IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

RARITY BAY PARTNERS F/K/A, SALEM POINTE CAPITAL PARTNERS,	)	
Plaintiff,	)	
v.	)	**No. 21,173**
RARITY BAY COMMUNITY ASSOCIATION, INC., SALEM POINTE CAPITAL, LLC, AND BEP RARITY BAY, LLC,	)	
Defendants.	)	

FILED
AUG 02 2022
TIME 2:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

AMENDED ANSWER

Comes now Defendants; Rarity Bay Community Association, Inc., and for ITS response to the Complaint filed against them say as follows:

1. To the knowledge, information and belief of the Defendants, the allegations contained in Paragraph 1 of the Complaint are admitted if RBP is permitted to vote under the governing documents.
2. The allegations contained in Paragraph 2 of the Complaint are admitted.
3. It is admitted that the persons listed in Paragraph 3 of the Complaint were members of the Board of Directors for the Association at the time the original complaint was filed but submits those persons are no longer serving on the Board. The remaining statement in Paragraph 3 of the Complaint is a legal statement to which no response is required of this Defendant.
4. With respect to the allegations in Paragraph 4, a plain reading of the governing documents indicate that SPC was allowed to cast 25 votes in the 2019 election.

This Defendant asserts that any issues with respect to SPC's votes in the 2019 election are now moot. All other allegations contained in Paragraph 4 of the Complaint are not directed at this Defendant; therefore, no response is required of it.

5. This Defendant denies the allegation in Paragraph 5 of the Complaint that BEP Rarity Bay, LLC (Bald Eagle) cast three (3) votes in the Association's 2019 Board election that it was not eligible to cast under the Association's governing documents. All other allegations contained in Paragraph 5 of the Complaint are not directed at this Defendant; therefore, no response is required of it.

6. With respect to the allegations in Paragraph 6, this Defendant produced certain records to the Plaintiff upon request and for those records not produced, this Defendant had a good faith basis for any refusal, as it had a reasonable basis for doubt about the right of the member to inspect the records demanded. With respect to the remaining allegations in Paragraph 6, a plain reading of the governing documents indicated that SPC was allowed to cast 25 votes in the 2019 election, and Bald Eagle did not cast 3 extra votes. Further, any alleged errors in the 2019 election are now moot. Accordingly, the allegations in Paragraph 6 fail to state a claim upon which relief can be granted.

7. This Defendant denies that this action is derivative in nature, denies its elections were not conducted in accordance with Rarity Bay's governing documents, and asserts any records withheld were withheld in good faith. Further, any allegations with respect to the 2019 and 2020 elections are now moot and fail to state a claim upon which relief can be granted.

8. Jurisdiction and venue are admitted.

9. These Defendants admit the allegation in Paragraph 9 of the Complaint that the Rarity Bay subdivision was initially developed in different phases with differing declarations ("Phase Declarations").

10. These Defendants admit that in 1998, Tellico Lake Properties, LP was the developer and declarant for Rarity Bay and recorded the Master Declaration. The Master Declaration speaks for itself.

11. The allegation in the first sentence of Paragraph 11 of the Complaint is admitted.

12. With respect to Paragraph 12 of the Complaint, the language in the By-laws speaks for itself.

13. The documents referenced in Paragraph 13 of the Complaint speak for themselves.

14. With regard to the allegations in Paragraph 14 of the Complaint, the Assignment of Right to Purchase Real Property agreement is not part of the governing documents for the Association and did not involve this Defendant.

15. The governing documents speak for themselves.

16. With regard to Paragraph 16 of the Complaint, the language in said Charter speaks for itself.

17. With regard to Paragraph 17 of the Complaint, the language in said Charter speaks for itself.

18. With regard to the allegations in Paragraph 18 of the Complaint, the Master Declaration and Phase Declarations speak for themselves. However, this Defendant denies that the property at issue was additional property outside of existing declarations.

19. With regard to Paragraph 19 of the Complaint, Phase I, II and III Declarations speaks for itself.

20. With regard to Paragraph 20 of the Complaint, Phase IV Declaration speaks for itself.

21. With regard to Paragraph 21 of the Complaint, Phase V Declaration speaks for itself.

22. With regard to Paragraph 22 of the Complaint, the Master Declaration speaks for itself; however, this Defendant denies that the property at issue was additional property outside of existing declarations.

23. With regard to Paragraph 23 of the Complaint, Section 6.1 of the Master Declaration speaks for itself; however, these Defendants denies that the property at issue was required to be annexed.

24. With regard to Paragraph 24 of the Complaint, Section 6.1 and Section 6.2 of the Master Declaration speaks for itself; however, these Defendants denies that the property at issue was required to be annexed.

25. The allegations in Paragraph 25 of the Complaint are denied for any property at issue in this lawsuit. It is denied that the property at issue is additional property not included in the previous phases.

26. With regard to Paragraph 26 of the Complaint, it is admitted that SPC subdivided property into five lots and recorded a plat for same. It is denied that the lots were excess land not included in the subdivision and denied that the lots were not subject to a Declaration. Accordingly, all remaining allegations in Paragraph 26 of the Complaint are denied.

27. The allegations in Paragraph 27 of the Complaint are denied.

28. The allegations in Paragraph 28 of the Complaint are denied.

29. The allegations in Paragraph 29 of the Complaint are denied.

30. With respect to the allegation in Paragraph 30 of the Complaint, the Assignment of Right speaks for itself; however, these Defendants deny that said Assignment is part of its governing documents.

31. The allegation in Paragraph 31 of the Complaint is generally admitted; however, it is denied that annexation into the subdivision was required for any property at issue in this lawsuit.

32. With regard to the allegation in Paragraph 32 of the Complaint, it is denied that annexation is applicable in this case.

33. Paragraph 33 of the Complaint contains a statement for which no answer is required.

34. The allegation in Paragraph 34 of the Complaint is generally admitted; however, it is denied that annexation into the subdivision was required for any property at issue in this lawsuit.

35. The allegation in Paragraph 35 of the Complaint is generally admitted; however, it is denied that the property at issue in this lawsuit was not subject to the Master Declaration or Phase Declarations.

36. The allegations in Paragraph 36 of the Complaint are denied.

37. With regard to Paragraph 37 of the Complaint, the language in the By-Laws speaks for itself.

38. With regard to Paragraph 38 of the Complaint, the language in the By-Laws speaks for itself.
39. The Charter and By-Laws speak for themselves.
40. The allegations in Paragraph 40 of the Complaint are generally admitted but only if the Member(s) is in good standing.
41. The allegations in Paragraph 41 of the Complaint are generally admitted; however, it is denied that the property at issue in this lawsuit was not part of the Development or subject to the Declarations.
42. The allegation in Paragraph 42 of the Complaint is denied.
43. The allegation in Paragraph 43 of the Complaint is admitted but only if the Member is in good standing.
44. The allegations in Paragraph 44 of the Complaint are denied.
45. The allegations in Paragraph 45 are now moot and fail to state a claim for which relief can be granted.
46. The allegation in Paragraph 46 of the Complaint is admitted, as RBP was not in good standing for failure to pay assessments; however, said allegation is now moot and fails to state a claim upon which relief can be granted.
47. With regard to the allegations in Paragraph 47 of the Complaint, it is admitted that the 2020 election had been postponed indefinitely due to the COVID-19 pandemic. Paragraph 47 of the Complaint is denied to the extent it implies it postponed the election because RBP filed a motion in case no. 20489. Further, this issue is now moot and fails to state a claim upon which relief can be granted.
48. The allegation in paragraph 48 of the Complaint is denied.

49. Paragraph 49 of the Complaint contains no allegations for which a response is required by this Defendant.

50. This Defendant does not have sufficient knowledge to admit or deny the exact amounts of vacant lots and demand strict proof if material; otherwise, allegations in Paragraph 50 of the Complaint are admitted.

51. This Defendant does not have sufficient knowledge to admit or deny the exact amounts of vacant lots and demand strict proof if material. This Defendant denies that SPC obtained the Country Club only, as it owned/owns condominiums. The remaining allegations in Paragraph 51 of the Complaint are admitted.

52. Paragraph 52 of the Complaint contains a statement for which no response is required.

53. The allegations in Paragraph 53 of the Complaint are not directed as this Defendant; therefore, no response is required.

54. The allegations in Paragraph 54 of the Complaint are not directed as this Defendant; therefore, no response is required.

55. The allegations in Paragraph 55 of the Complaint are not directed as this Defendant; therefore, no response is required.

56. The allegations in Paragraph 56 of the Complaint are not directed as these Defendants; therefore, no response is required.

57. The allegations in Paragraph 57 of the Complaint are not directed as these Defendants; therefore, no response is required.

58. The allegations in Paragraph 58 of the Complaint are not directed as these Defendants; therefore, no response is required.

59. The allegations in Paragraph 59 of the Complaint are denied.

60. The allegation in Paragraph 60 of the Complaint is denied.

61. The allegation in Paragraph 61 of the Complaint is denied.

62. It is admitted that the Board filed suit against RBP in Monroe County Chancery Court case no. 20489. It is denied that the Board is "SPC-controlled", and it is denied that the Association sought foreclosure upon unlawful liens it had filed against lots owned by RBP.

63. It is admitted that the Association released liens and admitted that the Court required that RBP be allowed to participate in the 2019 election. It is denied that the liens were unlawful and denies that the RBP is in good standing.

64. It is denied that the Board is "SPC-controlled" or that the Board made unsubstantiated allegations that RBP owed assessments and was not in good standing. It is admitted that RBP is not in good standing for failure to pay assessments and, therefore, was at one time prohibited from voting or slating candidates for the 2019 election.

65. The allegations in Paragraph 65 of the Complaint are admitted.

66. The Court's ruling speaks for itself; therefore, no answer is required to Paragraph 66 of the Complaint.

67. It is admitted that the Association released the liens; however, it is denied that the liens were unlawful. The Court's order speaks for itself. It is admitted the case remains pending.

68. The By-laws speaks for itself.

69. The Tennessee Nonprofit Corporation Act speaks for itself.

70. Resolution 10 speaks for itself.

71. The allegations in Paragraph 71 of the Complaint are admitted.

72. The allegations contained in Paragraph 72 of the Complaint are admitted.

73. The allegation in Paragraph 73 of the Complaint is denied, as annexation would not be required.

74. The allegation in Paragraph 74 of the Complaint is denied.

75. The allegation in Paragraph 75 of the Complaint is denied.

76. It is denied that annexation is applicable in this suit. Section 6.1 speaks for itself.

77. The allegations in Paragraph 77 of the Complaint are denied. Said lots are in Phase 16 Declaration.

78. The allegations in Paragraph 78 of the Complaint are denied.

79. The allegations in Paragraph 79 of the Complaint are denied.

80. Defendants deny that the Vote Roster for the 25 lots was incorrect based upon a plain reading of the governing documents or that the lots needed to be annexed into the subdivision.

81. The allegation in Paragraph 81 of the Complaint is admitted.

82. Allegations in Paragraph 82 of the Complaint are denied to the extent it implies that the Board was required to or has ever disclosed how many votes had been cast or the vote tally immediately following an election. All remaining allegations in Paragraph 82 of the Complaint are admitted.

83. It is admitted that the Board did not immediately disclose the votes lost by or how many Class B votes were cast or vote tally but denies it was required to do so.

84. The allegation in Paragraph 84 of the Complaint is admitted.

85. It is admitted the Board initially refused to provide any vote tally but eventually produced an election report.

86. With regard to the allegations in Paragraph 86 of the Complaint, Defendants admit the election report would not disclose the number of votes SPC cast, how many Class A or B votes were cast or the identity of voters.

87. With regard to the allegations in Paragraph 87 of the Complaint, the election report and governing documents speak for itself.

88. It is admitted RBP's counsel requested the information stated in Paragraph 88 of the Complaint.

89. This Defendant admits that RBP asked the Board to confirm the votes in the election were cast in accordance with the voter roster. Any communications between attorneys would speak for themselves.

90. With regard to the allegations in Paragraph 90 of the Complaint, it admitted that Bald Eagle owned 102 lots at the time of the 2019 election and that it was eligible to case 102 votes. However, it is denied that the voter registration reflected that Bald Eagle was eligible to cast 105 votes, and it is denied that Bald Eagle cast 105 votes in the election.

91. The allegations in in Paragraph 91 of the Complaint are denied.

92. The allegations in Paragraph 92 of the Complaint are denied.

93. The allegation in Paragraph 93 of the Complaint is admitted.

94. The allegation in Paragraph 94 of the Complaint is admitted.

95. The allegation in Paragraph 95 of the Complaint is admitted.

96. The allegation in Paragraph 96 of the Complaint is admitted.

97. The letter referenced in Paragraph 97 of the Complaint would speak for itself.

98. The email referenced in Exhibit L and Exhibit M would speak for itself.

99. The letter from Kevin Stevens referenced in Paragraph 99 of the Complaint would speak for itself.

100. The bulletin attached as Exhibit P would speak for itself. It is denied that the Board has had a regular open meeting after the pandemic. It is admitted Board Member Harvey Phillips resigned, admitted that a new member was appointed, and admitted that Jim Atchley became Board President, but it is denied those matters transpired at an open meeting to the public due to the circumstances of the pandemic.

101. Denied.

102. Any information withheld was withheld in good faith, and information requested now has been disclosed.

103. With respect to the allegations in Paragraph 103 of the Complaint, the Association denies any acts of wrongdoing or that Bald Eagle cast extra votes. The Association also asserts that a plain reading of the governing documents allowed SPC 5 votes per property/lot.

104. With regard to the allegations in Paragraph 104 of the Complaint, it is denied the Board met in secret to expedite Harvey Phillips' resignation from the Board and denies that it has acted improperly in any manner. Further, the Board has held (2) elections since the 2019 election, and none of the originally named board members are currently serving on the board.

105. With regard to the allegations in Paragraph 105 of the Complaint, it is denied the Association has acted improperly in any election or in any manner. Further, all requests made in Paragraph 105 are now moot.

106. These Defendants incorporate all preceding paragraphs of this Answer.

107. The allegation in Paragraph 107 of the Complaint is admitted.

108. The statement in Paragraph 108 of the Complaint is a legal statement for which no response is required.

109. The statement in Paragraph 109 of the Complaint is a legal statement for which no response is required.

110. It is admitted RBP has made requests. Any documents withheld were withheld in good faith. Further, it is denied that RBP did not have full participation in any election.

111. With respect to the allegation in Paragraph 11, the Association demands strict proof that RBP's election records request was made in good faith and for the benefit of the community as a whole if deemed material. The Association asserts that any denial of records requested was denied in good faith.

112. The allegation in Paragraph 112 of the Complaint is denied.

113. All records referenced in Paragraph 13 have been provided.

114. These Defendants deny RBP is entitled to the relief sought in Paragraph 114 of the Complaint.

115. These Defendants incorporate all preceding paragraphs of this Answer.

116. The Bylaws and Tennessee Nonprofit Corporation Act speak for itself.

117. Resolution 10 speaks for itself.

118. The allegations in Paragraph 18 are admitted.

119. The allegation in Paragraph 119 of the Complaint is denied; however, a plain reading of the governing documents allowed SPC to cast 5 votes for each property owned.

120. The allegation in Paragraph 120 of the Complaint is denied, as Defendants deny there are errors in the voter roster except with respect to SPC's voting eligibility according to a plain reading of the governing documents.

121. The allegation in Paragraph 121 of the Complaint is denied.

122. The governing documents speak for themselves. Defendant denies it failed any required duty.

123. Defendant denies RBP is entitled to the relief sought in Paragraph 123 of the Complaint or to any relief.

124. These Defendants incorporate all preceding paragraphs of this Answer.

125. Defendants deny any person or entity was given voting rights in violation of governing documents; accordingly, allegations in Paragraph 125 of the Complaint are denied.

126. The allegations in Paragraph 126 of the Complaint are denied.

127. The allegations in Paragraph 127 of the Complaint are denied.

128. The governing documents speak for themselves. However, Defendants deny they failed to comply with governing documents with respect to voting rights.

129. Defendants deny RBP is entitled to the relief sought in Paragraph 129 of the Complaint or to any relief.

130. These Defendants incorporate all preceding paragraphs of this Answer.

131. Defendants deny they failed to comply with governing documents with respect to an election.

132. The allegations in Paragraph 132 of the Complaint are denied.

133. The allegations in Paragraph 133 of the Complaint are denied.

134. The allegations in Paragraph 134 of the Complaint are admitted.

135. It is admitted that Bald Eagle is allowed to cast only one vote for Lots 1414, 1415, and 1462 but it is denied that Bald Eagle was able to case more than one vote per unit.

136. These Defendants incorporate all preceding paragraphs of this Answer.

137. Defendants deny they failed to comply with governing documents with respect to an election and deny that a declaration for a 2019 election presents the existence of an actual and judiciable controversy.

138. The allegations in Paragraph 138 of the Complaint are denied.

139. The allegations in Paragraph 139 of the Complaint are denied.

140. The allegation in Paragraph 140 of the Complaint is denied.

141. The allegations in Paragraph 141 of the Complaint are denied.

142. Defendants deny that RBP is entitled to the relief sought in Paragraph 142 of the Complaint or to any relief.

143. These Defendants incorporate all preceding paragraphs of this Answer.

144. The allegations in Paragraph 144 of the Complaint are denied.

145. Defendants deny that RBP is entitled to the relief sought in Paragraph 145 of the Complaint and deny that a declaration for a 2019 election presents the existence of an actual and judiciable controversy.

146. Defendants deny that RBP is entitled to the relief sought in Paragraph 146 of the Complaint and deny that a declaration for a 2019 election presents the existence of an actual and judiciable controversy.

147. These Defendants incorporate all preceding paragraphs of this Answer.

148. The Section 7.2 of By-Laws speaks for itself.

149. It is admitted that the By-Laws do allow for meetings to take place as stated; however, the By-Laws do not require that meetings take place by telephonic or other means. Further, remote meetings are only an option if the Association has the capability to conduct a meeting where the community population who would be participating remotely could converse with all others attending the meeting.

150. Defendants admit that each director serves a two- year term.

151. The By-laws speaks for itself.

152. Defendants admit postponing the annual meeting would extend the term of some directors.

153. The allegation in Paragraph 153 of the Complaint is denied.

154. The allegations in Paragraph 154 of the Complaint are denied as stated.

155. The requested relief is moot.

156. Any and all allegations of the Complaint not hereinabove admitted, denied or controverted are hereby denied.

AFFIRMATIVE DEFENSES

For its affirmative defenses to this action, Defendants state as follows:

First Defense

Any allegations with respect to the 2019 and 2020 elections are moot. Further, Plaintiff's action is not derivative in nature but instead is brought for its own personal interest and/or gain. Accordingly, Plaintiff's Compliant fails to state a claim upon which relief can be granted.

Second Defense

Defendants rely on and assert the doctrine of laches. Plaintiff is attempting to contest the election of 2019 years after the election occurred. Such election contest comes far too late, is unreasonably delayed, is moot, and does not involve the existence of an actual and judiciable controversy.

Third Defense

Defendants assert and rely upon the affirmative defense of estoppel.

Fourth Defense

Due to the COVID-19 pandemic and executive orders by the Governor of the state of Tennessee, the Association had been prohibited from having large indoor gatherings, which would have been required for an annual Board meeting. Tennessee law takes precedent over any conflict with the governing documents. (See By-Laws Section 13.1; Tenn. Code Ann. §48-53-103 (emergency powers)).

Fifth Defense

Plaintiff lacks standing for the relief requested for failure to pay assessments.

Sixth Defense

Any Board of Directors (Board) refusal of any request by Plaintiff to inspect record(s) was made in good faith by the Board because the Board had a reasonable basis for

doubt about the right of the Plaintiff (member) to inspect the record(s). See Tenn. Code Ann. §48-66-104(c).

WHEREFORE, having fully answered the Complaint, Defendant demands the same be dismissed against it at Plaintiff's cost; that Defendants are entitled to and demand to recover its attorney fees and costs pursuant to Tenn. Code Ann. §48-56-401(e) and Section 17 of the Settlement Agreement of December 17, 2015 (in plaintiff's possession), and further demands such other and general relief to which it may be entitled.

Respectfully submitted this 2 day of August, 2022

Dana S. Pemberton (BPR #18214)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing was served upon all counsel of record by delivering said copy of same by hand or by placing same in the United States mail with sufficient postage for delivery thereon to

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This 2 day of August, 2022.

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