IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

MICHAEL FRISBEY and wife, JAMIE FRISBEY,	)	
Plaintiffs,	)	
v.	)	**DOCKET NO. 21,579**
SALEM POINTE CAPITAL, LLC, MICHAEL AYRES, and RARITY BAY COMMUNITY ASSOCIATION, INC.	)	
Defendants.	)	

FILED
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TERESA M. CHOATE
CLERK & MASTER MONROE CTY.

SALEM POINTE CAPITAL, LLC'S MOTION TO ALTER OR AMEND THE ORDER ENTERED ON JULY 29, 2022

Defendants Salem Pointe Capital, LLC ("**LLC**") and Michael Ayres ("**Ayres**"), pursuant to Rule 54.02 of the Tenn. R. Civ. P. moves the Court to alter or amend its interlocutory order entered on July 29, 2022 (the "**Order**") granting a temporary injunction requested by Plaintiffs, Michael and Jamie Frisbey ("**Plaintiffs**"). As grounds for their motion, Defendants note the following factual errors cited by the Court in the Order, each of which purport to be part of the foundation for the Order,[1] and rely upon the provisions of the Master Declaration constituting the Declarant rights held by LLC and the authorities cited herein that affirm the validity of those rights.

[1] Many of the facts cited in the Order that will be highlighted and explained herein were not part of the record at the July 21, 2022 hearing on Plaintiff's Motion for Temporary Injunction. The Court was familiar with the subject matter of many of the "facts" because the Court is presiding over case numbers 19943, 20489 and 21173 (the "**Other Cases**"), which involve various disputes over conduct of the Defendants, Rarity Bay Partners ("**Partners**") and the Rarity Bay Community Association, Inc. (the "**Association**") with respect to the different aspects of the operation and governance of the residential subdivision development known as "Rarity Bay on Lake Tellico." The Other Cases have involved numerous motions and proceedings, the result of which the Court was required to consider and apply many, many complex agreements, and factual scenarios. Saying that the Court's work on the Other Cases has been "no small task," would be a gross understatement, and one can understand how an effort to recall the details without having the relevant documents containing the actual facts could lead to reliance upon incorrect information. In order to supplement the record with correct information on issues considered in the Order, the Defendants have submitted the following documents for inclusion in the record by way of the Affidavit of Michael D. Ayres:

A. The Order states:

> By way of background, Salem Pointe Capital, LLC made itself the Declarant of Rarity Bay by the Sixth Amendment to the Master Declarations of Covenants and Conditions and Restrictions for Rarity Bay on May 18, 2015. Mr. Ayres testified he owns a majority interest in Salem Pointe Capital, LLC. Salem Pointed Capital, LLC (LLC) purchased the Declarant rights along with the golf course. Salem Pointe Capital, LLC unilaterally amended the Master Declaration and By-laws of RBCAI to give it the authority to amend the Master Declarations and By-laws for any purpose. (Order, p. 2).

LLC did not "make itself" the Declarant by the Sixth Amendment. As explained in and implemented by the document entitled the Fifth Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay Amendment of Bylaws for Rarity Bay Community Association, Inc., and Assignment of Declarant (the "**Fifth Amendment**"), Receiver Sterling P. Owen, IV assigned the Declarant Rights that defendant LLC purchased from the Federal Court supervised receivership. In the Fifth Amendment the receiver also amended the Master Declaration, as previously amended, as well as the Bylaws of the Association, to change the named Declarant from Tellico Lake Properties, L.P. to LLC. (Ayres' Affidavit, September 21, 2022, Exhibit 1 (Fifth Amendment), §§ 1, 2 and 3). The Fifth Amendment fulfilled the direction of the United States District court in its Order entered on April 17, 2015. (Ayres Affidavit, September 21, 2022, Exhibit 2 (Assignment of Right to Purchase Real Property), Exhibit B (Memorandum and Order, p. 3)).

(i) Fifth Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay Amendment of Bylaws for Rarity Bay Community Association, Inc., and Assignment of Declarant Rights Under Master Declaration.

(ii) Assignment of Right to Purchase Real Estate.

(iii) Bylaws of the Rarity Bay Community Association, Inc. as recorded in the Register's offices of Loudon County and Monroe County.

(iv) Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay as recorded in the Register's offices of Loudon County and Monroe County.

(v) Settlement Agreement between the Association, Partners and LLC.

LLC purchased for $3,250,000 not only the Declarant Rights and the golf course, but also all assets related to the Rarity Bay Golf and Country Club and real estate associated with the Rarity Bay development, except the 172 lots, all as set out in the Real Estate Contract of Purchase and Sale dated March 11, 2015 (Ayres Affidavit, September 21, 2022, Exhibit 2 (Assignment of Right), Exhibit A (Purchase Agreement), Exhibit A (Descriptions of Premises)).[2]

In addition, LLC did not amend the Master Declaration "to give it[self] the authority to amend the Master Declaration and Bylaws for any purpose." The Master Declaration as originally adopted by Tellico Lake Properties, L.P. on October 1, 1998 and as recorded in the Register's offices of Loudon County on October 14, 1998 and in Monroe County on October 30, 1998, included in material part the following provision at § 13.2.

> Amendment (a) by Declarant: Until the end of the Development Period, the Declarant may unilaterally amend this Declaration **for any purpose**.

(Ayres Affidavit, September 21, 2022, *Exhibit 4* (Master Declaration), § 13.2 (emphasis added)). Thus, LLC had nothing to do with the creation of the Declarant right empowering the named Declarant to amend the provisions of the Master Declaration. LLC merely purchased this right in May 2015 along with all of the other rights of the Declarant contained in the Master Declaration and Bylaws of the Association.

B. The Order states as follows:

> Salem Pointe Capital, LLC changed the definition of "owner" and added Salem Pointe Capital Partners, now known as Rarity Bay Partners as a defined exempt person under the Master Declarations. There were many other changes in the Sixth Amendment to the Master Declaration and the By-Laws of Rarity Bay Community Association, Inc. Under the new section 11.6, LLC purportedly gave itself the right to disapprove of any action of the Association, Board, Committee…,

[2] All assets purchased from the Receiver, including those purchased by LLC and those assigned for purchase by LLC to Partners are listed on Exhibit A, Descriptions of Premises, which is attached to the Purchase Agreement (a/k/a Real Estate Contract of Purchase and Sale) which is Exhibit A to the Assignment of Right to Purchase Real Property. A review of the Description of Premises shows the 172 lots ultimately purchased by Partners listed first, followed by all of the assets to be purchased by LLC, including eleven (11) condominiums, golf course, clubhouse, common area, five (5) tracts of acreage estimated to total 44.372 acres, and the Declarant Rights.

> which in its sole judgment… would tend to impair his rights… under the governing documents. It required that its notice of meetings be given by certified mail.

The language of "new § 11.6" in the Sixth Amendment which upon adoption was added to the Master Declaration which the Court found purportedly gave LLC the right to disapprove of any action of the Association, has been a right held by the Declarant, pursuant to the terms of the Bylaws of the Association since the time the Bylaws were originally adopted in 1998, to wit:

> 8.19. Right of the Declarant to Disapprove Actions. During the Development Period, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of or construction on any portion of the Development, or diminish the level of services being provided by the Association.

(Ayres Affidavit, September 21, 2022, Exhibit 3 (Bylaws of the Rarity Bay Community Association, Inc.) ("Bylaws"), § 8.19). Thus, LLC had nothing to do with the creation of the Declarant right that existed in the Bylaws of the Association empowering the Declarant to protect its efforts and investment as the Declarant by disapproving Association decisions when in the Declarant's sole judgment the Association action would *"tend to impair rights of the Declarant under the Governing Documents, or interfere with Development of or construction on any portion of the Development, or diminish the level of services being provided by the Association."*

The language of new § 11.6 being added to the Master Declaration was for the purpose of allowing the Declarant to disapprove also when the rights under the Governing Documents of "Declarant-Related Entities, Builders or any Exempt Person" [i.e., Partners], were being impaired.

The undisputed testimony of the immediate past president and the current President of the Association, Jim Atchley and Chad Story, at the hearing on July 21, 2022 was that the Declarant, acting through Michael D. Ayres, "never one time" sought to override the actions of the members of the Board of Directors of the Association, and that when the Board disagreed with Mr. Ayres's

views he had never exercised the Declarant right pursuant to § 8.19 of the Bylaws (Transcript of hearing pp. 173-179, 194-195, 199-202).

The Order further incorrectly states that "It required that its notice of meetings be given by certified mail." We assume "it" is referring to the provisions of new § 11.6 to the Master Declaration which is fundamentally the same as the 1998 version of § 8.19 of the Bylaws. However, both § 11.6 (a) of the Master Declaration and § 8.19(a) of the Bylaws only address the type of notice of Association meetings that the *Association is required to give to the Declarant* because it was contemplated that the Declarant or its owner might not otherwise get notice because it was not serving as a member of the Board of the Association.

After an introductory paragraph at the beginning of § 11.6 articulates the power to disapprove, subsection (a) addresses the notice requirement with respect to actions taken pursuant to §11.6 and states as follows:

> (a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

C. The Order states:

> Salem Pointe Capital, LLC gave itself the right to join all discussions and the right to disapprove of any action of the Board within ten (10) days. (Order, p. 2).

LLC did not give "itself the right to join in all discussions" nor did it give itself "the right to disapprove of any action of the Board." From the inception of the Association, and long before LLC came on to the scene, § 8.19 of the Bylaws have stated:

> 8.19. Right of the Declarant to Disapprove Actions. During the Development Period, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the

> sole judgment of the Declarant, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of or construction on any portion of the Development, or diminish the level of services being provided by the Association.
>
> ....
>
> (b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.
>
> No action, policy or program subject to the right of disapproval set forth herein shall become effective or implemented until and unless the requirements of subsections (a) and (b) above have been met.

(Ayres Affidavit, Exhibit 3 (Bylaws of the Rarity Bay Community Association, Inc., § 8.19).

The world, including the Plaintiffs, the Defendant, and every purchaser of property in Rarity Bay are held to have constructive knowledge of each of the foregoing rights that were in the original Master Declaration and the original Bylaws.

D. The Order provides:

> Since LLC had purchased the golf course as part of this deal in 2015, the new Bylaws included completely new sections on mandatory club membership and lien rights for those dues. (Order, p. 2).

First, as noted above, LLC purchased much more than the golf course related to the Rarity Bay development. Moreover, Ayres and his wife Amy have invested more than money, they have invested their life's work to the operation and improvement of the focal point of the Rarity Bay community, the Rarity Bay Golf and Country Club.

The Sixth Amendment, as the full title of the document suggests, includes amendments to both the Master Declaration and the Bylaws of the Association. The Master Declaration governs Phases VI through XVI containing roughly 650 lots, but it does not govern the approximately 650 lots contained in Phases I through V. Thus, the portions of the Sixth Amendment that amend the Master Declaration do not apply to lots in Phases I through V. As a result, the new § 7.11 added

to the Master Declaration by the Sixth Amendment, which provides for mandatory social membership in the Rarity Bay Golf and Country Club, only applies to post May 18, 2015 sales of lots in Phases VI through XVI.

While somewhat unclear, the implication from the language in the Order is that the mandatory social membership requirement has an immediate impact on the existing property owners in the Rarity Bay Development. Since the requirement only applies to future purchasers of lots in Phases VI - XVI, there is no immediate impact on the current residents in the Development.

E. The Order provides as follows:

> After hearing the testimony and review of the matter, the Court finds that: because of the acts of Mr. Ayres, Mr. Frisbey's rights are being violated and failure to enter a temporary injunction will tend to render such final judgment ineffectual. This Court finds on the issue of notice that Mr. Ayres sent a blanket email the day of the election. The email was purportedly signed by Michael Ayres and not by Salem Pointe Capital, LLC. It is noted that Salem Pointe Capital, LLC is the Declarant, pursuant to the document created by Salem Pointe Capital, LLC. Section 8.5 of the By-laws as amended by Salem Pointe Capital, LLC provides that notice "be delivered to the director prior to the meeting called for that purpose." (Order, pp. 3-4)

Since the Order was to "enjoin the Defendants from continuing to take the position that Michael Frisbey is removed from his elected position on the Board of the Association by the 'actions of the Declarant'," Defendants conclude that the rights of Frisbey that are being violated is the right to occupy a seat on the Board of the Association. Every elected member of the Board of Directors of the Association, since May 2015, has had the right to occupy that position subject to the right of the Declarant to remove them from the position. Moreover, since 1998 every Board of the Association has made decisions in the operation of the Association subject to the right of the Declarant to disapprove an action it believed tended to impair the Declarant's Rights under the Master Declaration, Bylaws, Charter, Rules of the Association, Design Guidelines, as amended. (Ayres Affidavit, Exhibit 3, (Bylaws) § 2.18 and § 8.19).

Pursuant to the Declarant's right to amend the Bylaws, *a right that has existed since 1998*, the Declarant LLC, by the adoption of the Sixth Amendment, amended § 8.5 of the Bylaws. Similar to the Declarant's right to amend the Master Declaration contained therein at § 13.2 (Infra, p. 3), the Declarant has the following right as set out in the original Bylaws:

> 13.10 Amendment. (a) by Declarant. Until the termination of the Development Period, the Declarant may unilaterally amend the By-laws for any purpose. (Ayres Affidavit, Exhibit 3 (Bylaws), § 13.10(a)).

The amendment to the Bylaws that was contained in the Sixth Amendment expanded § 8.5 to allow the Declarant to remove directors of the Board of the Association. The amended language which was substituted for the first paragraph of § 8.5 is as follows:

> Removal of Directors and Vacancies. Any director may be removed, with or without cause, by Members holding a Majority of the total votes in the Association, or by the Declarant. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director, which successor must also be approved by Declarant.

The quote from the Order at the beginning of this subsection "E." raises the Court's first problem with the Declarant's notice. "The email was purportedly signed by Michael Ayres and not by Salem Pointe Capital, LLC. It is noted that Salem Pointe Capital, LLC is the Declarant, pursuant to the document created by Sale Pointe Capital, LLC." (Order p.4)

First, as already demonstrated, the status of LLC as Declarant was not created by some document created by LLC. LLC was named the Declarant by the Fifth Amendment executed by the Receiver. And second, in the email notice of the meeting sent by Ayres that was addressed to Plaintiff Michael Frisbey, the body of the email stated "... please consider this correspondence from SPC[3] as official 'notice' of the special called meeting for the pending removal ...," clearly

[3] Earlier in the email, Salem Point Capital, LLC is designated "SPC."

indicating the notice was being sent by Ayres for LLC in his representative capacity. (Verified Complaint ¶21, Exhibit E).

F. The Order did not conclude, or even address, whether this amendment was valid or invalid. Instead, the Court concludes that the removal of Mr. Frisbey was not properly executed for reasons we will address in subsection "G." below, and implies that the rights of the Declarant are trumped by the voting rights of the residents.

With respect to the latter issue, in 2012, the Tennessee Supreme Court issued a decision that, in part, dealt with the validity of an amendment to covenants and restrictions in a residential subdivision known as "*Cooley's Rift.*" The Court noted the proliferation in all types and kinds of residential developments of the use of restrictive covenants to privately control land use. *Hughes v. New Life Development Corp.*, 387 S.W. 3d 453, 475, (Tenn. 2012). These restrictive covenants are recorded prior to any lot sales and are "intended to bind each purchaser in the community." *Id.* "The developer also creates an association to govern the community and drafts bylaws for the association, which typically provide for a board of directors, define the scope of the board's power, and specify the procedures the board must follow in its everyday governance of the community (citation omitted). *Notably, the declaration often provides for its own amendment.* (Citation omitted)." *Id.*

The Court in *Hughes* had concluded that the amendment to the covenants in question had been properly adopted but noted that "what we are now called upon to examine is the extent to which the courts will sit judgment of the private decision-making in this community structure." *Id.*

The Court started its analysis by stating the restrictive covenants that run with the land are "a series of overlapping contractual transactions," and thus, "they should be viewed as contracts and examined as such. See, *Maples Homeowners Association v. T&R Nashville Ltd. Partnership*, 99 S.W. 2d at 39."

Said the Court:

> Contract law in Tennessee plainly reflects the public policy allowing competent parties to strike their own bargains. (Citation omitted). Courts do not concern themselves with the wisdom or folly of a contract, (citation omitted), and they cannot countenance disregarding contractual provisions simply because a party later finds the contract to be unwise or unsatisfactory.
>
> *These contract principles, applied in the context of a private residential development covenants that are expressly subject to amendment without substantive limitation, yield the conclusion that a homeowner should not be heard to complain when as anticipated by the recorded declaration of covenants, the homeowners' association amends the declaration. (Citation omitted). When a purchaser buys into such a community, the purchaser buys not only subject to the express covenants in the declaration, but also subject to the amendment provisions of the declaration.* (Citation omitted). And, of course, a potential homeowner concerned about community association governance has the option to purchase a home not subject to association governance. (Citation omitted). As one commentator has notes, people who live in private developments "are not just opting for private ordering in the form of covenants, but also are opting for a privatized form of collective decision making that can undo, replace, modify, or augment the private ordering already achieved." (Citation omitted).

Hughes, at 475-76.

The Defendants have concerns about the Court's apparent perception that LLC made itself the Declarant, gave itself the right to amend the Master Declaration and Bylaws, gave itself the power to disapprove Association actions, and created its right to participate in board meetings. Were these rights and powers only recently created, rather than long standing rights within the constructive knowledge of every purchaser in Rarity Bay, then the principles relied on by Supreme Court in *Hughes* would not be as clearly applicable in support of the Declarants actions in this case. The fact that the Declarant has control over any action of the Board of the Association and can amend the governing documents have existed since 1998, and if a potential purchaser could not abide co-existing under these conditions, there were other available options.

G. The Court places substantial emphasis on the details and requirements of the notice given for the meeting. Even though all of the Directors to whom the Declarant sent the notice attended and participated in questioning by the Declarant, the Order states:

> Section 7 of the By-laws provides that the president or 25% of the members are the person(s) that are allowed to call a special meeting. That was not done in this situation. Section 7.4 of the By-laws provides notice of the place, day and time shall be delivered to each member entitled to vote not less than thirty (30) days nor more than sixty (60) days before the date of such meeting. That was not done. T.C.A. §48-51-202 provides that notice is not considered delivered when it is sent by email. This was not followed by the Declarant. Since the Declarant could not call the meeting, the Declarant did not deliver notice, and the Declarant did not give the correct amount of advance notice and deliver said notice to the specific member who was being considered for removal, the removal was inappropriate. Mr. Frisbey has been vocal in his support for the removal of Salem Pointe Capital, LLC as the Declarant and allowing the Association to govern itself. The Court holds that the temporary injunction advances the interest of the voters in the subdivisions and those who were lawfully elected.

The foregoing notice issues were not raised by the Plaintiffs. They raised different notice issues, but not that the meeting called by the Declarant to implement a director removal should be treated as if it were an action being taken by the Board of the Association, or at a meeting of the members of the Association. The action that was taken March 1, 2022 was neither an action of the Board nor of the Association. It was an action taken by the Declarant. On the one hand, unless they are acting by written consent, the Association and its Directors can only act at a meeting, called and noticed as required by the Bylaws. On the other hand, the Declarant in the exercise of its independent decision to remove a member of the Board, in the words of §8.5, must only give "notice prior to *any* meeting called for that purpose."

Since the decision being considered is a decision of the Declarant, and not of the Directors or the Association, the Declarant is not required to follow §7 of the Bylaws or T.C.A. 48-51-202. Not being bound to these legal notice requirements, the Declarant can call and hold its own meeting in any fashion that it wants, so long as it informs the Director prior to "any meeting." As noted, Frisbey received two notices prior to the meeting that was identified by the Declarant, a meeting

that just happened to be on everyone's calendars as it was to be the first Director's meeting at which the newly elected board members would attend.

The notice sent to Frisbey on February 25, 2022 was the second notice of the meeting that he received (Verified Answer and Response of Salem Pointe Capital, LLC and Michael Ayres to Verified Complaint and Motion for Temporary Injunction, Exhibit 2). It not only was addressed to him, but it gave the date and time for the meeting and identified both he and Crystal Pate as the Directors who likely would be removed.

CONCLUSION

The Tennessee Supreme Court in *Fisher v. Hargett*, 604 S.W. 3d 381, 394 (Tenn. 2020) noted that in considering a motion for temporary injunction Tennessee courts are required to consider four factors. Those factors are:

> (1) "The threat of irreparable harm to the Plaintiff if the injunction is not granted;
>
> (2) The balance between this harm and the injury that granting the injunction would inflict on Defendant;
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> (3) The probability that Plaintiff will succeed on the merits; and
>
> (4) The public interest." (Citations omitted).

Id.

The testimony of current association president Chad Story at the hearing on July 21, 2022 was that the Board of the Association had no significant matters to take up in the immediate future. His words were "No, Sir. … We're just keeping the lights on. There's no pavilion. There is no plans to do anything but let's keep the lights on, let's get past all of the legal issues one of these days and move on." (Transcript, p. 196). Given that the Association was not taking up any significant matters, Plaintiff Michael Frisbey, not being on the Board would result in no harm. Moreover, Frisbey's service on the Board under the circumstances might actually be harmful to the Association. Directors in carrying out their fiduciary duties are not to side with a faction of

the members or shareholders, but are required to consider all views of the members or shareholders in determining what is in the best interest of the entity.[4]

Plaintiff Frisbey, demonstrated by his own words that his long term goal was the removal of the Declarant rights, thus clearly aligning himself with the self-governance faction of members of the Association. As he stated in his April 15, 2021 email:

> … my goals are simple. … 2. My long-term goal is to help elect enough independent residents to the Board that the RBCAI [Association] will eventually file a legal action against SPC [LLC] and Michael Ayres to remove the declarant rights. At that point it will take 67% vote of ALL PROPERTY OWNERS, to change any of the governing documents or Design Review Guidelines. Thus, giving control of the community back to the Residents and ending all the legal issues that have hung over the community for the past five (5) years. (Verified Answer and Response of Salem Pointe Capital, LLC and Michael Ayres to Verified Complaint and Motion for Temporary Injunction, Exhibit 1).

The third factor to be considered is whether the Plaintiff has a strong probability of success on the merits. An assessment of this issue requires one to consider whether or not the Declarant rights being exercised by LLC that gave rise to this action could be shown by Frisbey to be arbitrary and capricious, or otherwise unenforceable. Given the holding in *Hughes*, Defendants submit that the contract rights acquired from the Receiver by LLC would be superior to the rights of the members of the Association who purchased with knowledge of the Declarant's right to amend the Bylaws. This is particularly true given the fact that all members of the Association purchased their interest with constructive knowledge as set forth in § 8.19 of the originally adopted Bylaws gave the Declarant the right to "disapprove any action, policy or program of the Association, the Board or any committee which, in the sole judgment of the

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[4] 3 *Fletcher Cyclopedia of the Law of Corporations, § 1012* Favoring Certain Shareholders. It is the duty of a board of directors to manage the corporate affairs solely in the interest of the corporation, regardless of the effect of its policies and management upon the fortunes of individual shareholders in the corporation. (Footnote omitted). If different persons claim the right to a majority of the stock, the directors should not side with either faction. (Footnote omitted). Corporate officers have no right to extend favors to certain shareholders as against other shareholders or the corporation. (Footnote omitted). Directors and other officers cannot rightly manipulate the affairs of the corporation primarily with the design of securing its control to one particular group of shareholders or of excluding another group from the exercise of its corporate rights. (Footnote omitted).

Declarant, would tend to impair rights of the Declarant under the governing documents, or interfere with development of or construction of any portion of the development…" (Bylaws, § 8.19).

For the foregoing reasons, Defendants respectfully request that the Court enter its Order altering or amending its Order granting the Plaintiff's injunction and denying same. Moreover, it is requested that the factual inaccuracies in the Order noted herein be corrected.

Respectfully submitted this ~~21st~~ 22nd day of September, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been served upon all counsel of interest in this cause by emailing a true and exact copy to all counsel and parties of interest shown at the addresses below and by placing a copy in the United States mail, postage prepaid.

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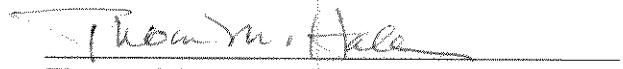
This ~~21st~~ 22nd day of September, 2022.



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