IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

RARITY BAY PARTNERS, formerly known as SALEM POINTE CAPITAL RARITY BAY PARTNERS,	)	
Plaintiff,	)	**Docket No. 21173**
v.	)	
RARITY BAY COMMUNITY S, INC., SALEM POINTE CAPITAL, LLC and BEP RARITY BAY, LLC,	)	
Defendants.	)	

FILED
AUG 29 2022
TIME 3:15
TERESA A. CHOATE
CLERK & MASTER MONROE CTY

STATEMENT OF UNDISPUTED MATERIAL FACTS

Comes Defendant Rarity Bay Community Association, Inc. ("Association"), by and through counsel and, pursuant to Tennessee Rule of Civil Procedure 56.03, submits the following Statement of Undisputed Material Facts in support of its ***Defendant Association's Motion for Summary Judgment***:

1. In this case, Plaintiff Rarity Bay Rarity Bay Partners ("Partners") asserts it "[i]s not a party to this [12-17-15] Settlement Agreement." (Transcript of Proceedings, Nov. 24, 2020, p. 29, ll. 17-24)(Ex. 1).
2. Partners further asserts the parties to the Settlement Agreement never reached a mutual agreement on Partner's position as an Exempt Person under the Master Declaration. (Rarity Bay Partners' Objections, Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant Rarity Bay Partners, Response No. 2) (Ex. 6).

3. If Rarity Bay Partners is not an individual party to the Settlement Agreement of December 17, 2015, it has no standing to enforce the Agreement. (See Owner-Operator Indep. Drivers Ass'n v. Concord Efs, 59 S.w.3d 63, 68 (Tenn. 2001)).
4. The Declaration of Covenants, Conditions and Restrictions for Properties of Rarity Bay Subdivision, Phase I, Section 1, 2, and 3 of 1994 (hereinafter "Phase I Declarations") states that the Declarant covenants, and each lot owner by accepting a deed therefore, is deemed to agree to pay annual and special assessments and agrees to the assessments together with interest, costs, reasonable attorney fees and a continuing lien on the property for the assessments. (Declarations Phase I, Article IV, Section 3)(Ex. 2).
5. The purpose of the Assessments was for improvement and maintenance of common areas. (Declarations Phase I, Article IV, Section 2)(Ex. 2).
6. The original governing documents do not contain the term "Exempt Person". (See governing documents prior to Amendments).
7. Under the original declarations and Master Declaration, the only entity exempt from assessments is the Declarant for property owned by the Declarant. (See Phase III Declarations, Article VI, Section 1; Master Declaration 7.8 (before amendment))(Ex. 3, Ex. 4).
8. The only property exempt from assessments under the Association governing documents is:

> Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:
>
> (a) All Common Area and such portions of the property **owned by the Declarant** and included in the Area of Common Responsibility pursuant to the By-Laws;...

(Master Dec. 7.10)(emphasis added)(Ex. 2)(Ex. 4); (Bylaw 12.10)(Ex. 3)(Ex. 5).

9. There can be only one (1) Declarant at any one time. (Master Dec. 1.12; Fifth Amendment)(Ex. 4; Ex. 7).
10. On or about May 18, 2015, Section 2.10 of the Bylaws was amended to name Salem Pointe Capital, LLC ("LLC") as the Declarant. (Bylaws, Fifth Amendment)(Ex. 7).
11. LLC remains the named Declarant under the governing documents for the Association. (See Fifth Amendment)(Ex. 7).
12. LLC continues to own lots in the Association and continues to be exempt on property it owns. (See Phase III Declarations, Article VI, Section 1; Bylaws Section 2.14)(Ex. 3 and Ex. 5).
13. According to the Charter for the Association, executed on September 24, 1998, reference was made by the Charter to the Declarations, and the Association was given power to "[e]xercise all rights and powers of the Association, as specified in the Declarations and Bylaws, as provided by law." (Charter, Article 6)(Ex. 8).
14. Unless otherwise indicated **by the Declarations**, the Charter gives the Board of Directors for the Association the power to establish, collect, and enforce payment of assessments and other charges. (Charter, Article 7)(emphasis added)(Ex. 8).
15. The Charter gives the Association the right to enforce contracts of any kind to carry out any purpose of the Association. (Charter, Article 7)(Ex. 8).
16. Members cannot use the Association for monetary gain or profit. (See Charter, Article 7(c) (Ex. 8).
17. Members cannot exempt themselves from assessments by any means. (See Master Declaration 7.1; Bylaw 12.1) (Ex. 4 and Ex. 5).
18. The Charter for the Association, executed on September 24, 1998 states:

> The share of a Member in the privileges, rights and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to real property subject to the Declarations.
>
> (Charter, Article 8(c), Ex. 4) (Ex. 8).

19. Special rights and obligations of the Declarant set forth in the Governing Documents cannot be transferred or assigned to another, either in whole or in part, if such transfer would either reduce an obligation or enlarge a right beyond that which the Declarant has under the Master Declaration or the By-Laws. (Master Declaration Article 11, Section 11.1)(Ex. 4).

20. On or about April 23, 2021, the Court found that the Sixth Amendment did not allow the Declarant to extend voting rights to itself on lots the Declarant did not own. (See Transcript, Findings of Fact, April 23, 2021)(Ex. 10).

21. Likewise, the Declarant cannot extend an exemption for assessments on lots the Declarant does not own. (See Charter, Article 8 (Ex. 8); Master Declaration Article 1, Article 7; Article 11)(Ex. 4).

22. Partners owns 377 lots in the Association. (Trans. November 24, 2020, p. 48, ll. 18)(Ex. 1).

23. In this lawsuit, Partners claims LLC has never owned any part of Rarity Bay Partners. (Trans. November 24, 2020, p. 36, ll. 15-17)(Ex. 1).

24. Partners claims in this lawsuit it was never a parent or subsidiary of LLC. (Trans. November 24, 2020, p. 36, ll. 20-23)(Ex. 1).

25. Partners claims in this lawsuit the alleged SPC Rarity Bay Partnership owns no lots. (Trans. November 24, 2020, p. 38, ll. 13-14)(Ex. 1).

26. Partners claims in this lawsuit its obligation to pay under the Settlement Agreement ended when its Rarity Bay Partnership with LLC ended. (Trans. November 24, 2020, p. 39)(Ex. 1).

27. Partners claims in this lawsuit its lots are separately owned from its relationship with LLC. (Trans. November 24, 2020, p. 40, ll. 5-8)(Ex. 1).

28. Partners is simply a Class A lot(s) owner/member of the Association. (See Bylaw, Section 4.1)(Ex. 5).

29. The Settlement Agreement qualifies as a cost sharing agreement under the governing documents for the Association. (See Master Declaration, Article I, Section 1.10)(Ex. 4).

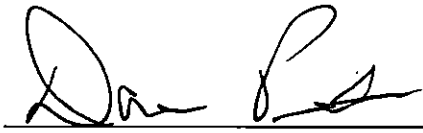
30. An owner's right to vote may be suspended under the Governing Documents for violating the Governing Documents. (Phase III Declaration, Article IV, Bylaw Section 1(a)(Ex. 3).

31. A member with delinquent assessments loses its voting rights. (See Bylaw 8.24)(Ex. 5).

32. No member or resident shall be eligible to serve as a director if any assessment for such member's unit is delinquent. (Bylaw Section 8.10)(Ex. 5).

33. Partners has not paid assessments since 2017. (Affidavit of Joe Barletta, Ex. 9).

RESPECTFULLY SUBMITTED:

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, an exact copy of this pleading has been emailed, faxed, hand-delivered and/or mailed to the following individual(s):

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