understanding that
12 there was a partnership between LLC and Rarity Bay
13 Partners at that time?
14 A. Legal documents.
15 Q. Which legal documents?
16 A. The amendments that were filed by them.
17 The -- by the partnership. The legal documents, 6 and
18 7, that were filed by the partnership.
19 Q. So the partnership?
20 A. The court records that confirmed that the
21 bid that was -- there were five bidders for the assets
22 of Rarity Bay when they were bought out of the
23 receivership.
24 The holding company that was the
25 partnership between Matt Daniels and Michael Ayers was

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1 the awarded recipient -- is that the right word -- of
2 the assets. I've seen the document.
3 Q. What document are you talking about?
4 A. I'm trying to think. I've got a copy of
5 it at the house. I don't remember the title of it.
6 Q. Is it an assignment of right to purchase
7 property?
8 A. No. It is the court -- it's the write-up
9 that was done when the court approved the sale of the
10 property to them. Whatever -- what phraseology?
11 THE WITNESS: What am I looking for?
12 Phraseology.
13 BY MR. RUSSELL:
14 Q. Are you talking about -- she can't answer
15 your questions. The federal court approving the
16 purchase of the assets by LLC from the receiver?
17 A. Yeah.
18 Q. Is that what you're talking about?
19 A. Yeah.
20 Q. Are you aware that the partners -- that
21 Rarity Bay Partners was not a party to that contract?
22 A. Is there not -- was there not in 2015 a
23 partnership that existed between -- I'm going to call
24 them names of people because that's the simplest way
25 to -- was Matt Daniels and Michael Ayers in some legal

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1 partnership together in 2015?
2 Q. Well, here's the thing.
3 A. Whatever that's called.
4 Q. Here's the thing, Mr. Frisbey. I can't
5 answer your questions, but you have said -- you
6 testified for the last five, ten minutes that there's
7 this partnership and I'm asking you what's your basis
8 for your testimony that there was a partnership between
9 Rarity Bay Partners and LLC? Mr. Daniels and
10 Mr. Ayres?
11 A. Well, there's a court action. I don't
12 remember the docket number right now. There's a court
13 action that's even in Monroe County right now regarding
14 the partnership.
15 Q. Okay. So those lawsuit papers,
16 obviously, say what they say.
17 A. Yeah.
18 Q. You're testifying there was a
19 partnership, and your testimony is based on what's been
20 filed in the lawsuit papers?
21 A. Correct.
22 Q. Were you aware that the LLC has denied
23 that there was a partnership?
24 A. Was I aware that the LLC denied there was
25 ever a partnership?

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Q. Yes.
A. No, I'm not aware of that.
Q. Have you -- well, have you read the lawsuit papers?
A. I've read the lawsuit papers, the claim.
Q. Have you read any of the answers or the responses by LLC, or do you just read the partner's side of the lawsuit?
A. No. I read the judge's rulings. That's based on the judge's rulings. I rely on the judge's rulings.
Q. Okay. Well, have you read the ruling where the judge said that there was never a partnership formed? Salem Pointe Capital Holdings' partnership, that that partnership was never formed?
A. I don't remember seeing any document to that effect.
Q. Are you aware that she ruled that the declarant rights were never transferred to the partnership?
A. I did read that.
Q. All right. Did you ever send that information out to the community to make them aware of that?
A. Don't think so.

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Q. Why not?
A. Never became an issue.
Q. Okay. You said, "Then under declarant control, the RB..."
A. Where are you looking?
Q. Same paragraph. "Then under declarant control, the RBCAI board spent over $90,000 (all the bills are not in) filing suit against RBP for community assessments you clearly knew."
A. That came from Denzil Thies, who was the then treasurer for the CAI, because I asked him specifically for that number.
Q. Okay. So the $90,000 came from Denzil Thies?
A. Correct.
Q. What's your understanding that the LLC had any control over the CAI board with respect to the filing of the lawsuit?
A. I'm not sure I understand your question.
Q. All right. You wrote, "Then under declarant control, the RBCAI Board spent over $90,000 filing suit against RBP for community assessments." What is your basis for your claim that the LLC had any role in the CAI's decision to file a lawsuit against the partner group?

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A. Michael was on the board at that time. As were most of his appointed people.
Q. Who?
A. If I remember the names, one of the last names was Wood. Another one of the names was Oakley, himself. I don't remember if there was a representative of RBP on the board. I do not think at that time.
Q. Do you know if the CAI board voted to file the lawsuit against Rarity Bay Partners?
A. Not off the top of my head.
Q. Okay. So you don't have any knowledge of whether or not LLC participated in any vote to file a lawsuit against the partners?
A. I'd have to go back and look at the notes of the board notes to confirm that.
Q. So you would rely on the board notes to answer that question?
A. Correct.
Q. Okay. But you wrote here that the declarant controlled the RBCAI board.
A. If the declarant appointed the representatives of the board at the time, doesn't that designate control of the board? If the people that work for him or that are associated with him that he

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physically appointed to the board, wouldn't that imply control?
Q. Would it surprise you to know that the LLC had no role in the decision to file the lawsuit against the partnership group?
A. I would find that hard to believe.
Q. Why?
A. It just sort of defies logic.
Q. It defies your logic?
A. No. I think it defies the logic of the situation.
Q. You got to explain that to me. What do you mean?
A. I'm struggling with a way to try to explain that. The community board, based on information that Kevin Stevens wrote up, said that -- according to an original agreement -- that only 250 lots were to be exempted from community assessments and that anything over 250 lots were supposed to -- people were supposed to pay the assessments on.
And at that time, Matt and the company, Rarity Bay Partners, owned more than that. And that was the basis of the lawsuit by the board to collect that, but the signing of the Sixth Agreement specifically excluded, and the partnership agreement

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1 specifically excluded, any properties that were bought
2 by -- I'm trying to remember the exact word that's in
3 there -- exempted parties I think is what it says --
4 that bought lots between 2015 and 2025 were exempt from
5 those assessments.
6 Q. What partnership agreement?
7 A. The partnership agreement between Salem
8 Pointe Capital and -- well, between Michael and Matt.
9 I'm just going to use those names. Michael and Matt.
10 Q. Have you seen a partnership agreement?
11 A. Yes.
12 Q. Do you have a copy of it?
13 A. Yes, I do.
14 Q. Can you provide it to your lawyer?
15 A. Yeah.
16 Q. Okay.
17 MR. RUSSELL: Just for the record, I'm
18 going to make that Late Filed 3.
19 (Exhibit 3 - Late Filed - Partnership Agreement.)
20 BY MR. RUSSELL:
21 Q. What's the partnership agreement say?
22 A. I don't remember. I don't have it in
23 front of me. I would have to read it again.
24 Q. Okay. So when you say that you clearly
25 knew it could not be collected?

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1 A. Well, the partnership agreement excluded
2 any properties from assessment that were purchased by
3 either Michael or Matt's companies between when the
4 agreement was signed in '15 through 2025.
5 Q. Have you read the settlement agreement?
6 A. Yes.
7 Q. Are you aware that the settlement
8 agreement was dated after the Sixth Amendment?
9 A. Yes.
10 Q. Were you aware that the settlement
11 agreement provided that partners were to pay
12 assessments on lots it owned in excess of 250 lots?
13 A. That was -- yes. That was signed, but
14 the Sixth Agreement excludes that. Precludes that.
15 The Sixth Agreement says any properties that they buy.
16 I believe it's the Sixth Agreement.
17 Q. Sixth Amendment?
18 A. There's one that says that they're exempt
19 on anything they buy until 2025. I think it's May of
20 2025.
21 Q. We're talking about the Sixth Amendment
22 to the master declaration.
23 A. Okay. Let me say something here. I have
24 those documents in a binder. They are the same
25 documents that you have in a binder. You're asking me

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1 questions without having the binders in front of me and
2 you're asking me to try to remember complicated
3 documents, and I do not, since I had a stroke in June,
4 my memory is little rusty, and I do not remember the
5 details of every document off the top of my head.
6 MR. RUSSELL: Let's make this --
7 MS. DAVIS: Can we take a bathroom break?
8 MR. RUSSELL: Sure.
9 (Exhibit 4 - Sixth Amendment of Master
10 Declaration of Covenants, Conditions, and
11 Restrictions for Rarity Bay and Amendment of
12 Bylaws for Rarity Bay Community Association,
13 Inc.)
14 (The deposition was in recess at 10:18
15 a.m.)
16 (The deposition resumed at 10:29 a.m.)
17 BY MR. RUSSELL:
18 Q. All right. I was asking you -- I believe
19 we were talking about these documents and you didn't
20 have them in front of you, so let me show you.
21 A. Let me, if I can for a second, clarify
22 something for you.
23 Q. Okay.
24 A. I try to be very careful about what I
25 write. I try to make sure that it is factual in all

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1 areas. Now, am I capable of making a mistake? Yes,
2 because I'm human, but I try to -- in situations like
3 this, I try to read the governing documents.
4 I try to read the partnership agreements.
5 I try to read the amendments. I try to read the court
6 records and I try to form my own opinion and what I say
7 about things based on that information.
8 I do not like to rely on hearsay or other
9 people's opinions. I try to do my own research.
10 Q. Okay. Well, I appreciate that. But I
11 think what we've at least shown so far is some of the
12 things that you've written have come from other people.
13 A. Okay.
14 Q. Okay. Let's look at -- it's Exhibit
15 No. 4. This is the Sixth Amendment that we talked
16 about.
17 A. Yeah.
18 Q. You've seen that document?
19 A. Right.
20 Q. At the top it says, "Prepared by: John
21 Brock." Is that right?
22 A. Yeah.
23 Q. Do you know who John Brock is?
24 A. No.
25 Q. Do you know whether or not he's a lawyer?

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A. No.
Q. Okay. If you'll go to the, kind of the end of the document, there should be a date.
A. Well, I've got stamped, it says Michael Ayers, President; Salem Pointe Capital, LLC, a limited liability corporation, and his signature.
Q. And what's it dated?
A. The commission -- this is the commission -- go to another page. The witness hand-signed this on 14 May 2015.
Q. All right.
MR. RUSSELL: Make this the next exhibit.
(Exhibit 5 - Settlement Agreement.)
BY MR. RUSSELL:
Q. All right. Sir, look at this Exhibit 5, please.
MS. DAVIS: What is this?
MR. RUSSELL: This is the settlement agreement. Sorry. I don't have a bunch of copies on this one.
THE WITNESS: 17 December 2015.
BY MR. RUSSELL:
Q. So that settlement agreement was signed after the Sixth Agreement, right?
A. Yes.

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Q. Okay. And the point of this is because we're talking about this e-mail here that we've marked here as Exhibit, I think, 3 where you said the declarant clearly knew you couldn't -- that the CAI couldn't sue the partner group for assessments.
A. Right.
Q. All right. And I'm asking questions about these documents because you've said that the documents exempt the partner group from the assessments, right?
A. Isn't that what the Sixth Amendment says?
Q. Yes, sir. And then in Exhibit 5 is the settlement agreement, and the settlement agreement says that they -- that the partner group will pay assessments on lots that it owns in excess of 250.
Is that what your understanding is?
A. Yes.
Q. Okay.
A. But the Sixth Amendment says, I think that's -- one of them says that they're exempt through 2025.
Q. All right.
A. Which one is that?
Q. That's the one you have in front of you.
A. Is that the Sixth Amendment or the

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settlement agreement?
Q. The Sixth Amendment.
A. The Sixth Amendment says that they're exempt on all the lots they purchased between now and 2025.
Q. And then the settlement agreement says that they will pay assessments on lots that they own in excess of 250.
A. Okay.
Q. And the settlement agreement was executed after the Sixth Amendment, right?
A. Yes.
Q. Okay.
A. But this takes precedent, doesn't it?
Q. Well, why do you think it takes precedent?
A. Well, isn't this signed before this one was done?
Q. Yes.
A. Okay.
Q. Let me ask you a more general question.
A. I'm not sure what you're trying to get at.
Q. Well, what I'm trying to get at is why you think you know that Michael Ayers clearly knew that

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they couldn't bring the lawsuit. And you're saying it's because of the Sixth Amendment, right?
A. Yes.
Q. Okay. And I'm asking why you don't think the settlement agreement could amend or revise --
A. I'm not a lawyer.
MS. DAVIS: Object. Asking him for a legal opinion.
THE WITNESS: I'm not a lawyer. I don't know which one takes precedent.
BY MR. RUSSELL:
Q. Exactly. But you say that Michael Ayers clearly knew.
A. Didn't he know about the Sixth Amendment?
Q. In all your business experience, have you ever dealt with, like, an exclusivity agreement, exclusive distribution rights?
A. Yes.
Q. Okay. Let's say, hypothetically, you enter into an exclusivity agreement with a distributor and that distributor is the only one that's going to distribute your product.
Does that make sense?
A. Yeah.
Q. You're familiar with those types of

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1 agreements?
2 A. Yeah. I've got those agreements.
3 Q. And then let's say you enter into a new
4 agreement that says you can now distribute with two
5 people. Which one would control?
6 A. I don't know. That's a legal issue.
7 Q. Well, I'm talking about from your
8 experience as a business owner.
9 A. I don't do that.
10 Q. Okay. But if you have an agreement that
11 says I'm only going to distribute with you and then you
12 sign a new agreement that says I'm going to distribute
13 with you and the new person, the new agreement would
14 control, right?
15 MS. DAVIS: I'm going to object.
16 BY MR. RUSSELL:
17 Q. Well, you can answer if you know the
18 answer.
19 MS. FRISBEY: She objected.
20 MS. DAVIS: No, you can go ahead and
21 answer the best you can.
22 THE WITNESS: I wouldn't do that because
23 you got territories. If I give you the right to
24 distribute your products in the City of Knoxville
25 and that agreement runs for X number of years,

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1 unless you and I sit down and you tell me that
2 there's too much opportunity here and that I
3 should bring on somebody else and we're in
4 complete agreement on that --
5 BY MR. RUSSELL:
6 Q. Yes.
7 A. -- then I could see that happening.
8 Q. Okay.
9 A. Okay.
10 Q. If all parties agree?
11 A. If all parties are in a hundred percent
12 agreement.
13 Q. Okay. So that -- okay. That's what I
14 need to know. Let's look at --
15 MS. FRISBEY: Can I ask a quick question?
16 I always still get confused. Partners is who?
17 MR. RUSSELL: Rarity Bay Partners.
18 MR. HALE: Partners is Daniels.
19 MS. FRISBEY: Daniels and Ayres. Okay.
20 THE WITNESS: That's why I use names.
21 MS. FRISBEY: Me too.
22 THE WITNESS: The court calls it Partners
23 and LLC.
24 MS. FRISBEY: I got it. I got it. I got
25 it. I don't need -- just -- I just had them

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1 backwards. I get confused.
2 BY MR. RUSSELL:
3 Q. Let me show you what's -- have you seen
4 the answer to your lawsuit that was filed?
5 A. Yes.
6 Q. Okay.
7 A. Do I have it in front of me? No. Do I
8 need those back, I guess?
9 MS. DAVIS: Is that the answer from you
10 guys?
11 MR. RUSSELL: Yes, ma'am.
12 (Exhibit 6 - Verified Answer and Response of
13 Salem Pointe Capital, LLC and Michael Ayres to
14 Verified Complaint and Motion for Temporary
15 Injunction.)
16 THE WITNESS: Okay.
17 BY MR. RUSSELL:
18 Q. Exhibit 6 is the Verified Answer to the
19 lawsuit that you filed.
20 A. Uh-huh.
21 Q. Then I'm going to show you the next
22 document, which is going to be Exhibit 7.
23 (Exhibit 7 - E-mail communication.)
24 BY MR. RUSSELL:
25 Q. Do you recognize this e-mail?

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1 A. From Luke Noe to Salem Pointe.
2 Q. Well, go down below that. That's,
3 obviously, the -- from Luke Noe to Salem Pointe, but
4 then it says, "X," and then it says, "Please do not get
5 discouraged," and at the bottom it says, "Mike."
6 Do you see that?
7 A. I see Mike. Then there's a "To: Mike
8 Frisbey" here. "Does your vote count?"
9 Q. Yes. So it appears that you received an
10 e-mail from someone saying, "Michael, I read your
11 e-mails from the point of skepticism." And then it
12 looks like you're responding on page 1 of Exhibit 7.
13 A. Okay. I don't know which Michael that
14 is.
15 Q. Let me ask you this way. Did you write
16 this e-mail on the first page of Exhibit 7?
17 A. First page of Exhibit 7 is written from
18 Luke Noe to Salem Pointe.
19 Q. Well --
20 A. That's the Michael that's referenced in
21 that.
22 Q. Did you write this e-mail, the body of
23 the e-mail that's on the first page of Exhibit 7? "As
24 I have said, there are just a couple 'thorns among the
25 roses' that we need to move. That said, my goals are

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1 simple." Period.
2 This is your e-mail, right?
3 A. "Please do not discourage. Rarity Bay is
4 a terrific place and there are great people." I agree
5 with that statement. "As we have said, there are just
6 a couple of 'thorns among the roses' that we need to
7 remove," yes.
8 Wouldn't you call the lawsuits thorns?
9 MR. HALE: The question is, did you write
10 it?
11 BY MR. RUSSELL:
12 Q. Did you write it?
13 A. Yeah. I guess I did, yeah.
14 Q. And it says, "To that end, I am
15 recommending a vote for Crystal Pate."
16 Is that correct?
17 A. I haven't read that far, but if that's
18 what it says, I'll take your word for it.
19 Q. Well, read it. You can go ahead and read
20 it.
21 A. Yes. "To elect people that..."
22 (Instruction given by the court
23 reporter.)
24 MS. DAVIS: Just read it to yourself.
25 THE WITNESS: Yes, I remember the e-mail

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1 now.
2 BY MR. RUSSELL:
3 Q. So you wrote that "I am recommending a
4 vote for Crystal Pate." Correct?
5 A. Correct.
6 Q. You wrote, "My long-term goal is to help
7 elect enough independent residents to the board that
8 the RBCAI will eventually file a legal action against
9 SPC and Michael Ayers to remove the declarant rights."
10 Is that right?
11 A. Correct.
12 Q. When you talk about residents --
13 A. And the next sentence says, "At that
14 point, it will take a 67 percent vote of all property
15 owners to change any of the governing documents or the
16 design review guidelines."
17 Q. When you talk about residents, do you
18 consider Matt Daniels' group to be residents?
19 A. Probably a bad choice of words on my
20 part. Property owners, major property owners. Because
21 a resident to me implies that somebody is physically
22 living there, okay?
23 But people buy lots, just like we did, in
24 anticipation of maybe moving there when they retire,
25 when they quit work, or whatever. I consider those

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1 people residents, even though they don't live there,
2 because they have -- as the old expression goes, "Skin
3 in the game." They own property there. They bought
4 there because they wanted to see that investment grow.
5 Q. Would you consider Matt Daniels' group to
6 be a resident based on what you just described your
7 understanding of residents to be?
8 A. Yes.
9 Q. Okay. Turn to Exhibit 6.
10 MS. DAVIS: Which one is that?
11 MR. RUSSELL: That's the answer to the
12 Verified Complaint.
13 THE WITNESS: Okay.
14 BY MR. RUSSELL:
15 Q. Go to page -- I'm going to go through
16 some of the answers that we filed, okay? So if you
17 will go through, go to page 5, please.
18 A. Okay.
19 Q. Go to paragraph, excuse me, paragraph 21.
20 A. No. 21?
21 Q. Yes.
22 A. Okay.
23 Q. All right. And I'm just going to read
24 this to you, okay? It says -- part of it says,
25 "Plaintiff, Michael Frisbey, has actively, openly, and

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1 intentionally advocated that there should not be a
2 declarant as provided in the restrictive covenants (the
3 master declaration as amended)."
4 Do you agree with that?
5 A. Yes.
6 Q. Okay. It says, "LLC's rights as the
7 declarant have been used appropriately to further the
8 proper development of the Rarity Bay community and the
9 efforts put forth by the declarant are still needed
10 within the Rarity Bay community."
11 A. Where are you reading this?
12 Q. Paragraph 21.
13 A. Point to it.
14 Q. I'm sorry.
15 A. Or highlight it or something so I can
16 find it. I read slowly. Let me state I have dyslexia,
17 been diagnosed with it, so I have to read slowly and I
18 have to read carefully, okay?
19 So that's why, if you want me to read
20 something, highlight it and it will make it easier for
21 me to find.
22 Q. Okay.
23 A. And quicker for you.
24 Q. Let's start here (indicating).
25 A. Okay. Got it.

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Q. I want you to read that. Take your time and just tell me if you agree with that sentence.
A. No.
Q. What part do you not agree with?
A. All of it.
Q. Do you believe that a declarant with developmental responsibilities is no longer needed?
A. Yes. I believe that the declarant -- I do not believe there should be a declarant in the community. There are 600 homes there worth $800 million, approximately. We don't need anybody telling us what to do.
Q. Do you believe the CAI should function as the declarant?
A. I don't believe there should be a declarant, period.
Q. Okay.
A. I believe the residents that live there that have that money invested ought to be -- they are adults. They are business people. They own businesses. They are capable of managing their own affairs.
Q. Okay. How are these business owners that are capable of managing their affairs getting along at the moment?

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A. I would say -- this is a speculation, but I would say that the vast majority of the people in there want to be self-governing. And the reason I say that is there have been multiple elections of the residents over several years and if the residents wanted to have a declarant, they would have elected people to the board that supported the declarant and the need to have a declarant. They have not.
In multiple elections, the residents of Rarity Bay have voted for people that believe the community should be self-governing. And that even exceeds the fact that Michael gets five votes for all he's got.
Q. Okay.
(Exhibit 8 - E-mail correspondence.)
BY MR. RUSSELL:
Q. Keep this here, but look at Exhibit 8 for a minute. Exhibit 8 is another exhibit.
MS. DAVIS: Which one is 8?
MR. RUSSELL: I'm sorry.
BY MR. RUSSELL:
Q. And this was an exhibit to the Answer, right? So we looked at this Answer. This is the response to your lawsuit.
A. Can I mark this?

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Q. Yes.
A. Got a highlighter?
Q. Yeah. Sure.
A. I read everything with a highlighter. Sorry. Okay. Okay.
Q. All right. Now look at this document here, Exhibit 8.
A. What do you want me to read?
Q. Well, I want you to look at it, first. I understand from your testimony at the earlier hearing that you don't recall receiving Michael Ayres' e-mail, the first one on this string.
So if you go to, I guess --
A. The bottom? This one?
Q. No, I'm sorry. On the front. So that's February 25, 2022.
A. Okay. From Salem Pointe to me.
Q. Do you recall receiving that?
A. SPC notice to directors. Yeah, I think I do. I mean, I remember something about Patrick White because I don't know who Patrick White is.
Q. Well, that was going to be my next question. You don't know who Patrick White is?
A. No, I don't. I do now. I found out he -- since then. I don't remember who or how. I

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think he works or is associated with, in some fashion, Apex Bank.
Q. Okay.
A. Is that not correct?
Q. I believe that is correct. Do you know -- or, excuse me. Have you ever talked with Patrick White?
A. Not that I recall.
Q. Okay. You've never had any conversations with him that you can recall?
A. Not that I recall.
Q. Okay. Do you have any idea -- look at the bottom of Exhibit 8.
A. Exhibit A? Oh, 8.
Q. Yes, sir. And I'm not trying to trick you here. We're going to be on the same page. So look at this. It says, "From: Patrick White."
A. Uh-huh.
Q. And it says, "To: "Mfrisbey." That's you, right?
A. That's my business address too.
Q. Do you know why Patrick White would have been sending you an e-mail?
A. Honestly, I don't. Because I get hundreds of them a day.

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Q. Did you think it was odd that you would have got an e-mail from Patrick White, someone that you do not know and never had spoken to?
A. Let's see. Hang on a second. Okay. This is February the 25th and the election was on the 23rd, so I was a member of the board at this time, and Curtis Crawford and Bob Mundle, so he sent this to the entire board that I was on.
Q. Do you know why a lawyer for Apex Bank would be sending an e-mail to the board?
A. God only knows.
Q. Well, I'm asking if you know?
A. I would imagine he was notifying us of something.
Q. Why?
A. I don't know.
Q. Okay. Did you ever talk with Crystal Pate about why Patrick White would be e-mailing the board?
A. Not that I recall.
Q. Okay. Do you recall any discussions with anyone about this e-mail from Patrick White?
A. Okay. This was back during -- I guess -- no, I don't. The answer to your question, did you say, is do I have any idea why he wrote it?

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Q. Yes.
A. I am assuming -- I'm not going to assume. That makes asses out of both of us. No, I don't.
Q. Okay. Did you follow up with Patrick White? Do you have any recollection of doing that?
A. To my knowledge, I don't think I've ever spoken to Patrick White.
Q. Okay. Go to -- okay. Now we're going to jump back around here. If you need to highlight, that's fine. If you'll go down to paragraph 26.
A. Uh-huh.
Q. I want to start with this right here. "LLC" (indicating).
A. "LLC," that whole sentence?
Q. Yes, sir. And what the answer in paragraph 26 says --
A. Hang on. I'm just going to highlight. It's a long frickin' sentence.
Q. It is a long sentence.
A. Jesus Christ. Now let me read it. Okay. I read it. Now what's your question?
Q. My question is, do you agree that this is, that the punishment or the suspension of your membership was punishment for continuously and actively doing harm to the community, attempting to orchestrate

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division in the community, and by publishing half truths and statements?
A. Well, we got to take that sentence apart a little bit. How have I done harm to the country club?
Q. And I'm not asking if you agree that you've done harm. I'm asking if you think that that's why you were suspended?
A. I've never been told why I was suspended.
Q. Okay.
A. We've never had -- we had a hearing that lasted three minutes.
Q. And what was told -- well, let's back up. Who was at the hearing?
A. Michael Ayers; JR, the club manager; a woman, who I do not remember, nor do I remember what her role was; Jamie, and myself.
Q. You said it lasted about three minutes?
A. Right.
Q. And what was said during that three minutes?
A. That's a better question for Jamie to answer than me. I'm going -- my memory is rusty.
Q. Okay.
A. I don't remember.

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Q. That's fine. All right. Go to paragraph 28. Page 7.
A. I did not purchase -- I did not make any half-truths. I don't -- I try not to make half-truths.
Q. Okay. Do you agree that every purchaser of property in Rarity Bay development, including you, bought the property with knowledge of the existence of the restrictive covenants?
A. Yes. I've always tried to buy in homeowners associations.
Q. And do you agree that those restrictive covenants by contract gave to a person or entity designated that the declarant, during the development period, substantial rights with respect to managing the development?
MS. DAVIS: I'm going to object to the legal conclusion, but you can answer.
BY MR. RUSSELL:
Q. Do you agree that the restrictive covenants give the declarant the right during the development period to manage the ongoing development in Rarity Bay?
A. Yes.
Q. Do you agree that one of those rights held by the declarant is their right to amend the

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1 restrictive covenants?
2 A. That's what the paperwork says.
3 Q. And do you agree that the LLC purchased
4 the declarant rights as part of its purchase of the
5 Rarity Bay Golf and Country Club assets?
6 A. Yes. It was a part of the assets they
7 purchased. I think the court valued the declarant
8 rights at a dollar.
9 Q. You think the court valued that?
10 A. Well, there's a -- there is a written
11 assessment that was done of the assets of Rarity Bay.
12 I've got a copy of it in my office file that lists the
13 values that the court assigned and it's highlighted in
14 red and it says the declarant rights had a value of a
15 buck.
16 Q. Do you agree that the LLC has worked
17 diligently with or -- excuse me. Worked diligently
18 towards the continuing development within Rarity Bay
19 with the assistance of the CAI?
20 A. No.
21 Q. Why not?
22 A. The -- I'm going to try to be nice. I
23 spent 40 years of my career in marketing building
24 brands, national brands, from the ground up. He has
25 spent no money -- no, bad choice of words. A dollar is

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1 a money.
2 The amount of money that has been spent
3 promoting the development, example, with billboards,
4 participating in trade shows to attract more residents
5 to Rarity Bay, to try to draw -- to do anything
6 literally to draw in more residents to Rarity Bay --
7 because the sooner we get more residents, the more
8 successful our community is, the more we get in
9 assessments to take care of what we're doing.
10 He's done nothing, in my opinion, to
11 promote Rarity Bay, at all, to attract any new
12 business. And, frankly, the lawsuits, which generally
13 are the result of some action he created, have created
14 a cloud over Rarity Bay where Realtors are concerned
15 about even showing property in there.
16 Q. How do you know that?
17 A. I've talked to the Realtors.
18 Q. Who?
19 A. When we were looking at property, we
20 worked with a number of Realtors who shared with us the
21 history of Mike Rose and all the stuff that was going
22 on in there.
23 Then, when we were looking at our lot, it
24 was independent, everybody felt better about it, then
25 the assets were purchased. Everybody got concerned

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1 over the Sixth Amendment and the new control and ever
2 since then, there's been a series of ongoing lawsuits.
3 Q. You filed a lawsuit.
4 A. I did.
5 Q. Okay. You think that's helped to -- the
6 community, the cloud of the community?
7 A. Yes, I do.
8 Q. You think your lawsuit has actually
9 helped?
10 A. Yes, I do.
11 Q. How?
12 A. Because it will identify, when we
13 ultimately get a court ruling, whether or not as
14 declarant he had a right to remove me from the board of
15 directors without cause.
16 Q. And you --
17 A. I do not believe, as I read Tennessee law
18 as it's been explained to me by my attorney, I do not
19 believe he has that right.
20 Q. And can you name any of the Realtors by
21 name that told you this?
22 A. Not offhand.
23 Q. Okay. Are you aware if LLC has ever
24 filed any lawsuits?
25 A. Am I aware that Michael Ayers has filed a

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1 lawsuit? Against whom?
2 Q. Any at all.
3 A. No. He's been named usually as the
4 defendant. People have filed lawsuits against him.
5 Q. Okay. So the cloud of the litigation are
6 all lawsuits that have been filed against LLC, right?
7 A. Correct. Because he did something to --
8 that was perceived as either a violation of a
9 partnership agreement or an authority that he claimed
10 he had that somebody disagreed with, such as in the
11 Bald Eagle suit that's filed in Knox County, that
12 resulted in a lawsuit between him and Rarity Bay
13 Partners and Bald Eagle Partners where he -- there's
14 some question about whether he had the authority to
15 negotiate a settlement agreement with Bald Eagle.
16 He was sued by Rarity Bay Partners over
17 what they considered a violation of his partnership
18 agreement with them. He was sued again by Rarity Bay
19 Partners in multiple elections because he was voting
20 lots he did not own. The court ruled on that in 2019,
21 that the 2019 election was invalid.
22 There was a subsequent filing, again in
23 the 2020 election, where Kevin Stevens wrote a
24 justification, which I've still never understood, where
25 he said that Michael Ayers had -- as declarant had a

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1 right to vote five lots for some 300-and-something lots
2 that were actually owned by Rarity Bay Partners, while
3 at the same time allowing Rarity Bay Partners to have
4 one vote for those same lots, which is giving six votes
5 to two different people on one lot that's owned -- or
6 on lots that are owned by one party.
7 Q. Okay. One of the things you said earlier
8 was that you don't think Michael Ayers has done
9 anything to promote the community, right?
10 A. Correct.
11 Q. Where did --
12 A. Anything of significance.
13 Q. Where do you get that information? How
14 do you know that? Is it just your opinion?
15 A. Show me any advertising that's been done.
16 Show me billboards. Show me ads that have been run in
17 the Wall Street Journal, Southern Living, multiple
18 magazines in our community.
19 Show me anything that he has done that
20 promotes and draws customers into Rarity Bay and
21 encourages them to buy lots in Rarity Bay. Show me any
22 significant investments that he's made in the Rarity
23 Bay community.
24 All I can find is $175,000 that he
25 acknowledges he spent in seven years. That doesn't

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1 even pay the community's phone bill.
2 Q. One of the things you've alleged in your
3 lawsuit is that Michael Ayers has claimed absolute
4 power and authority and I think you even used the word
5 "God card."
6 Do you remember that?
7 A. Do I remember saying that?
8 Q. Yes, sir.
9 A. I believe -- well, maybe something to
10 that effect. I'm not sure I said those exact words.
11 Q. Where did you get that? What is the
12 basis for your claim that Michael Ayers has claimed
13 "God card" or "absolute authority"?
14 A. Okay. If he -- okay. First off, let's
15 back up. Would you agree that if he has the ability --
16 first off, he appointed the board members, then when
17 the judge said they had to be elected, he tried to out
18 vote them.
19 Would you agree that if, according to the
20 Sixth Amendment, he can remove any board member without
21 cause and he can veto any board action, that in effect
22 he is in control of the board?
23 Q. What I'm asking you is, what is your
24 basis for your claim that Michael Ayers has claimed to
25 have absolute authority?

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1 A. Doesn't he have absolute authority if he
2 can remove any board member and veto any board action?
3 How can --
4 Q. You claimed that, sir. You said it. You
5 said it in your lawsuit.
6 A. Is that not correct?
7 Q. It's your lawsuit. You tell me. Is it
8 correct or not?
9 A. I think it's correct.
10 Q. Why do you think it's correct?
11 A. Because of his actions, because he claims
12 he can remove any board member and he can veto any
13 board action.
14 Q. Isn't that what the document --
15 A. That overrides the control of the board
16 that's supposed to govern the community. Those are
17 mutually exclusive terms.
18 Q. Sorry. Isn't that what the documents
19 say?
20 A. Isn't -- that's what the documents say.
21 Do I agree that that's legal? No. I think there's --
22 I think there's -- I think that's an incorrect
23 interpretation of the law.
24 Q. That's fine. And you can believe that,
25 but my question is, that's what the documents say,

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1 correct?
2 A. That's what's written in them.
3 Q. Okay. And so your claim that Michael
4 Ayers claims to have actual authority is based on the
5 fact that Michael Ayers is relying on what the
6 documents say, right?
7 A. Okay.
8 Q. Yes? Do you agree with that?
9 A. I would say that Michael Ayers is relying
10 on those documents and what Kevin Stevens says because
11 Kevin Stevens is supposed to represent the board.
12 Q. All right. Give me just a second. Okay?
13 MR. RUSSELL: Tom, can I get 3A?
14 MR. HALE: Yep.
15 MR. RUSSELL: 3A. I only have one.
16 BY MR. RUSSELL:
17 Q. Are you aware that the bylaws provide
18 that the declarant has the right to disapprove actions
19 of the board?
20 A. As he amended the Sixth Amendment. As he
21 amended the bylaws based on the Sixth Amendment, yes.
22 Q. Are you aware of Michael Ayers ever
23 exercising that authority?
24 A. Did he remove board members? Yeah, he
25 has removed a bunch of them.

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Q. I'm talking about the bylaws provide that the declarant has the authority to disapprove actions taken by the board. Are you aware of Michael Ayers ever exercising that authority?

A. I was not on the board until February of 2023 (sic), so I can't comment on that.

Q. Well, is your answer, then, no? You're not aware of Michael Ayers ever exercising that authority?

A. That's a hard question to answer. Let me try to clarify it this way. If he appoints all of the members of the board or a majority of the board members of the community and then the board agrees with something that he wants to accomplish and votes to accomplish it, has he not got control of the board?

Q. All I'm asking, sir, is if you're aware?

A. I'm trying to answer the question.

Q. Well, if you'll work with me here. I'm not trying to make it complicated. Are you aware of Michael Ayers ever disapproving an action taken by the board?

A. I don't know. I've not been in the executive sessions that the board seemed to function under for a number of years.

Q. Okay. All right. And I think you said

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earlier that Michael Ayers created that?

A. Created what?

Q. Created the authority to disapprove actions of the board. Did you say that earlier?

A. I don't remember saying that.

Q. That's fine. I may have misunderstood you. Are you aware that the bylaws that were in effect from the beginning always provided the declarant the authority to disapprove board actions?

A. Yes.

Q. Okay. Let me show you the next exhibit.

(Exhibit 9 - E-mail correspondence.)

THE WITNESS: Again -- again, I've got -- I had a real estate license. I've had real estate licenses. When a development is being put in and the developer of that property is investing his money to buy the land, to clear the land, to put in the infrastructure and has a great deal of capital invested in that development, before anybody ever moves in there, as those few people start to come into a development, yes, he should have a right to control how that development functions. Absolutely. Our development is far beyond that point.

BY MR. RUSSELL:

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Q. I understand. Look at Exhibit 9. I've highlighted it for you.

A. Okay. Hang on a second. Yeah. As I understand, again, memory, documents which I don't have in front of me, one of the suits that was filed by Rarity Bay Partners against Salem Pointe was the dispute over declarant rights.

I think it was Article 7, or Count 7, that they said -- they, Rarity Bay Partners, said he had not done whatever was required under their interpretation of the law to continue to hold the declarant rights.

Q. Okay. This e-mail here on Exhibit 9 is an e-mail from you and it just says, "Guys." Do you recall who you sent this to?

A. No. Because I use that term generally in a bunch of e-mails when I'm sending it to more than three people.

Q. Okay. Well, this is all I have, so we're just going to go on what you said here. It's dated June 2, 2021. Talks about, in a conversation with Crystal -- that's Crystal Pate, right?

A. Correct.

Q. How often do you guys talk?

A. Occasionally as the need arises.

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Q. Would you say more than once a week?

A. No.

Q. Would you say more than once a month?

A. Depends on what's going on. Maybe.

Q. Okay.

A. During --

Q. Would you agree that Crystal Pate is a source of your information about the other lawsuits?

A. No.

Q. You don't ever ask her about the status of those lawsuits?

A. I read the documents.

Q. That's not what I asked you, sir. Do you ever ask her about what's going on in those lawsuits?

A. Not as it would relate to "tell me what's going on. I need this specific piece of information." If it's a general comment, sort of like you and I have a drink and "What's going on with the Chicago White Sox baseball team," that sort of phraseology.

Q. So in this e-mail -- we don't know who it's to -- but it says Crystal "stated that Rarity Bay Partners has filed another action against SPC (Michael Ayers)."

A. It should say removal of the declarant rights, okay.

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Q. Okay. "Based on the results of the Inter Images case."
A. Correct.
Q. That's what Crystal Pate told you?
A. Correct.
Q. Did you know that there actually hasn't been a lawsuit filed for the declarant rights based on the Inter Images case?
MS. DAVIS: Objection.
MR. RUSSELL: I'm just asking if he knows.
BY MR. RUSSELL:
Q. Are you aware?
MS. DAVIS: You're representing something that's not true.
THE WITNESS: Did not Rarity Bay Partners in, I think it was Count 7, challenge Michael Ayres' ability to be the declarant? Is that not an accurate statement?
BY MR. RUSSELL:
Q. What I'm asking, sir, it says, "filed another action." What you're talking about, Count 7, is a lawsuit that was filed in 2017.
A. Okay.
Q. And in 2021, you're telling people that

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Rarity Bay Partners is filing another lawsuit.
A. Has not Rarity Bay Partners filed multiple lawsuits against Michael?
MS. DAVIS: You can't ask questions.
MS. FRISBEY: Yeah, you got to stop doing that.
THE WITNESS: Well, I don't know how to answer. I mean --
MS. FRISBEY: Yes or no or don't know.
BY MR. RUSSELL:
Q. Listen --
A. I don't know how to answer a question that way.
MS. DAVIS: You just can't ask him questions.
BY MR. RUSSELL:
Q. I'm not trying to trick you. Listen, I'm asking you what you've written. I'm asking about what you've written.
A. And I tried to explain it to you just now.
Q. But your explanation is asking a question because you don't know whether or not it's true or not, right?
A. Yes, I know it's true. There's been

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multiple lawsuits filed by Rarity Bay Partners against Michael Ayers.
Q. 100 percent agree with that.
A. Okay. So that's an accurate statement.
Q. So then you go on to say, "She said that the case clearly states, unless you hold a majority of the available lots within the development, you cannot hold the declarant rights."
That's what Crystal told you, right?
A. Yeah.
Q. Have you ever verified whether that's true or not?
A. Verified? Did I reach out to an attorney and ask for a specific legal opinion? No.
Q. So when you're telling "guys" -- you're sending this e-mail to "guys," putting information in there based on what Crystal Pate told you that you don't know is true or not, correct?
A. As I went back and read my interpretation of the Inter Images case and the UCIOA, my interpretation would be that's correct. Her statement is correct.
Q. Okay.
A. He does not own enough property in there to justify developable rights.

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Q. You base that on your reading of the Inter Images case and the -- what did you say?
A. UCIOA. Help me out. Uniform Commercial --
MS. FRISBEY: We can't help you.
BY MR. RUSSELL:
Q. You got to just testify to what you know, sir.
MS. FRISBEY: Yeah.
THE WITNESS: Yeah.
BY MR. RUSSELL:
Q. It's Uniform Commercial something?
A. Yeah. UCIOA.
Q. Is it a law?
A. UCIOA is a law in several states, multiple states.
Q. What about Tennessee?
A. It has been used in the Inter Images case as a precedent.
Q. Okay. All right. Do you know if it's law in the state of Tennessee?
A. I think that's a legal question again.
Q. All right.
A. The UCI has broad parameters.
Q. I'm not going to argue with you about

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1 this stuff. So let's turn to page 2 of Exhibit 9.
2 A. Exhibit 9.
3 Q. Yes. Go to the next page of that.
4 A. Okay.
5 Q. All right. Second sentence, "She," being
6 Crystal, "stated Michael Ayers..."
7 A. Hold on. Hold on.
8 Q. Yes, sir.
9 A. The second sentence is right there. Oh,
10 "She also stated." The first sentence.
11 Q. No. Wait, wait, wait. The second
12 sentence.
13 A. Oh, second sentence.
14 MR. HALE: The first one too.
15 THE WITNESS: The first one too.
16 BY MR. RUSSELL:
17 Q. The first sentence says, "She also stated
18 both the rumors about Michael Ayres purchasing
19 declarant rights for $1 or $100,000 are false." She
20 told you that?
21 A. Right.
22 Q. And you testified earlier that the
23 declarant rights were purchased for a dollar?
24 A. They were included in the assets that
25 were purchased and, yes, the document from the court

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1 says they were valued at a dollar.
2 Q. That document, do you have that document?
3 A. Not with me.
4 Q. Do you have it at your house?
5 A. Yes.
6 Q. Can you provide that to your lawyer?
7 A. Yes.
8 MR. RUSSELL: All right. Let's make that
9 the next late filed.
10 (Exhibit 10 - Late Filed - Document showing
11 declarant rights were purchased for $1.00.)
12 THE WITNESS: Hang on a second. Hang on
13 a second.
14 BY MR. RUSSELL:
15 Q. The next sentence says, "She stated..."
16 A. Hold on.
17 Q. "...Michael Ayers got the declarant
18 rights as part of the, quote, 'holding agreement.'"
19 End quote.
20 A. Uh-huh.
21 Q. Is that what Crystal told you?
22 A. Correct.
23 Q. Do you -- did you do anything to verify
24 whether that was true or not?
25 A. I read the partnership agreement between

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1 them and I read the court's ruling that Salem Pointe
2 Capital holds the declarant rights.
3 Q. But here's my question. You -- you know
4 for a fact that LLC purchased the declarant right out
5 of the receivership?
6 A. No, he didn't purchase them. They came
7 as a part of what he bought. To my knowledge, I have
8 not seen any document that specifically says bill of
9 sale, title, or anything else that says Michael Ayers
10 paid anything for the declarant rights. They were
11 valued at a dollar.
12 Q. Okay.
13 A. Valued at a dollar. There was no
14 separate bill of sale for the declarant rights.
15 Q. Well, you would agree that Michael Ayers
16 and the LLC purchased the Rarity Bay assets out of the
17 receivership?
18 A. Yes.
19 Q. And that one of those assets was the
20 declarant rights?
21 A. Yes.
22 Q. Then you now say he "got the declarant
23 rights as part of the holding agreement." That's what
24 you say right here, sir.
25 A. Okay. I guess I'm confused.

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1 Q. I'm confused too.
2 A. That makes two of us.
3 Q. So you're saying in this e-mail to these
4 guys, Michael Ayers got the declarant rights because of
5 an agreement, the holding agreement?
6 A. It is my understanding -- and perhaps my
7 understanding is incorrect -- it is my understanding
8 that when the original partnership was formed that --
9 I'm going to use names. Matt Daniels paid roughly
10 $2.75 million in exchange for approximately 172 lots
11 and the money for that came from Apex Bank.
12 It is my understanding that Michael Ayers
13 and Matt Daniels had some sort of legal agreement with
14 each other, partnership, verbal conversation, written
15 document, that there was a partnership between them to
16 purchase the combined assets that they quoted at
17 roughly 5-plus million dollars, and Michael Ayers for
18 his approximate $2.75 million was money he borrowed
19 from Apex Bank.
20 The money that he borrowed from Apex Bank
21 gave him the right to acquire the golf course, the
22 country club, approximately, I think 11 condos, and
23 approximately 19 lots.
24 So whatever their entanglement was at
25 that particular point in time, that was the agreement

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1 and there was supposed to be a third party up here,
2 holding company, that was supposed to actually hold
3 those rights, which were going to be shared -- those
4 declarant rights were going to be shared between
5 Michael Ayers and Matt Daniels.
6 Q. Where did you get this understanding?
7 A. Where do I get this understanding? From
8 drawing my own conclusions from the legal documents,
9 the stuff I read.
10 Q. Okay. Okay. So your testimony is that
11 your understanding as to what you just said about this
12 partnership and this holding agreement is based solely
13 on the legal documents that have been filed in that
14 original lawsuit?
15 A. I guess that's right.
16 Q. Okay. Well, have you gotten that
17 information from Crystal Pate?
18 A. I don't remember is the best answer to
19 that question now.
20 Q. So let's just clear the air here.
21 Crystal Pate never told you, "Hey, Michael Ayres only
22 got this because of the holdings agreement"?
23 A. I don't remember that statement.
24 Q. Okay. So you're sending this e-mail to
25 the guys based upon your opinions drawn from lawsuit

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1 papers, right?
2 A. I sent the note from the guys restating a
3 conversation where Crystal made a statement that sort
4 of dovetailed with my understanding of what I'd
5 previously read.
6 Q. Okay. So if that is not true, if what
7 you've written here is not true, would you send a
8 retraction?
9 A. Yeah. If somebody could prove that.
10 Q. Okay.
11 A. I've said multiple times, in fact, I've
12 sent articles to Michael to have him review before I
13 sent them out, but I never got a response; so I assumed
14 they were right.
15 Q. Okay. Read the next paragraph. Crystal
16 said, "Michael Ayers is out of money and unless either
17 his father or father-in-law bails him out, the court
18 case in January 2022, will put him under."
19 A. That's a correct statement.
20 Q. That's what she told you?
21 A. Yes.
22 Q. Why did you feel like you needed to
23 communicate that to anybody?
24 A. Because it's a concern to the community.
25 If he goes belly-up right now, Premier Resort

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1 Management is sitting on a bunch of money.
2 Q. How do you know that?
3 A. Because Premier Resort Management is who
4 anybody building a new home in Rarity Bay writes their
5 deposit checks to.
6 Q. Have you ever seen the bank account?
7 A. No. I wish I could.
8 Q. Okay. Now, you feel like you needed to
9 send this to the guys because it's a concern for the
10 community that Crystal said that Michael is out of
11 money?
12 A. Yes, I do. I think that's --
13 Q. Let me ask you this. Is it a concern for
14 the community that Matt Daniels has said he wants to
15 bankrupt Michael Ayers?
16 A. I've never heard him say that.
17 Q. You've not read that in the court papers?
18 A. I've read -- I'm not sure. I'm not sure.
19 I don't remember.
20 Q. Well, assuming he did --
21 A. I don't remember reading that.
22 Q. Assuming that he did, would you say
23 that's a concern for the community?
24 A. Yes.
25 Q. All right.

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1 A. Do you want me to tell you why?
2 Q. Sure.
3 A. If the money that people building new
4 homes in Rarity Bay were paid to the CAI and held by
5 the CAI in an escrow account so that those monies were
6 protected, I would feel very comfortable and this has
7 nothing to do with Michael Ayers.
8 Q. Okay.
9 A. But that is not what happens. The money
10 for those deposits is paid to Premier Resort
11 Management, which is a third-party company. It is a
12 for-profit, third-party company, and as long as the
13 money is paid to that company, if for any reason that
14 third-party company went out of existence and did not
15 refund those monies to the residents that were building
16 those homes, because that third-party company is acting
17 as an agent for the CAI, opens the CAI up to potential
18 litigation from those residents to get their money
19 back. That is a genuine concern.
20 Q. Has that happened?
21 A. And that would be a genuine concern with
22 any third-party company. That's why I believe the
23 money should be held by the CAI.
24 Q. Has that happened?
25 A. Has it happened?

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Q. Yes, sir.
A. In this particular development?
Q. Yes.
A. At this particular time, not yet.
Q. Okay. Okay. Let me show you the next exhibit.
A. Yet is the operative word.
(Exhibit 11 - E-mail correspondence.)
BY MR. RUSSELL:
Q. All right. This is an e-mail from you to JR and you've copied some people down here.
Do you see that?
A. Club manager, okay.
Q. All right. Then you say, "The reason I started Rarity Bay News was to assure the facts regarding all legal actions involving Rarity Bay were being disseminated to our residents versus the rumors, spin, and misstatements which exist in our community."
Right?
A. That's correct.
Q. What we've talked about, the last e-mail was your concerns or speculation, right, about what would happen?
A. Speculation, worry, yes. About -- yes.
Q. Not facts, right? It hasn't happened.

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A. Yes, it is a fact. It is a fact that the money is held by a third-party company, not directly by the CAI.
Q. Is it a fact that Michael Ayres is out of money in June 2021?
A. I don't know. I don't know how much money he's got. I've never seen a P&L from him.
Q. I'm just asking if you wrote that, though. You did write that?
A. I would like to see the club books.
Q. Okay. Go to the third -- well, let me ask you this. Do you think what Crystal Pate tells you are facts?
A. I think they're her opinions.
Q. Okay. Go to the third page, there, sir. Exhibit 7 -- I mean, excuse me. 11.
A. 1, 2, 3.
Q. Yes, sir. This is an e-mail you wrote on August 30, 2021. It says, "Neighbors, as editor of the Rarity Bay News, I have received a number of calls and complaints from our neighbors about the Design Review Board."
A. Correct statement.
Q. Who has called and complained to you?
A. Oh, God, I don't remember. I don't keep

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a log of all of the phone calls that I get.
Q. Can you name anyone?
A. Off the top of my head?
Q. Yes.
A. From 2021, I'm not going to name -- I'm not going to speculate on trying to remember something from 2021. I got multiple phone calls in the last ten days over the Best facility being put in by TVA. I can't remember who called me in the last ten days, let alone a year ago.
Q. All I want to know is if you remember.
A. I don't.
Q. Okay. And then the next paragraph says, "In trying to both investigate and answer these questions on the DRB, I spoke with members of the DRB, the CAI board, and on multiple occasions sent e-mails to Michael Ayers, who is the head of the DRB, asking him to please correct any inaccuracies in the attached article prior to distribution."
A. Correct.
Q. All right. Why do you feel like you need to investigate these things?
A. Because residents of the community were confused over how the DRB was functioning. Again, a board -- the community board should be communicating

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information to the residents about its functions.
Q. To be clear, in August of 2021, you were not on the board?
A. That's correct.
Q. You had not run for the board in August of 2021?
A. Not a correct statement. I ran for the board and was denied.
Q. Okay. So why did you feel like you had any duty to investigate the Design Review Board as a resident homeowner in the community?
A. Because I'm a resident of the board -- excuse me. Because I'm a resident of the community.
Q. But what was your duty?
A. Doesn't the residents of the community have a responsibility if they want, if they're interested, to look at how our community is operating?
Q. Why did you feel like it was your duty to do that?
A. Because I had been asked by a number of people to do it.
Q. Who are those people?
A. Residents that live there.
Q. Who?
A. I've told you. I've answered that

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1 question already. I don't -- I'm not going to quote
2 you names today of something that happened over a year
3 ago from multiple phone calls when I do not keep a log
4 of who calls me. I'm not going to throw somebody under
5 the bus.
6 Q. I mean, just so we're clear, you don't
7 remember who it was?
8 A. That's correct.
9 Q. Okay. All right. Then you say, "As a
10 resident of Rarity Bay, I believe all the monies
11 collected either in fees or fines levied by the CAI
12 board should go to support the community's
13 infrastructure."
14 A. Correct.
15 Q. And that's your opinion, right?
16 A. That's my opinion, I said "I."
17 Q. That's right. So you wouldn't say that's
18 a fact. That's your opinion, right?
19 A. Didn't I say "I"?
20 Q. Okay.
21 (Exhibit 12 - E-mail correspondence.)
22 BY MR. RUSSELL:
23 Q. All right. Exhibit 12 there in front of
24 you is an e-mail from you dated October 2021.
25 A. Back to Michael and Corie. I don't

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1 remember who Jim is from the e-mail address.
2 Q. Okay. And then you -- this is?
3 A. Kevin, the attorney. I recognize that
4 one. Crystal, I recognize that one.
5 Q. No. 1, you say, "Docket 19943."
6 A. Yep.
7 Q. "RBP responded to SPC's motion for
8 partial summary judgment in Count 7. RBP's attorney
9 laid out a number of reasons SPC should be removed as
10 the declarant."
11 Is that correct?
12 A. There's Count 7.
13 Q. Is that correct?
14 A. Yeah.
15 Q. Why would you not put in this e-mail what
16 SPC's position is?
17 A. I'm not sure why you're asking. I
18 mean...
19 Q. Well, let me put it this way. It looks
20 to me like this e-mail is one sided. It looks like
21 you're telling the story of Partners' arguments, but
22 you have not put in there the side of the story from
23 LLC.
24 A. That's your opinion. That's not my
25 opinion.

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1 Q. And I'm asking you why you did not put
2 LLC's position in your e-mail?
3 A. Are any of these statements inaccurate?
4 Are any of these statements inaccurate? I got
5 quotation marks around them. They came out of the
6 court documents.
7 Q. That's exactly right.
8 A. Tell me where I made any mistake.
9 Q. What I'm asking you is, why you only put
10 in what Partners is saying and not include the full
11 picture of what LLC's position is?
12 A. I took these -- again, let me repeat. I
13 took these out of the court documents. If there is a
14 mistake in what I said here, I would have been happy to
15 correct it.
16 Q. Is there -- did you --
17 A. Is there a mistake here?
18 MR. HALE: There's a lot of mistakes.
19 BY MR. RUSSELL:
20 Q. I'll ask it a different way. Was it your
21 intention to only put in what Partners said?
22 A. No.
23 Q. Have you ever sent an e-mail out to the
24 community saying, "Hey, LLC thinks that they have the
25 declarant rights because of X, Y, and Z. This is what

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1 they put in their lawsuit papers"?
2 A. No. Because I think that's sort of been
3 settled already. They went to court and the court
4 awarded -- said that the declarant rights belonged to
5 SPC, so everybody in the community knows that.
6 Q. If it's been settled, why are you putting
7 in this e-mail why LLC shouldn't be the declarant?
8 A. Because that was the legal action that
9 was filed. In Count 7, Rarity Bay Partners was
10 challenging SPC's right to be the declarant based on
11 the facts. That's new information, is it not?
12 Q. It is what their position is, correct?
13 That's what Partners is claiming?
14 A. Yes.
15 Q. Yes. Their allegations in a lawsuit.
16 A. Yes.
17 Q. Okay. But you do not include any
18 allegations from LLC's side.
19 A. What allegations from LLC's side were in
20 the court documents that I missed?
21 Q. That they own property for development
22 and sale. Did you know that?
23 A. I've heard that.
24 Q. Okay. You didn't put that in there, did
25 you?

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A. How is that relevant to what this is?
Q. You didn't put that in there, right?
A. No. I'm taking your word that it was in the court document someplace and I missed it.
Q. That LLC owns property for development and sale.
A. I don't think they own property for development, personally. Just my personal opinion.
Q. Okay.
A. I've not seen them put in one road, one sewer system, one lighting system. Phase 17 has absolutely no infrastructure. You can't sell it until it's got infrastructure.
Q. And in the next --
A. So how is that development?
Q. The next section says, "LLC did not have the approximately 2.5 million required to purchase its share, so it borrowed the money from Matt Daniels."
A. Is that incorrect?
MS. DAVIS: Don't ask questions.
MS. FRISBEY: You got to stop.
THE WITNESS: Sorry.
MS. DAVIS: If that's what it says, that's what it says.
THE WITNESS: Is that what I should be

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saying, then?
MS. FRISBEY: You can't do this.
BY MR. RUSSELL:
Q. Listen. Listen. This is -- you know, I'm trying to work with you here, but I need to just know what you know, okay?
A. I'm trying to tell you.
Q. Okay. When you say he borrowed money from Matt Daniels, you mean they borrowed money from Apex Bank?
A. Apex Bank.
Q. Which is owned by Matt Daniels?
A. Correct.
Q. Were you aware that that loan was refinanced through another bank?
A. Yes.
Q. Is there some problem with LLC borrowing money from a bank to buy assets?
A. No.
Q. Okay. Under -- go to the next page.
A. Next page of what?
Q. Of that Exhibit 12.
A. I moved my pages around, so point me to something.
Q. It's right here (indicating).

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A. Docket?
Q. Yes. Now we're talking about the Knox County case.
A. That's the Knox County case, okay. Got it.
Q. "The court ruled in favor of RBP and required SPC to deposit with the court $500,000 in an escrow account."
Is that right?
A. Yes.
Q. Where did you get that information?
A. Court documents.
Q. From the Knox County action?
A. Yes.
Q. How did you get those documents?
A. Go to the courthouse.
Q. You drove to Knox County and pulled them?
A. Yeah.
Q. All right. Are you aware that that lawsuit has not been --
A. It's not settled.
Q. -- determined?
A. Yes.
Q. Are you aware that the court has not ruled who is entitled to the 500,000?

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A. Well, they had SPC post a bond for it, so that -- again, I'm not an attorney but, yes, I'm aware of that.
Q. You mean Partners had to post a bond?
A. There was a bond posted for it. Yes, I'm aware there's not a decision been made.
Q. Were you aware Partners is the one that had to pay the bond?
A. I don't remember. I'd have to go back and read the documents.
Q. So my question is, you are aware that there has not been a decision to determine who is entitled to the $500,000?
A. Correct.
Q. Okay. All right.
MR. RUSSELL: Let's take -- can we take a five-minute break?
(The deposition was in recess at 11:49 a.m.)
(The deposition resumed at 11:55 a.m.)
BY MR. RUSSELL:
Q. Okay. A couple more documents.
(Exhibit 13 - E-mail correspondence.)
BY MR. RUSSELL:
Q. All right. This is an e-mail that you

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1 sent out on January 7th of this year, so, hopefully,
2 it's a little more fresh, okay?
3 A. Okay. Yeah, this is my e-mail explaining
4 what I felt happened at the board meeting.
5 Q. That's right.
6 A. Okay.
7 Q. Let's go to the next page.
8 A. Okay. Page 2?
9 Q. Yes, sir. And we're going to go down to
10 where it talks about "A little history is important
11 here," okay?
12 A. Okay.
13 Q. It says, "Starting in 2019, the declarant
14 has tried to 'rig' our elections by voting lots he did
15 not own."
16 You believe that to be true?
17 A. Yes. Absolutely.
18 Q. What do you mean by "rig" our elections?
19 A. If he votes plots he does not own in
20 direct violation of our governing documents, that's
21 rigging an election.
22 Q. Where -- where does the governing
23 document, where is it being violated?
24 A. The governing document says he gets five
25 votes for each lot he owns. Owns.

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1 Q. Are you aware it says five votes for
2 exempt parties?
3 A. Okay.
4 Q. Okay. And an exempt party could mean
5 another entity, right?
6 A. That's a legal interpretation. I don't
7 know.
8 Q. Okay.
9 A. As far as I know, the court says he has
10 to own them.
11 Q. What you said is he's "rigging the
12 elections." That's an accusation that implies
13 something that is wrong or somebody's got ill will
14 or...
15 A. If somebody is voting a lot they don't
16 own, that is rigging an election. It's like stuffing a
17 ballot box.
18 Q. Okay. Then you said, "Next, he
19 subdivided lots in Phase 16 and platted 'ghost' lots in
20 Phase 17 which only exist on paper."
21 Is that correct?
22 A. Yes.
23 Q. Okay. "His actions, by creating
24 additional lots within Rarity Bay, violates his
25 partnership agreement with RBP."

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1 A. His partnership with RBP says that he's
2 not supposed to be able to bring in new property to the
3 development unless it is approved by the partnership.
4 Q. Where do you --
5 A. That's my understanding of how I read it.
6 Q. It's your understanding. That's your
7 interpretation of a partnership agreement that we don't
8 have, right, but you say you have at your house, but
9 there's some partnership agreement and it says his
10 platting of these lots violates it?
11 A. What I'm supplying you is a copy of the
12 court assessment of RBP assets. That's what you told
13 me to get.
14 MS. DAVIS: One was the partnership
15 agreement.
16 BY MR. RUSSELL:
17 Q. I think the first late filed was a
18 partnership agreement. You said you have it. Can't
19 remember exactly what you said, but you were going to
20 get it to me, or you're going to get it to your lawyer.
21 My question is this: All right. You're
22 putting this out to the community, correct?
23 A. Yeah.
24 Q. And you're saying that LLC's platting of
25 these lots violates a partnership agreement.

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1 A. That's my understanding.
2 Q. Based on what, sir?
3 A. My interpretation of what I have read.
4 Q. So you've read something that says LLC is
5 not allowed to plat lots?
6 A. They didn't say that.
7 Q. Okay. What did you read?
8 A. I'm paraphrasing, but my understanding
9 is -- my interpretation of their agreement is that they
10 have to both agree, both parties have to agree that
11 neither one -- before either one of them can bring in
12 new property to the development -- because by bringing
13 new property into the development, it dilutes the
14 ownership interest of the other party, and so the
15 agreement was neither one of them could bring
16 additional property in so that the assets that they
17 bought back in '15 are consistent.
18 Q. And you're saying that's your
19 interpretation?
20 A. That's my interpretation.
21 Q. Of a partnership agreement?
22 A. Yes.
23 Q. That you're going to --
24 A. I think it's the partnership agreement.
25 I don't remember exactly where I read it, but that's

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my -- of the documents that I've read, that's my interpretation of those documents.

I'm not going to say -- just like I can't say for sure it's in Amendment 6 versus something else. In the documents that I have read, that's my interpretation of that information.

Q. Can we agree that your interpretation of these documents is not a fact?

MS. DAVIS: Object to the form of that question.

BY MR. RUSSELL:

Q. You can answer the question. Can you agree that your interpretation of documents is not a fact?

A. That it is an opinion?

Q. Yes, sir.

A. Yes. Because I'm not a lawyer.

Q. And would you agree that that opinion is biased -- that you're biased in your opinion because you want the declarant removed.

Can you agree to that?

A. Yes.

Q. Can you agree that LLC, Michael Ayers, believes it does have the authority to plat additional lots without anybody's approval? That that's LLC's

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opinion.

A. That's an opinion.

Q. And that they're entitled to an opinion --

A. Just like me.

Q. -- just like you.

A. Absolutely.

Q. Okay. All right. Did Crystal Pate tell you that LLC wasn't allowed to replat?

A. No.

Q. And what you then say is, "Why would he create these additional lots?"

A. Uh-huh.

Q. "Because it creates five votes per lot."

A. That's correct.

Q. So your opinion is that these additional lots were platted just to give Michael Ayres more votes?

A. Yes. That's my opinion.

Q. Okay. But that's not a fact, right?

A. I said it's an opinion.

Q. But you've also said that --

A. He gets five votes for the lots. That's a fact.

Q. And what you've also --

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A. And if he gets more votes because he's platting additional lots and has the ability to out vote the residents because he gets five votes per lot on all of those lots, then he has control of the board because he's outvoting them.

Q. Okay. Well, let's be clear. The votes --

A. So, therefore, he's in control of the board.

Q. The five votes have nothing to do with votes by the board, right?

A. No. The five votes have everything to do with votes by the board. That's who gets elected to the board.

Q. Exactly. To be clear, you think that he's platted these additional lots to give himself more votes for elections?

A. Yes.

Q. Why would he do that if he has the right to disapprove any board action?

A. That's a good question.

Q. Have you ever thought about it?

A. Yes.

Q. What's your opinion?

A. Of why he does it?

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Q. Yes.

A. I'm trying to be diplomatic. I think he has a strange desire to control, literally, everything in that community. I think it is a power position.

Q. And you have a strong desire to remove him from the community, right?

A. I have a strong desire for the community to govern itself.

Q. Okay. And what I'm saying is, or what I'm asking is, what you've written in here, because it creates five votes per lot and it gives him the ability to vote, that's your opinion on why he's created these lots?

A. Well, no, the five votes he gets. That's part of the governing documents.

Q. Okay.

A. I think he created the lots to create the votes, yes. Because five votes -- 51 lots times 5 is 255 votes.

Q. Okay. But you would agree that the governing documents allow the declarant to disapprove any action the board takes?

A. Yep. I'll agree with that.

Q. Okay. So --

A. That's why he has removed board members.

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Q. So --
A. Isn't that a governing action of the board?
MS. FRISBEY: Stop asking questions.
BY MR. RUSSELL:
Q. Here's -- you know, here's the point. Michael Ayers doesn't need to vote for anybody to be on the board to control the board, correct?
A. Right. Because he can remove them.
Q. So why would he create lots just to have more votes?
A. Image.
Q. And that's your opinion?
A. That's my opinion.
Q. Okay.
A. Control.
Q. And then it says, "Thus dragging our community into yet another lawsuit."
A. And it did.
Q. And spending more money on attorneys' fees.
A. And it did.
Q. And you have sued the community association that has to spend more money to defend your lawsuit, correct?

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A. Because I disagreed with being removed from the board, yes.
Q. Okay. So, by your actions, you've drug the community into yet another lawsuit, right?
A. I drug them into one lawsuit.
Q. Correct. Okay. Do you remember an incident that happened outside of the Community Association Center, the CAC, where you had a run-in with Michael Ayers?
A. I didn't have a run-in with him. I had a conversation with him.
Q. That resulted in some e-mails going back and forth, right, where he asked you to -- well, I'm not going to speculate. Let's just look at it.
(Exhibit 14 - E-mail correspondence.)
BY MR. RUSSELL:
Q. All right. Exhibit 14 is an e-mail --
MR. RUSSELL: Sorry, Kevin.
BY MR. RUSSELL:
Q. May 17, 2022, you wrote an e-mail, "Folks" -- and this is to the board, I'm assuming?
A. It starts with the word "Folks."
Q. Yeah. Look on the next page. "At the end of yesterday's board meeting, you may have noticed I was walked out by Michael Ayers, who wanted to speak

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with me. Below is a paraphrased version of that conversation."
Is that right?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. Okay.
A. Paraphrased.
Q. Okay. And you said -- this is -- this is your quote. "When we got outside the doors of the clubhouse, he said, quote, 'This is private property and you are not welcome here.'"
A. Correct.
Q. Is that what he said?
A. Yes.
Q. Do you recall this incident?
A. Yes.
Q. As we sit here today?
A. Yes.
Q. Was Michael's -- what was his demeanor like?
A. Authoritative.
Q. Did you find him to be combative?
A. Yeah. That's a good word for it.
Q. Okay. Was he -- was he raising his

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voice?
A. He was making a point.
Q. Was he -- did you find him to be, like, yelling or raising his voice, or was he talking in a normal tone?
A. No, he was not talking in a normal tone. He was being authoritative. He wanted to make the point clear that I was not welcome on his property or any of his properties.
Q. Okay. And that's what you recall of that?
A. That's correct.
Q. Okay. All right. You remember we were talking about the -- one of the first e-mails we talked about about whether Michael Ayers controlled the board and made them -- or controlled --
A. Point me to the e-mail.
Q. Yeah. It's going to be back at the beginning. It's going to be the one where you said clearly -- we were talking about --
MR. HALE: It was 3E, wasn't it?
MR. RUSSELL: Was it 3E?
BY MR. RUSSELL:
Q. Right here. "Then under declarant control, the RBCAI board spent over $95,000 filing suit

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against RBP for community assessments you clearly knew, per both the settlement agreement and Amendment 6, could not be collected."

All right. Remember that?

A. My interpretation, yes.

Q. Okay. And we went through this whole thing about, you know, whether a settlement agreement controls, the Sixth Amendment controls, but it's your interpretation that the Rarity Bay Partners doesn't owe any assessments at any point?

A. That's my interpretation of it. I'm waiting for the court to decide that.

Q. Were you aware that the lawyer for Rarity Bay Partners has written an opinion that Rarity Bay Partners did agree to self-impose assessments for lots it owned over 250?

A. First time I've heard that.

Q. All right.

(Exhibit 15 - April 16, 2018, letter.)

THE WITNESS: The first time I've ever seen this document.

BY MR. RUSSELL:

Q. I'm just asking if you were aware.

MR. HALE: Not going to give you anything --

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BY MR. RUSSELL:

Q. So this is a letter from Matt Graves to Kevin Stevens.

A. Wait a minute. I'm just looking for the names.

Q. That's fine.

A. Who's Matt Graves? Sorry. I can't ask questions.

Q. That's fine. I will represent to you that Matt Graves is a lawyer and at the time was the lawyer for -- working for Apex Bank and representing Rarity Bay Partners, okay?

And I want you to look at the second paragraph on the first page.

A. Second paragraph on the first page. It starts with the words "The responsibilities of"?

Q. Yes. We're going to go to the second sentence. "Under the terms of this agreement."

A. Hang on. "Under" -- got it. "Under the terms of this agreement." Got it.

Q. He's referring to the settlement agreement.

A. Hang on. Hang on.

Q. RBP did agree to, quote, "'Self-impose,' a voluntary exemption on lots owned in excess of 250

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lots in inventory on the last day of the calendar year."

That's what it says, right?

A. Right.

Q. That's the first time you've learned about that, today, is that correct?

A. That's the first time I've seen this letter.

Q. All right.

A. I am aware that there was in some of the documents, because I've read it, something to the effect of RBP agreeing to self-impose something. I forget exactly. Self-impose a voluntary payment, maybe.

Q. Voluntary -- what the lawyer says here is a voluntary exemption.

A. Okay.

Q. All right. Now that you've seen this, do you think that this would be the type of communication that the community would be interested in knowing about?

A. I don't know. I got to read the rest of it.

Q. Okay. But Crystal Pate has never told you that RBP agreed that they were going to pay

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assessments on lots they owned in excess of 250?

A. I've never seen this.

Q. I'm asking, did Crystal Pate ever tell you that?

A. Not that I recall.

Q. Were you aware that RBP actually paid assessments on lots it owned in excess of 250 in 2016?

A. I'm aware that they paid some assessments in one year. I think it was '16. I think that's about right.

Q. Okay.

A. And I think they even maybe paid something in '17, if I'm remembering it right.

Q. Okay. So the fact that the CAI sued RBP to recover assessments was supported by their own lawyer and their own actions, right?

A. I don't know. Again, I don't remember. Without looking back at it, I don't remember the dates of when everything was filed.

Q. Okay. But you've said that that lawsuit was -- had no basis, right?

A. From everything that I had read, everything that I had seen, yes. It had no basis.

Q. And that's based upon the court filings that you've read?

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A. Yes.
Q. And conversations you had with Crystal Pate?
A. Court filings that I've read, yes.
Q. Okay.
A. I'm not going to comment on Crystal's interpretation of something.
Q. Let me ask you -- I guess -- I don't think we need to make it an exhibit.
MR. HALE: No.
BY MR. RUSSELL:
Q. Just for the record, it's the affidavit of Michael David Ayres in case number 2489, Chancery Court, Monroe County.
Have you read that court filing?
A. Oh, God, I've read a ton of them. 20489.
Q. Okay.
A. I'm familiar with the docket number. I remember that.
Q. I'm just asking if you remember reading that?
A. I have read so much, I honest to God don't know, unless I sat here and read this and went back and looked at my handwritten notes. I don't know.
Q. That's fine.

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A. It's a half-inch thick.
Q. That's fair.
MR. HALE: Did the record reflect that?
MR. RUSSELL: I guess for the full record, it's the affidavit dated November 17, 2020. Just a second.
BY MR. RUSSELL:
Q. Were you aware that the Rarity Bay Golf and Country Club was losing money before it was purchased by Michael Ayers?
A. No.
Q. Okay. I've got one more question, I think, then I will pass the witness. In your testimony that you gave earlier in the hearing in this case --
A. Talking about the June testimony?
Q. Yes, sir. One of the things you said, and we were talking about -- this is talking about the -- we're talking about the time frame of your removal from the board, that February time frame.
A. On 3/25.
Q. Yes, sir. One of the things you said was, "We learned after the fact that there were several conversations, e-mails, and intimidation by board members who were basically told if they didn't adhere to the board rules and regulations as they were

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written, that they would be personally liable."
A. That's a correct statement. I actually saw that firsthand.
Q. And that's what I'm trying -- who said --
A. Chad Story.
Q. Chad -- so give me the details. Are you saying that -- who was the one that was intimidating the board members?
A. Chad Story. Let me rephrase that. There was -- we were sitting in the small conference room at the CAC. This was Chad Story (indicating).
Q. For the record, you're drawing on a piece of paper circles.
A. This was Curtis Crawford (indicating). This was Porter (indicating). I was sitting across the table here (indicating). And I do not remember who the third person sitting at the table on that side was.
And we were discussing whether or not the board -- and it was a fairly heated discussion. We were discussing whether or not the board should simply (a) agree, and allow Michael Ayers to remove me and Crystal from the board or (b) tell Michael Ayers that we did not believe under Tennessee law he had the authority to do that and, if he did, we would wait until the court ruled on it. And Chad Story leaned

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into these people.
Q. Porter and Curtis Crawford?
A. Porter and Curtis Crawford and said that he had had conversations with Michael Ayers and that Michael had told him that if they did not follow and adhere to the bylaws or challenged Michael in any way, that he would sue them personally and they would lose their homes and their retirement accounts.
And it was such a strong-worded statement that it literally scared them. It was one of the intimidation tactics. And I had to go back after that and read our governing documents and found Resolution 39, and I sent them a copy of Resolution 39 and said, "You do not have to fear for your home or you do not have to fear for a personal lawsuit against you because it says right here in Resolution 39 that, even if the community does not have D&O insurance, as long as you are acting as a member of the board in good faith, you are protected.
But it was Chad's Story that relayed the fact of the conversation he had with Michael Ayers and relayed the threat to those people.
Q. And so Chad Story told you and those other gentlemen that Michael told Chad that if they didn't go along with your removal, that they were going

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to be personally liable and lose their homes?

A. Correct.

Q. Did you ever ask Michael if he said those things?

A. No. Because Chad talks to Michael all the time. I had every tendency to believe him.

Q. Then you said in one case he told the board member he could lose his pension with Exxon Mobile.

A. Correct. That was Curtis Crawford. He was sitting right there (indicating).

Q. Chad Story told Curtis that he could lose his pension with Exxon Mobile?

A. Yep.

Q. Okay.

MR. RUSSELL: Pass the witness.

MR. STEVENS: I don't think I have any further questions at this time.

MS. DAVIS: Is he done?

MR. RUSSELL: Yeah.

(The deposition concluded at 12:22 p.m.)

FURTHER THIS DEPONENT SAYETH NAUGHT.

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C E R T I F I C A T E

STATE OF TENNESSEE

COUNTY OF KNOX

I, Holly A. Klinger, LCR #704, Licensed Court Reporter and Registered Professional Reporter, in and for the State of Tennessee, do hereby certify that the above deposition was reported by me and that the foregoing pages of the transcript are a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

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Tennessee LCR #704
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