IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

RARITY BAY COMMUNITY ASSOCIATION, INC.,	)	
Plaintiff/Counter-Defendant,	)	
v.	)	**No. 20489**
RARITY BAY PARTNERS F/K/A, SALEM POINTE CAPITAL PARTNERS	)	
Defendant/Counter-Plaintiff/ Third Party Plaintiff,	)	
v.	)	
SALEM POINTE CAPITAL, LLC, MICHAEL AYRES AND DOUG YOAKLEY,	)	
Third Party Defendants.	)	

FILED
AUG 24 2022
TIME 1:45
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

and

RARITY BAY PARTNERS	)	
v.	)	**No. 21173**
RARITY BAY COMMUNITY ASSOC., INC., SALEM POINTE CAPITAL, LLC and BEP RARITY BAY, LLC.	)	
Defendants.	)	

MOTION FOR PROTECTIVE ORDER

Comes now Rarity Bay Community Association, Inc. (the Association), by and through counsel, and moves the Court for Protective Orders in the captioned cases. In support of this Motion, the Association would show unto the Court the following:

Introduction

The Association has been caught in the middle of a partnership dispute between Rarity Bay Partners ("Partners") and Salem Pointe Capital, LLC ("LLC") for over 5 years. The Association's only voluntary involvement in these cases was to initiate legal action to enforce the Settlement Agreement which obligated Partners to pay RBCAI annual assessments on lots held over a 250 lot threshold each year. Partners presently owns approximately 377 lots (the largest holding in the community), but has contributed nothing to the Association in assessments since 2017. These cases have been ongoing for years with a copious amount of motions and court filings, and the Association is being dragged through the mire of this acrimonious partnership dispute.

Notably in the year 2016, Matt Daniels of Partners was involved in disagreements with property owners, and he said if homeowners filed a lawsuit, part of his strategy was: "[I] would remind owners that BE's own attorney claims this action will take 3 to 4 years. I promise that it will take longer, because I will appeal it until it's unappealable...**most owners will be dead when this case is settled**." (See email from Matt Daniels, dated May 12, 2016)(**Exhibit A**). Unfortunately, Mr. Daniels has lived up to his threat.

The parties have been trying to schedule depositions but seem to constantly run into issues that prevent this case from moving forward, such that the Association needs some relief and protection from the Court. In support of this Motion, the Association would state as follows:

1. The parties agreed to schedule depositions for August 22-24, 2022 and on or about August 2, 2022, the Association filed Notice of Depositions for Rarity Bay Partners, for Crystal Pate, and for Matt Daniels, to occur on August 22, 2022 to confirm the presence of Partners' corporate representatives at the offices of Kennerly Montgomery beginning at 9:00 a.m., or at such other location and time as the parties agreed. (See Notices attached hereto as cumulative **Exhibit B**).
2. No objection was ever made to those Notices.
3. On or about August 11, 2022 and on the last day allowed under the Tennessee Rules of Civil Procedure, Rarity Bay Partners hand-delivered a very lengthy Notice of Deposition for the Association's corporate representatives, which deposition was purportedly to begin 30 minutes before the time noted in the August 2, 2022 Notice and at a different location in Knoxville. (See Notice of Deposition filed by Rarity Bay Partners)(**Exhibit C**).
4. To comply with such Notice would have been impossible given the time and location of the depositions reflected in the first Notices filed on or about August 2, 2022, so counsel for the parties conferenced in an effort to work out differences.
5. While counsel was able to work out some differences in scheduling, during those discussions it became clear that Partners will seek to insist on discovering communications among the Association and its legal counsel that clearly violate the attorney-client privilege as a condition precedent to taking the depositions of Partners' corporate

representatives. This discovery has been sought in two (2) sets of written discovery filed in late June, 2022. Also, it became clear that if Partners did not receive such privileged documents, it would not present its corporate representatives for depositions on August 22, 2022. Specifically, Partners' counsel stated that it would have to file a Motion to Compel production of the protected attorney-client communication before presenting its corporate representatives for depositions. (See written discovery propounded by Partners on or about June 30, 2022). (Cumulative **Exhibit D**).

6. This is at least the second time the Association has had depositions scheduled that included the deposition of Matt Daniels as a corporate representative of Partners.
7. Depositions, including that of Matt Daniels, were last scheduled for December 20, 2021 (See Notices of Depositions attached hereto as **Exhibit E**).
8. At the 11th hour before the December deposition, counsel was verbally made aware of plaintiff counsel's need to withdraw from representation of Partners, and a motion to withdraw was made on December 21, 2022.
9. There was a stay in litigation until Rarity Bay Partners found what is believed to be its fourth counsel of record.
10. Since that time, the parties have once again been embroiled in extensive motion practice.
11. Counsel for the Association is eager to conduct depositions and bring this case to a resolution and fears further discovery disputes over something

as sacred as attorney-client privilege will cause this case to drag out even further than what has transpired thus far.

12. Counsel for the Association also believes this latest move, after being embroiled in years of litigation and then asking for attorney-client communications during the same period of litigation, is tactical by Partners.
13. While Partners has time and time again maintained that it is bringing its action for the sake of the community, the duration of litigation has been very harmful to the community.
14. Further, the positions taken by Partners for purposes of litigation are very different from its positions prelitigation.
15. Before the partnership breakup between it and Salem Pointe Capital Partners, LLC, Rarity Bay Partners agreed with the Association's interpretation of the governing documents.
16. For example, Rarity Bay Partners thought the Declarant rights allowed the Declarant to appoint members to the Board, and in fact both it and LLC appointed board members. (See Complaint filed by Partners in Monroe Chancery case no. 19943, ¶22)(**Exhibit F).**
17. Rarity Bay Partners had paid RBCAI annual assessments to Association in 2017 pursuant to the Settlement Agreement at issue.
18. Rarity Bay Partners and LLC ***both*** voted 5 votes on lots they respectively owned, and Rarity Bay Partners did not want the community to be privy to its voting power. (See emails from Matt Sherrod dated April 7, 2016)(**Exhibit G).**
19. Further, counsel (other than Kevin Stevens) confirmed the community would not be privy to such information. (See email from attorney Matt Sherod with Howard

& Howard dated April 7, 2016)(**Exhibit H**).

20. Even though Crystal Pate was elected to the board of directors in 2021, Partners continues to insist on litigating the 2019 election, even though Partners has not once alleged that the Association engaged in any improper conduct between 2019 and 2021 (other than not counting election votes in the manner that Partners' desired).

21. It should be noted that Crystal Pate received 400 votes in the 2019 election, 374 of which came from Rarity Bay Partners. (See Complaint and ballot of Rarity Bay Partners from the September 2019 election)(**Exhibit I**). So in the 2019 election, Crystal Pate received 26 votes from all other community members, and the requested audit will not change that fact.

22. While Partners has argued it should have much say in the community given the amount of lots it owns, it contributes nothing to the Association in assessments, while all other property owners pay annual assessments to disproportionally maintain the community for the benefit of Partners (as the largest property owner).

23. In short, before the partnership breakup Partners was in agreement that a non-Declarant entity (itself) could receive 5 votes per lot on a lot not owned by the Declarant, that the Declarant rights allowed the Declarant to appoint members to the Board (including its own representatives), and that it owed (and paid) assessments to the Association under the Settlement Agreement.

24. After the partnership breakup, Partners has been vying for control over the Association board of directors, has been attempting to obfuscate its obligation to pay assessments to the Association under the Settlement Agreement, has been using the litigation process to better its position for profit, is dragging the Association along to the detriment of a nonprofit organization, and is attempting to leverage a potential recovery for attorney fees against the Association to offset its potential exposure for assessments owed to the Association.

25. The Association fears this newest discovery dispute is an attempt to further slow this process and keep the Association mired in litigation. The Association requests protection from the Court from the litigation tactics of Partners, the latest of which is an attempt to obtain information clearly protected by the attorney-client privilege and work product.

26. The Association requests Orders from the Court prohibiting Partners from obtaining information clearly protected by attorney-client privilege and/or the work product doctrine. The Association submits such Orders will assist the parties in moving the litigation forward and specifically to conduct party depositions in preparation for the upcoming trial dates.

WHEREFORE, the Association requests Orders protecting it from discovery requests that seek disclosure of information protected by attorney-client privilege and work product information.

RESPECTFULLY SUBMITTED:

STOKES, WILLIAMS, SHARP, COPE & MANN, PC

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 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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