

<p>IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE TRANSCRIPT OF PROCEEDINGS - APRIL 6, 2023</p> <p>RARITY BAY PARTNERS, formerly known as SALEM POINTE CAPITAL PARTNERS, ) Plaintiff/Counter-Defendant, ) v. ) No. 19943 SALEM POINTE CAPITAL, LLC, ) Defendant/Counter-Plaintiff. )</p> <hr/> <p>RARITY BAY COMMUNITY ASSOCIATION, INC., ) Plaintiff/Counter-Defendant, ) v. ) No. 20489 RARITY BAY PARTNERS f/k/a SALEM POINTE PARTNERS, ) Defendant/Counter-Plaintiff, ) v. ) SALEM POINTE CAPITAL, LLC, MICHAEL AYERS and DOUG YOAKLEY, ) Third-Party Defendants. )</p> <hr/> <p>RARITY BAY PARTNERS, formerly known as SALEM POINTE CAPITAL PARTNERS, ) Plaintiff, ) v. ) No. 21,173 RARITY BAY COMMUNITY ASSOCIATION, INC., MICHAEL AYRES, AMY AYRES, CLAYTON WOOD, DOUGG YOAKLEY, KRIS SCHUH, JEFF LAWS, JIM ATCHLEY, DENZIL THIES, SALEM POINTE CAPITAL, LLC, and BEP RARITY BAY, LLC, ) Defendants. )</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>(Whereupon, the aforementioned case came on for hearing on April 6, 2024, before Chancellor Jerri S. Bryant, Monroe County Chancery Court, and the following proceedings took place, to wit:)</p> <p style="text-align: center;">* * * * *</p> <p>THE COURT: All right. Let's get started on -- which one you want to do, motion to compel first or this other?</p> <p>And I appreciate the color-coded copies. That helps also. And that is part of my request that's been years in the making, for the state to let me have a \$400 color printer. I asked for one seven years ago. They sent me an \$8,000 car that sits in the corner and prints and makes copies. I know all of you all have leased that kind of thing, but I can't have a \$400 color copier.</p> <p>So the way I'm looking at this -- and I'll just go through these one at a time. If you want to start with 19943.</p> <p>I appreciate that you all have numbered the -- you all did 15 that you agreed on.</p> <p>Eight and nine, I think the</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 FOR DEFENDANT/COUNTER-PLAINTIFF 3 RARITY BAY PARTNERS f/k/a 4 SALEM POINTE CAPITAL, LLC: 5 Wynne du M. Caffey-Knight 6 Trent Kincaid 7 ELMORE, STONE &amp; CAFFEY, PLLC 8 5616 Kingston Pike, Suite 301 9 Knoxville, Tennessee 37919 10 (865)766-0056 11 12 FOR COUNTER-DEFENDANT RARITY BAY 13 COMMUNITY ASSOCIATION, INC: 14 Dana S. Pemberton 15 STOKES, WILLIAMS, SHARP, COPE &amp; MANN 16 920 Volunteer Landing Lane, Suite 100 17 Knoxville, Tennessee 37915 18 (865)544-3833 19 20 FOR PLAINTIFF RARITY BAY 21 COMMUNITY ASSOCIATION, INC: 22 Kevin C. Stevens 23 KENNERLY, MONTGOMERY &amp; FINLEY, P.C. 24 550 Main Street, Suite 400 25 Knoxville, Tennessee 37902 (865)546-7311</p> <p>18 FOR THIRD-PARTY DEFENDANTS 19 SALEM POINTE CAPITAL, LLC, 20 MICHAEL AYRES and DOUG YOAKLEY: 21 Adam Russell 22 FISHER-RUSSELL 23 10265 Kingston Pike, Suite C 24 Knoxville, Tennessee 37922 25 (865)259-7777</p> <p>23 Thomas M. Hale 24 KRAMER RAYSON, LLP 25 800 South Gay Street, Suite 2500 Knoxville, Tennessee 37929 (865)525-5134</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>calculation of damages is something that is going to require proof. And when I say these are going to require proof, I don't mean that we necessarily need a trial for that if you all can stipulate that. I think that you all should be able to stipulate how much has been paid and has not been paid. Does that sound like I'm being unreasonable? I'm on No. 8.</p> <p>MS. CAFFEY-KNIGHT: Okay. That's -- to the extent, Your Honor, that applies to the social membership. I sent yesterday -- and this may go into the motion to compel, but I sent something last night based on hours and hours and hours of review of hard files that were produced pursuant to the prior motions, it looks like there may be another 150-something thousand, approximately. So I asked -- maybe we can agree on that, when it comes to the golf membership, we still -- that may require proof. And I don't know because we don't have all the information.</p> <p>THE COURT: All right.</p> <p>MS. CAFFEY-KNIGHT: But we can certainly try to stipulate.</p> <p>THE COURT: Let me tell you what I</p>

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1 don't envision. I do not envision going Lot  
 2 No. 1, did you get paid? No. Yes, you did.  
 3 I do not envision that kind of trial. That  
 4 kind of trial would drive me absolutely nuts.  
 5 You can capitalize the word "nuts" in the  
 6 record.  
 7 MS. CAFFEY-KNIGHT: We have it all  
 8 on a spreadsheet. But that's why I sent that  
 9 to them yesterday. Hopefully, we can agree on  
 10 some of those.  
 11 THE COURT: I think you all should  
 12 be able to do that.  
 13 MR. HALE: Your Honor, we don't  
 14 disagree that we should be able to. We did --  
 15 we should be able to. Part of the problem is,  
 16 Your Honor, there are -- some of these items  
 17 are unique in the sense that a transaction may  
 18 have occurred before or a contract signed  
 19 before May 18 and it -- there was a contract  
 20 to do it before May 18. Well, they put every  
 21 possible thing on the list they can possibly  
 22 think of. And there are several of them that  
 23 we have an explanation for and why we're  
 24 trying to hone that.  
 25 THE COURT: Can we group them?

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1 MR. HALE: That's what we're trying  
 2 to do.  
 3 MS. CAFFEY-KNIGHT: Yes. So that's  
 4 why I said we'll discuss it.  
 5 THE COURT: All right.  
 6 MR. HALE: And I haven't been able  
 7 to read what you sent yesterday.  
 8 MS. CAFFEY-KNIGHT: I know.  
 9 MR. HALE: It came late.  
 10 THE COURT: Why not? I read stuff  
 11 that I got sent at 9:00 last night.  
 12 MS. CAFFEY-KNIGHT: I just don't  
 13 want to foreclose the possibility there will  
 14 be proof, particularly on the golf.  
 15 THE COURT: I just want to get on  
 16 the record that if you all are going to start  
 17 that kind of trial, that my head will spin  
 18 off.  
 19 MR. HALE: And I don't think -- we  
 20 know better than that, I think.  
 21 THE COURT: Hopefully.  
 22 MR. HALE: Let me mention something  
 23 about the golf since they brought up golf.  
 24 THE COURT: Well, I wasn't sure what  
 25 the word "country club fees" meant.

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1 MS. CAFFEY-KNIGHT: It refers to  
 2 both, Your Honor, because both are alleged in  
 3 the complaint.  
 4 THE COURT: Social and golf  
 5 membership?  
 6 MS. CAFFEY-KNIGHT: We aren't  
 7 entitled to share in the golf, but they're not  
 8 supposed to reduce or do anything that affects  
 9 the value of those.  
 10 THE COURT: Okay. I'll have to read  
 11 that. Maybe that's a legal argument. But I'm  
 12 thinking off the cuff why the heck do you care  
 13 if they charge a dollar for golf or \$100,000  
 14 for golf if you're not sharing in them anyway?  
 15 MS. CAFFEY-KNIGHT: Because under  
 16 the assignment of right, we get free golf  
 17 memberships with our 362 lots. Everybody else  
 18 has to pay \$25,000. And when he gives those  
 19 for free or discounts them, that affects the  
 20 value of our lots.  
 21 THE COURT: Okay. So that's  
 22 something that you would argue. That's a  
 23 legal argument.  
 24 MS. CAFFEY-KNIGHT: It takes away  
 25 the marketing advantage.

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1 THE COURT: That's a legal argument.  
 2 MR. HALE: It's kind of a legal  
 3 argument in the sense --  
 4 THE COURT: I agree.  
 5 MR. HALE: -- that they still have  
 6 their free memberships they can sell but  
 7 they're not -- let me finish.  
 8 THE COURT: Okay. We're not making  
 9 the legal argument today. That's a trial  
 10 legal argument.  
 11 MR. HALE: I think that's what the  
 12 nature of the golf thing is. It's not a money  
 13 thing as much as it is they've got an argument  
 14 that somehow, if we did -- assuming we did  
 15 discount a golf membership, that somehow  
 16 they're damaged.  
 17 THE COURT: I gotcha.  
 18 Is that pled in a certain paragraph?  
 19 MS. CAFFEY-KNIGHT: It is, Your  
 20 Honor.  
 21 THE COURT: Give me the paragraph.  
 22 MR. HALE: It is. We don't -- we  
 23 don't dispute that they raised it. We're just  
 24 saying there are no damages as a result  
 25 because they got their free memberships.

<p>1 MS. CAFFEY-KNIGHT: And that may be 2 a matter of proof, Your Honor. 3 THE COURT: I just think that is a 4 legal argument. 5 MS. CAFFEY-KNIGHT: The calculation 6 of the damages? 7 THE COURT: The calculation of the 8 damages may be. 9 MS. CAFFEY-KNIGHT: That's what I 10 mean. 11 THE COURT: But whether you're 12 entitled to it or not should probably be ruled 13 on before we start damages. Because if I 14 rule, no, I don't see that there's a damage to 15 that, that's going to require proof of, yes, 16 it is damaged, but the amount of damage would 17 wait until later. 18 MS. CAFFEY-KNIGHT: But there would 19 be proof on if it is damaged. 20 THE COURT: If it is damaged, yes. 21 If I say, no, I find no damage, then there's 22 no sense in having proof ready for that. 23 Give me one second. 24 All right. Tell me about No. 9, 25 whether LLC has breached the assignment of</p>	<p>Page 9</p>	<p>1 in fact, does exempt RBP from the payment. 2 But later, after they agreed to that 3 assignment of right, they also agreed to the 4 settlement agreement in which the assessments 5 were part of the deal. And now they're trying 6 to argue that somehow that's a breach on our 7 part, that they agreed to pay those 8 assessments, and somehow we're to prevent them 9 from making an agreement that's contrary to 10 what they agreed to earlier. I mean, that's 11 the essence of that argument. I think that's 12 a legal question. 13 THE COURT: I think so too. 14 MS. CAFFEY-KNIGHT: Your Honor has 15 found that we didn't contractually and 16 individually agree to that settlement 17 agreement. So it may be a legal argument. 18 But in terms of whether that's a -- 19 THE COURT: I agree those are -- 20 those are legal arguments. 21 MS. CAFFEY-KNIGHT: You say nothing 22 else on that page, Your Honor, would require 23 a -- 24 THE COURT: I think everything else 25 on that page is a legal argument.</p>	<p>Page 11</p>
<p>1 right by allowing or compelling Rarity Bay -- 2 you're saying by the fact that the suit was 3 brought, that's a breach. 4 MS. CAFFEY-KNIGHT: Well, a couple 5 of things, Your Honor. And this is an agreed 6 issue. But with respect to -- under the 7 assignment of right and the sixth amendment, 8 we're exempt from assessments individually. 9 Your Honor has found that in other cases. And 10 we believe with the control of the board, 11 there was the prompting and the initiation of 12 that suit. And so that would breach that 13 contractual agreement that we had under the 14 assignment of right. 15 THE COURT: All right. 16 MS. CAFFEY-KNIGHT: It would also be 17 a breach of the fiduciary duty as partners. 18 THE COURT: I think all of the rest 19 of those on that page are just things that 20 we're just going to need legal argument on. 21 Do you all agree to that? 22 MR. HALE: I certainly do on the one 23 that we just addressed. I think the question 24 with respect to the one you just addressed, 25 assignment of right. The assignment of right,</p>	<p>Page 10</p>	<p>1 MR. HALE: Page 3? 2 THE COURT: Yes, page 3. 3 MS. CAFFEY-KNIGHT: Oh, on 3. 4 I thought we were on 2. Okay. 5 THE COURT: No. 6 All of them are "whethers," whether 7 this or that, and I think that's all legal 8 argument. 9 MS. CAFFEY-KNIGHT: I'd say, yes, on 10 ten. Of course, if Your Honor decides, yes, 11 we're entitled to it, then there's proof of 12 the attorney fees. 13 THE COURT: Yes. 14 MS. CAFFEY-KNIGHT: No, I think 11 15 is a matter of proof, Your Honor. If you will 16 recall, we both submitted expert affidavits 17 and we talked about the course of conduct and 18 so forth and what actually has occurred in 19 this community. I think those are matters of 20 proof. There will be a legal component to it, 21 but there are certainly matters of proof to 22 come in. 23 You may recall they submitted John 24 Cleveland's affidavit, and we submitted -- 25 THE COURT: I remember you all gave</p>	<p>Page 12</p>

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1 me affidavits. I don't remember what issues  
 2 they were on.

3 MS. CAFFEY-KNIGHT: It's on that  
 4 issue, Your Honor.

5 THE COURT: So you want to put on  
 6 proof of course of conduct?

7 MS. CAFFEY-KNIGHT: Well, not just  
 8 that. I mean, in terms of what's in the  
 9 register of deeds and historically how these  
 10 have been treated.

11 THE COURT: That's course of  
 12 conduct.

13 MS. CAFFEY-KNIGHT: Yes. Prior and  
 14 subsequent, yes.

15 THE COURT: All right.

16 MS. CAFFEY-KNIGHT: And what  
 17 those -- and what that means in effect, in  
 18 terms of whether those are actually even  
 19 annexed in. That's what those affidavits talk  
 20 about.

21 THE COURT: I would like some law  
 22 ahead of time on that --

23 MS. CAFFEY-KNIGHT: Okay.

24 THE COURT: -- on course of conduct  
 25 and whether that controls or modifies the

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1 contract documents. It's a pretty specific  
 2 question.

3 MS. CAFFEY-KNIGHT: Okay.

4 THE COURT: Those are usually in  
 5 contract cases and usually in sales and those  
 6 kinds of cases. This is talking about master  
 7 declarations and bylaws. So if you can find  
 8 any specific cases on that, then -- or just  
 9 some general course of conduct.

10 All right. When you all came up  
 11 with these additional issues, I do have some  
 12 questions on those, beginning on page 4.

13 On No. 1, can we stipulate the facts  
 14 on those? Because you say in LLC, the  
 15 partnership held no assets, had no  
 16 liabilities, conducted no business. Can that  
 17 be put in by affidavit so that we don't have  
 18 to have a witness on the stand to say that?  
 19 Is it some stipulation? Page 4, No. 1.

20 MR. HALE: We -- if there are assets  
 21 or liabilities, I don't know what they are.  
 22 So I would say our client can stipulate to  
 23 that. And I think it's also got a legal  
 24 component there, because the partnership  
 25 agreement -- I mean, the partnership agreement

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1 itself at 9.3 says that after a termination of  
 2 the partnership, the remaining partner or  
 3 partners is supposed to wind up the affairs.  
 4 Well, we terminated. We're not the remaining  
 5 partner or partners, yet we're being sued for  
 6 breaching the partnership agreement because we  
 7 didn't do it.

8 THE COURT: You all are arguing that  
 9 point. But I'm asking can we just stipulate  
 10 that there were no assets, no liabilities, and  
 11 no business conducted under that partnership  
 12 agreement?

13 MS. CAFFEY-KNIGHT: We'll discuss  
 14 it, Your Honor. The one thing, if we get  
 15 further through this, we talk about, and it  
 16 may be one of the stipulated ones, so not to  
 17 the exclusion that we have -- well, we do have  
 18 further on here allegations that LLC's failure  
 19 to then place those declarant rights into the  
 20 holdings agreement was a breach of that  
 21 partnership agreement.

22 THE COURT: That's not the question  
 23 that I'm asking. The question I'm asking is  
 24 very narrow: Can we stipulate that holdings  
 25 partnership held no assets, had no

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1 liabilities, and conducted no business?

2 MS. CAFFEY-KNIGHT: We'll certainly  
 3 discuss that.

4 THE COURT: What do you need to  
 5 discuss?

6 MS. CAFFEY-KNIGHT: Well, I think,  
 7 Your Honor, in terms of -- they did -- after  
 8 this holdings agreement was executed, they  
 9 conducted the business of the partnership as  
 10 if those declarant rights had in fact been  
 11 placed in there. And they did that for a year  
 12 and a half. So I don't know that we'll be  
 13 able to stipulate to all of that.

14 MR. HALE: We can stipulate to it.  
 15 It's been our position from the beginning if  
 16 they think that there's some assets and  
 17 liabilities, I need to know what they say they  
 18 are. Because we say they never did any  
 19 business, they never had any assets, never had  
 20 any liabilities. And even if they did, under  
 21 the partnership agreement when it terminated,  
 22 the declarant rights came right back to us as  
 23 required in the agreement. So to me, it's  
 24 really a legal question that goes back to the  
 25 very first time Your Honor ruled in this case.

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1 THE COURT: Yeah, and I will say, I  
 2 can rule on this question if I have a  
 3 stipulation that the partnership held no  
 4 assets, had no liabilities, and conducted no  
 5 business. I can rule on that question. But  
 6 otherwise, I'm asking do I need to -- is that  
 7 something you all can stipulate? And if you  
 8 can't stipulate it, then I want a citation to  
 9 the record of where something did happen.

10 MS. CAFFEY-KNIGHT: Okay.

11 THE COURT: I think No. 2 is just a  
 12 legal argument, but I'm assuming that Partners  
 13 wants to put in some sort of proof about  
 14 damages. Is that correct?

15 MS. CAFFEY-KNIGHT: Yes, Your Honor.

16 THE COURT: And the amount of  
 17 damages, that's also a proof.

18 MS. CAFFEY-KNIGHT: Yes.

19 THE COURT: And I -- what I foreseee,  
 20 and tell me if you all are foreseeing  
 21 something different, is that I can rule on a  
 22 lot of these that there is no proof. Just as  
 23 a matter of law, I can say whether somebody  
 24 breached the contract and who was the first to  
 25 breach, if you all have some stipulated facts.

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1 Otherwise, I'm going to have to hear that kind  
 2 of thing. And I don't know that there's a lot  
 3 of disagreement about what happened.  
 4 Otherwise, we're going to be into this --  
 5 well, let's just keep going and see where we  
 6 are.

7 I think No. 4 is a question of law  
 8 if the facts are as stated in No. 1.

9 MS. CAFFEY-KNIGHT: Your Honor, that  
 10 is not necessarily limited to the holdings  
 11 agreement. Your Honor has found there was a  
 12 partnership of common law and there's a  
 13 holdings agreement.

14 THE COURT: Where in the pleading  
 15 did you plead a common law partnership?  
 16 Because both of you all said in different  
 17 spots of this that issue was not pled. So I'm  
 18 going to require you today to find me where it  
 19 was pled. And we are not amending anything.

20 MS. CAFFEY-KNIGHT: I understand,  
 21 Your Honor. That was clear before I ever came  
 22 in the case.

23 MR. HALE: While she's looking, I  
 24 would just say that if we're talking about  
 25 No. 4, No. 4 is very -- it's very specific in

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1 the amended complaint. It refers to those  
 2 statutory provisions. It does not allege a  
 3 common law breach of fiduciary duty. It  
 4 alleges statutory. And that's the basis upon  
 5 which we say, over on page 10 -- we have  
 6 specific references to those statutes, where  
 7 we say these are the standards by which the  
 8 conduct should be viewed. And this concept of  
 9 just everything happened that somebody doesn't  
 10 like being a breach of fiduciary duty, that's  
 11 really not the way it should work or usually  
 12 does work. It's a situation where if they can  
 13 prove that we did something that is defined in  
 14 those statutory provisions, then that's an  
 15 issue for trial.

16 THE COURT: And I want some law on  
 17 that. I looked at 401. I didn't see much in  
 18 401.

19 MR. HALE: There's not.

20 THE COURT: It was either 403 or  
 21 404 -- and I don't have the statute with me.

22 MR. HALE: 403 just applies to  
 23 records.

24 THE COURT: Okay.

25 MR. HALE: 404 does have a conduct,

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1 and I outlined that on page 10 in the section  
 2 where we say there are issues. If we are  
 3 going to try the issue of fiduciary duty, it  
 4 really needs to be tried with the idea in mind  
 5 that we're looking at those statutory  
 6 provisions, because that's what the statute  
 7 says. The only duties one has in a  
 8 partnership is to do the following things.

9 THE COURT: I don't disagree with  
 10 that. And the partnership statute also talks  
 11 about winding up. So I want to -- I want that  
 12 in there.

13 If you all have any case law that is  
 14 instructive on 404, I would like to see that  
 15 before court.

16 MS. CAFFEY-KNIGHT: Your Honor, may  
 17 I address? You said where did we plead the  
 18 common law partnership.

19 THE COURT: Yes.

20 MS. CAFFEY-KNIGHT: It's pled in the  
 21 complaint beginning all the facts leading up  
 22 to it, basically No. 2 through.

23 THE COURT: Of what complaint?

24 MS. CAFFEY-KNIGHT: Of the second  
 25 amended --

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1 THE COURT: The second amended.  
 2 MS. CAFFEY-KNIGHT: The one that is  
 3 at issue. Everything that led up to before  
 4 you even get to the holdings agreement. And  
 5 so it goes all the way up through -- through  
 6 22 until you get to paragraph 23, and then  
 7 Your Honor has found and repeatedly has said  
 8 that there was a common law partnership prior  
 9 to the execution of the holdings agreement.  
 10 THE COURT: What order was that in?  
 11 MS. CAFFEY-KNIGHT: I think there's  
 12 one in this case. There's one in the  
 13 settlement agreement case. We'll cite that  
 14 for Your Honor. We'll get that. But in terms  
 15 of the statutory cause of action, Your Honor  
 16 has found you don't have to have a written  
 17 partnership agreement. So the fact that we're  
 18 seeking damages for a breach of fiduciary duty  
 19 of a statute doesn't mean we can't do that  
 20 based on the common law partnership or --  
 21 THE COURT: So you are planning on  
 22 putting on proof on No. 4, or are you just  
 23 arguing the breach was certain things?  
 24 MS. CAFFEY-KNIGHT: Well, as we go  
 25 further through this, we list specific what we

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1 contend are those breaches.  
 2 THE COURT: So let me go back.  
 3 MS. CAFFEY-KNIGHT: So we go through  
 4 5 and down; we list them.  
 5 THE COURT: Are you planning on  
 6 putting on proof?  
 7 MS. CAFFEY-KNIGHT: Yes.  
 8 THE COURT: All right.  
 9 MR. HALE: This is one you mentioned  
 10 just a minute ago, Your Honor, where you talk  
 11 about we say there was no -- nothing was pled.  
 12 This issue of fiduciary duty is one of those  
 13 that's a little unusual. They have one  
 14 paragraph.  
 15 THE COURT: Yeah, 55.  
 16 MR. HALE: Yes. And it doesn't  
 17 mention any of these other things that they  
 18 list that they want to claim now are breaches  
 19 of fiduciary duty. And our position would be  
 20 that in -- we have a lot of issues with those  
 21 things, factually.  
 22 THE COURT: I'd like -- I've made a  
 23 note for No. 5. I guess it kinda hooks into  
 24 No. 4. Any case law that you all have on this  
 25 transfer, if it did not happen, is Partners

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1 entitled to any of its value. I think that  
 2 still makes it a question of law. I think we  
 3 can stipulate that the declarant rights were  
 4 not transferred. And I know the contract  
 5 controlled what happened on a dissolution or a  
 6 30-day notice, I think if I remember the  
 7 contract correctly.  
 8 So I'm going to want to know what,  
 9 particularly Partners, you all operated for a  
 10 year and a half before it was dissolved. They  
 11 didn't actually transfer the declarant rights  
 12 to the partnership. So there's going to be an  
 13 argument of was it of a value that you should  
 14 have gotten, and I want some case law on that.  
 15 Because the contract's pretty clear, if the  
 16 partnership's dissolved, it goes back to the  
 17 declarant. I think I've already held that.  
 18 MS. CAFFEY-KNIGHT: You have, Your  
 19 Honor. And it may be a different question.  
 20 They get the actual asset back, but whether or  
 21 not we get part of the value.  
 22 THE COURT: Yes. And I want any  
 23 case law you have. Because under 401, when  
 24 that happens, a partnership account -- the  
 25 Partners get back their contributions minus

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1 their liabilities, minus or plus the profits  
 2 of the partnership. So if there was a zero  
 3 contribution, I think there's a question is  
 4 there any liabilities or profits. And that  
 5 goes back to No. 1, where I asked you,  
 6 Mr. Hale, if you all, and Partners, if you all  
 7 could stipulate that the partnership did no  
 8 business. And certainly, then, I would like  
 9 any case law for Partners to say we're  
 10 entitled to have -- when you say, well, we  
 11 should have half the value of the declarant  
 12 rights. Well, under 401, that's not what the  
 13 law says. The law says they get back their  
 14 contribution minus the liabilities plus the  
 15 profits. So I'm wondering what any authority  
 16 you have to support your position that they  
 17 should have given it to us and we're entitled  
 18 to half of it.  
 19 MS. CAFFEY-KNIGHT: Yes, Your Honor.  
 20 May I address --  
 21 THE COURT: Sure.  
 22 MS. CAFFEY-KNIGHT: Your Honor  
 23 pointed out paragraph 55, if counsel said  
 24 that's the only allegation of fiduciary duty,  
 25 and this is something that --

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1 THE COURT: You said it's in  
 2 paragraph 4. 54, I'm sorry. That's in your  
 3 response.  
 4 MS. CAFFEY-KNIGHT: You were talking  
 5 about --  
 6 THE COURT: I'm looking at  
 7 paragraph 5 on page 5, your argument to that.  
 8 His response was it's also in paragraph 54 and  
 9 paragraph 44.  
 10 MS. CAFFEY-KNIGHT: And on to each  
 11 of these, the argument, this was argued on the  
 12 motion to dismiss, motion for judgment on the  
 13 pleadings November 29, 2021, before we became  
 14 involved. And Your Honor asked for some  
 15 additional briefing on these, and prior  
 16 counsel did and then basically wrote that the  
 17 assertion is on motion to dismiss standard  
 18 that the facts are pled because all these  
 19 facts get subsumed --  
 20 THE COURT: Well, I'm not going back  
 21 and addressing any motion that I haven't ruled  
 22 on that is still pending out there. We're at  
 23 trial.  
 24 MS. CAFFEY-KNIGHT: Right.  
 25 THE COURT: And so I'm going to rule

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1 on all of these things, hopefully at trial or  
 2 shortly thereafter, depending on this  
 3 Nashville case.  
 4 MS. CAFFEY-KNIGHT: Right.  
 5 THE COURT: So if you all didn't put  
 6 down orders, I'm just saying it's waived.  
 7 MS. CAFFEY-KNIGHT: That's fine,  
 8 Your Honor. I guess I'm just saying that the  
 9 simple assertion is that because we each  
 10 paragraph, new cause of action, adopt all the  
 11 preceding. So 55 we say --  
 12 THE COURT: Failure to pay  
 13 50 percent interest is your breach of  
 14 fiduciary duty.  
 15 MS. CAFFEY-KNIGHT: Is one of them,  
 16 yes. It's all of the bad acts that are  
 17 alleged, basically, in the complaint.  
 18 THE COURT: All right.  
 19 MS. CAFFEY-KNIGHT: And so as you go  
 20 through --  
 21 THE COURT: The same thing on No. 6?  
 22 MS. CAFFEY-KNIGHT: Yes, and seven.  
 23 THE COURT: I think the law I've  
 24 asked for on all three of those --  
 25 MS. CAFFEY-KNIGHT: Okay.

Page 27

1 THE COURT: -- will cover those.  
 2 Number 8 I view as just argument.  
 3 Number 9 is a question of law. Just  
 4 argument.  
 5 Number 9, yes, Mr. Hale said, "See  
 6 back to No. 5." I think that's just kind of a  
 7 restatement of No. 5.  
 8 MR. HALE: I think I would like to  
 9 say just one thing on this. I recognized that  
 10 paragraph 54 incorporates everything  
 11 preceding. It says it does.  
 12 THE COURT: Yep.  
 13 MR. HALE: Then why do you go to 55  
 14 and you say these are the things you did that  
 15 breached your fiduciary duty, and then you  
 16 don't go and put in the things that you're now  
 17 claiming. It's kind of hide the ball is the  
 18 way it appears to me. And so I guess our  
 19 argument would be it's disingenuous to take  
 20 the position that somehow everything else in  
 21 the complaint that we want to call a breach of  
 22 fiduciary duty is a breach of fiduciary duty  
 23 even though in this one paragraph we lay out  
 24 what we claim is a breach of fiduciary duty  
 25 and we don't mention those things.

Page 28

1 THE COURT: I assume you all have  
 2 taken depositions. This case has been pending  
 3 for how long?  
 4 MR. HALE: We have.  
 5 MS. CAFFEY-KNIGHT: We just took  
 6 party depositions, Your Honor. Yes.  
 7 THE COURT: All right.  
 8 And when I say "argument," I'm  
 9 assuming that you all are going to argue these  
 10 issues and I'm going to rule. I'm not  
 11 assuming that there's a trial to put in other  
 12 than what we've called a question of fact. If  
 13 we can stipulate facts, at least on 19943, I'm  
 14 thinking we can do this in a day or less.  
 15 I don't want to listen to you all  
 16 argue, no offense, for five or six hours each.  
 17 MR. HALE: We get it. You've heard  
 18 enough.  
 19 THE COURT: Well, I'm just  
 20 thinking -- I go back to the Nashville case.  
 21 And I've never done TROs that way. But they  
 22 put in hundreds of pages of affidavits and  
 23 exhibits, and they were given one hour each  
 24 side to argue.  
 25 When there's so many questions of

Page 29

1 law like this case is, there's no reason for a  
 2 ton of argument. I just -- and please do not  
 3 send me any of these documents again. The  
 4 reason is, is I make my -- I don't want to  
 5 start over with new documents. I've marked  
 6 these things all up and highlighted and  
 7 circled and everything else, so I don't need a  
 8 new document. It's just a waste of trees.  
 9 But I think I can sit down with these  
 10 documents and give you all a ruling on every  
 11 one of these except where, for instance, if I  
 12 find that they are entitled to damages, then  
 13 we will need a hearing on how much. If I find  
 14 somebody is entitled to attorneys' fees, then  
 15 the question would be how much, and we'll have  
 16 to have some proof on that. It may be that I  
 17 find there's partial attorney fees. And then  
 18 you're going to have to go back at a different  
 19 day and time and break that out. So I'm not  
 20 expecting the day of trial on the issue of  
 21 attorneys' fees unless it's a global affidavit  
 22 from both sides. So those kind of things are  
 23 what I'm thinking about.

24 Number 10 on page 8, is that a  
 25 stipulated fact that LLC has waived or agreed

Page 30

1 to divide or reduce certain club fees, and  
 2 that means golf fees when you say "club"  
 3 again?

4 MS. CAFFEY-KNIGHT: It's both, Your  
 5 Honor. It's the social initiation and the  
 6 golf.

7 THE COURT: Okay.

8 MS. CAFFEY-KNIGHT: Where it says  
 9 "divide," I think that should --

10 THE COURT: Divide or reduce.

11 MS. CAFFEY-KNIGHT: Yeah, agreeing  
 12 to waive.

13 THE COURT: And I understand --  
 14 Mr. Hale goes back to No. 5 again. Does this  
 15 go back to whether you feel like you had  
 16 damage because the cheap fees make your lots  
 17 worth less?

18 MS. CAFFEY-KNIGHT: It's that, and  
 19 then all the efforts that have been undertaken  
 20 to get the nearly million dollars' social  
 21 initiation fees today. That both of those are  
 22 breach of the fiduciary duty to have not paid  
 23 and shared those to hide the ball on the  
 24 social initiation fees.

25 THE COURT: Is that a different

Page 31

1 claim than your breach of contract?  
 2 MS. CAFFEY-KNIGHT: It -- I think  
 3 it's both. We think it's a breach of the  
 4 assignment of right and it's a breach of their  
 5 obligation as partners. That assignment of  
 6 right was born out of the partnership  
 7 agreement. It is not the partnership  
 8 agreement. It is a contract. So we think it  
 9 constitutes both.

10 THE COURT: Okay. I understand  
 11 where you're going with that.

12 MR. HALE: I'm not sure I do. But I  
 13 would just say that's part of the problem with  
 14 this. A lot of this stuff is alleged to be a  
 15 breach of contract. They've already recovered  
 16 about a million dollars of the money for the  
 17 social membership initiation fees. So I'm  
 18 trying to figure out how do I present my case  
 19 to respond to a claim that this is a breach of  
 20 fiduciary duty when we've already recovered  
 21 all of our damage or we have a judgment or  
 22 several judgments related to the social  
 23 membership initiation fees.

24 THE COURT: Yeah, I would want  
 25 something to know why -- if we -- because if

Page 32

1 this ends up being an accounting in the back  
 2 part of this case of social membership fees  
 3 and initiation fees, then you get made whole  
 4 on one cause of action; you don't get a second  
 5 cause of action.

6 MS. CAFFEY-KNIGHT: It may be the  
 7 same damages, but it's two different findings  
 8 of liability.

9 MR. HALE: Who cares?

10 MS. CAFFEY-KNIGHT: My client, after  
 11 so much money as they've spent and these years  
 12 of litigation.

13 THE COURT: I would liken that to  
 14 akin of inappropriate marital conduct or  
 15 adultery. You get a divorce one way or the  
 16 other. The question is, what's the grounds.  
 17 Is that what you're talking about? Breach of  
 18 contract or breach of fiduciary duty.

19 MS. CAFFEY-KNIGHT: I just continue  
 20 to maintain it's both grounds of liability,  
 21 Your Honor.

22 MR. HALE: What she's telling you is  
 23 she doesn't do divorce work.

24 MS. CAFFEY-KNIGHT: Correct.

25 THE COURT: All right. Well, I'm



Page 33

1 glad you all got to watch what went on today.

2 MR. HALE: That was interesting.

3 THE COURT: I don't even want to be

4 on the record when I tell you what the one was

5 in McMinn County. They talk so fast and use

6 so many initials that I had to think a minute

7 about the topic to which they were referring.

8 On No. 11, back to breach of

9 fiduciary duty again, or the same breach of

10 contract.

11 MS. CAFFEY-KNIGHT: Yes.

12 THE COURT: Same thing.

13 MS. CAFFEY-KNIGHT: Yes.

14 THE COURT: I see each one of these

15 are your things that you're calling fiduciary

16 duties.

17 MS. CAFFEY-KNIGHT: Yes.

18 THE COURT: All right. Argument. I

19 think all of that is argument, 11 and 12.

20 LLC, we're with you on page 10, the

21 additional issues that you felt like were

22 appropriately pled.

23 MS. CAFFEY-KNIGHT: I'm sorry, Your

24 Honor, did you say 10 is also argument?

25 THE COURT: Yes. And now I'm on

Page 34

1 page 10, No. 1.

2 I think that's -- that's argument if

3 we can stipulate that there was no accounting

4 provided. That goes back to the very first

5 thing: Can we stipulate no business, no...

6 MR. HALE: Yeah. And I think there

7 is a tax return that got filed that has -- and

8 it's in the record. And that's the only

9 record of any business I know of.

10 THE COURT: The prefatory paragraph

11 that says statement of additional issues that

12 LLC believes are appropriately pled, do you

13 think it -- is that just an admission that you

14 think that your failure to provide an

15 accounting is appropriately pled?

16 MR. HALE: No, it's a statement

17 that...

18 THE COURT: I was wondering if I

19 read that wrong.

20 MR. HALE: Yeah, that one -- that's

21 one that we had in our original -- that was an

22 issue for trial.

23 THE COURT: Okay. So it's nothing

24 that I need to address.

25 MR. HALE: And Partners did not

Page 35

1 agree that that was an appropriate statement

2 of the issues. They would rather give you a

3 laundry list of 15 things that are breaches of

4 fiduciary duty and not relate it to the

5 statute. And what we're trying to say by this

6 is if we're going to talk about all of these

7 breaches of fiduciary duty, they need to rise

8 to the level of a grossly negligent or

9 reckless conduct and intentional misconduct or

10 knowing violation of law, which is what's in

11 the statute.

12 THE COURT: Did you quote that in

13 here? I read the statute. If you want to

14 give me the statute at the time you argue so

15 that I can read it.

16 In my wholly perfect world, you all

17 argue, I go through these, I make rulings.

18 And I want to quote the appropriate law at the

19 time I make an oral order. So if you will

20 have that statute with me -- with you or as

21 well as send it to me, I'll try to have it

22 with me. But when I read things into the

23 record for purposes of you all having the

24 court reporter type up an order, then I don't

25 have to take it back, take it under

Page 36

1 advisement, handle 47 other cases, and then

2 come back to this and go through it. I would

3 like to have this for continuity and just do

4 it orally, get it done, get it wrapped up, and

5 then you all can decide to appeal or not.

6 I can only imagine that you all

7 probably need to be really nice to the clerks

8 should you decide to appeal, because this is

9 going to be -- the designation of the record

10 is going to be extremely important. And you

11 will not get anything in the record that you

12 don't specifically designate or agree to.

13 I certainly want to quote the

14 appropriate standards on that, on the four --

15 I think it's 404.

16 All right. Number 2 on page 11,

17 whether Partners is estopped from contesting

18 the LLC. They say that has not been pled.

19 Can you point that to me in the pleadings?

20 MR. HALE: If I had the pleading, I

21 could. But I don't have it. The one thing I

22 didn't bring with me --

23 THE COURT: You will bring it to

24 trial and show me that it has been pled.

25 MR. HALE: It's the answer. It

Page 37

1 would be the answer to the second amended  
 2 complaint. I'm pretty sure we've pled it, but  
 3 I'd have to pull it and just make sure.  
 4 THE COURT: Do that for No. 2 and 3,  
 5 please.  
 6 MR. HALE: I will.  
 7 THE COURT: All right. That gets us  
 8 through that case. That sounds like a half a  
 9 day trial for that one. Would you all agree?  
 10 MS. CAFFEY-KNIGHT: Not when it  
 11 comes to the standing, whether he has standing  
 12 to be the declarant.  
 13 THE COURT: That's not in here.  
 14 MS. CAFFEY-KNIGHT: It is. It's an  
 15 agreed.  
 16 THE COURT: Oh, okay.  
 17 MS. CAFFEY-KNIGHT: That's Count 7  
 18 of the complaint.  
 19 THE COURT: I have that down as  
 20 argument.  
 21 MS. CAFFEY-KNIGHT: No. That's the  
 22 proof. That's part of the proof as well.  
 23 THE COURT: What kind of proof do  
 24 you think will need to come in on that?  
 25 MS. CAFFEY-KNIGHT: He is required,

Page 38

1 basically, to have land for development  
 2 purposes. And that flows right into why they  
 3 created -- attempted to create additional  
 4 Phase 16 and Phase 17 lots that are not  
 5 properly annexed. And there's proof that he  
 6 has not had any plans to develop. He bought  
 7 the golf course. He bought the club. The one  
 8 with the development plans was Partners.  
 9 THE COURT: But is that not  
 10 something that all those facts can be  
 11 stipulated to? I mean, he owns Phase 16 and  
 12 17. When was it put in for development. When  
 13 was it platted. I mean, that can all be  
 14 stipulated.  
 15 MS. CAFFEY-KNIGHT: Except that's  
 16 where I think we're going to get into  
 17 Mr. Cleveland and Mr. Shanks, whatever experts  
 18 might testify on that. I think we'll have --  
 19 that flows together.  
 20 THE COURT: As to what was done.  
 21 But as to my finding of standing...  
 22 MS. CAFFEY-KNIGHT: But I think you  
 23 will need the underlying proof.  
 24 THE COURT: I'm still asking why  
 25 can't that be stipulated to?

Page 39

1 MR. HALE: I think it's a legal  
 2 argument based on the language of the  
 3 documents and the facts that are -- the basis  
 4 for that are not in dispute. The reason  
 5 Mr. Cleveland and Mr. Shanks were involved was  
 6 there was a contention somehow that the  
 7 property in Phases 16 and 17 were not  
 8 encumbered by the master declaration. And we  
 9 argued that they were, and they argued that  
 10 they're not for various reasons. I'm not  
 11 even -- now that I've analyzed it a little bit  
 12 more in detail, the definitions in the master  
 13 declaration, I think that there's a strong  
 14 argument that that testimony is not needed for  
 15 this case. I think that the fact that  
 16 Mr. Ayres bought undeveloped land within the  
 17 development makes it comply with what is  
 18 called additional property under the master  
 19 declaration, and that makes it all covered.  
 20 But again, they don't agree with that.  
 21 THE COURT: And that's what I  
 22 thought. I'll be frank, that's what I  
 23 thought. And that's just an argument for me  
 24 to look at the master declaration and make  
 25 that call.

Page 40

1 MS. CAFFEY-KNIGHT: Your Honor, it's  
 2 whether he has the intent to develop it.  
 3 There is proof on that. There is proof, for  
 4 example, where he tells Sterling Engineering  
 5 I'm just trying to flex my muscles for the  
 6 Court. Basically, it's a fiction.  
 7 THE COURT: Where does it talk about  
 8 intent? Because certainly the master  
 9 declaration --  
 10 MS. CAFFEY-KNIGHT: For the purposes  
 11 of development, whether he -- this is Master  
 12 Dec 1.112, the declarant owns property for the  
 13 purpose of development, and there is --  
 14 there's going to be considerable proof on  
 15 that, Your Honor.  
 16 MR. HALE: For development or sale,  
 17 I believe, is what it says.  
 18 THE COURT: Yes, and/or sale.  
 19 MR. HALE: I don't think people buy  
 20 things to not develop them or sell them in  
 21 real estate. The fact is, he sold some of the  
 22 property too. So I don't think --  
 23 MS. CAFFEY-KNIGHT: He sold lots  
 24 that were already developed. Condos. But we  
 25 think that's a significant issue on which

Page 41

1 proof needs to be presented.

2 THE COURT: All right. So if you

3 think there needs to be proof on that issue,

4 because I don't think it's the word

5 "intended." It's "for the purpose of

6 development and/or sale." Then I think that

7 narrows the proof down some on that.

8 MS. CAFFEY-KNIGHT: I think

9 essentially what it does, it winds up invoking

10 Inner Images when you get to a point. I mean,

11 really is not acting as a developer and they

12 don't have standing anymore.

13 THE COURT: Well, the facts of this

14 case are a lot different from Inner Images.

15 MS. CAFFEY-KNIGHT: They are, Your

16 Honor, they are different. But there are some

17 significant similarities.

18 THE COURT: All right. So how much

19 time are you anticipating on the proof of

20 whether he has property for the purpose of

21 development and/or sale?

22 MS. CAFFEY-KNIGHT: That may be half

23 a day, Your Honor.

24 THE COURT: All right.

25 MS. CAFFEY-KNIGHT: It could be more

Page 42

1 than that with the parties' testimony.

2 MR. RUSSELL: Your Honor, may I say

3 something?

4 THE COURT: I may disagree with

5 that, but I will have to put it in as she can

6 ask the question and you can object, and I'll

7 make a ruling and we'll see where we go.

8 MS. CAFFEY-KNIGHT: Okay. Thank

9 you, Your Honor.

10 THE COURT: You wanted to say

11 something, Mr. Russell?

12 MR. RUSSELL: Yes. I'm sorry, Your

13 Honor. I guess just to circumvent this a

14 little bit, is the dispute to whether or not

15 the declarant actually owns the property

16 within the development? Because the record is

17 crystal clear.

18 THE COURT: No, I don't think that's

19 the dispute, because she's arguing purpose.

20 What is the purpose of the ownership.

21 MR. RUSSELL: Right.

22 THE COURT: Is it purpose of

23 development and/or sale. I'm thinking that

24 you've got a hard row to hoe on that one. I

25 mean, he owns something besides the golf

Page 43

1 course.

2 MS. CAFFEY-KNIGHT: So our

3 contention is you own ten lots of 1400, does

4 that give you standing. And I think there

5 needs to be proof. And as to the purpose of

6 whether he ever considered himself to be in

7 that position from the get-go.

8 THE COURT: I can foresee there can

9 be different kinds of testimony on what was

10 his purpose of owning that property. But if I

11 make a -- I guess it's a fact finding if he

12 owned that property, which we agree that he

13 owned.

14 MS. CAFFEY-KNIGHT: Yes.

15 THE COURT: For the purpose of

16 development and/or sale, then that makes him a

17 declarant.

18 MR. RUSSELL: Okay. I wanted to

19 make sure we're not going to get in here and

20 saying Mr. Ayres owned property.

21 THE COURT: No, no, no. I think the

22 parts that's, what, 16 and 17, is what he

23 owned? What he's platted or attempted to

24 plat?

25 MS. CAFFEY-KNIGHT: What he

Page 44

1 attempted to bring in, which we say he

2 couldn't do because it violated the assignment

3 of right.

4 THE COURT: I understand.

5 MS. CAFFEY-KNIGHT: Yes.

6 THE COURT: I understand.

7 MR. HALE: There's also going to

8 be --

9 THE COURT: There's going to be the

10 argument of, well, even if it's not platted,

11 is it still held for the purpose of

12 development and/or sale. Because all he has

13 to do is take title for the purpose of

14 development and/or sale.

15 MR. HALE: He's testified about the

16 golf course is property that -- the holes

17 don't have to remain where they are. They can

18 be reconfigured --

19 THE COURT: Well, I'm not sure that

20 I would call that development, but I'm

21 certainly curious about Phase 16 and 17 lots.

22 MR. HALE: Well, that's for sure.

23 But the golf course is a land available that

24 he could develop for sale.

25 THE COURT: You're right. You're

Page 45

1 right.

2 MR. HALE: He's testified.

3 THE COURT: You're right. He could

4 sell the whole golf course, or he could take

5 it all, I guess, I don't know, and plow it up

6 and say, I'm putting mega mansions there.

7 MS. CAFFEY-KNIGHT: Your Honor, he's

8 testified -- he testified in the Frisbee case,

9 which Your Honor recently ruled, that he

10 never, ever, ever planned to build houses and

11 develop.

12 THE COURT: I don't remember that.

13 MS. CAFFEY-KNIGHT: I know you

14 don't. I'm saying I don't want to be

15 foreclosed from the proof, and I think you

16 said that -- (inaudible).

17 THE COURT: All right. All right.

18 So just trying to guess if we still really

19 need a whole week or not.

20 All right. Are we at 20489 next?

21 MR. RUSSELL: Yes.

22 MR. STEVENS: Yes, Your Honor.

23 THE COURT: All right. The first

24 thing I have on here is can we do factual

25 stipulations of whether SPC ever purchased

Page 46

1 lots or acquired lots.

2 MS. CAFFEY-KNIGHT: I think LLC and

3 SPC will stipulate to that.

4 MR. STEVENS: Your Honor --

5 THE COURT: LLC and Partners?

6 MS. CAFFEY-KNIGHT: Yes, Your Honor.

7 THE COURT: Don't call yourself SPC.

8 MS. CAFFEY-KNIGHT: Oh, excuse me.

9 LLC and Partners, yeah.

10 THE COURT: And then if you all can

11 stipulate that, that takes a different amount

12 of time.

13 MR. STEVENS: Your Honor, it does.

14 The association I don't think, Your Honor,

15 will be in a position to stipulate that. I

16 think there's a fact in inquiry under

17 TCA 61-1204 to determine if lots acquired in

18 the name of Partners became partnership

19 property based upon the acquisition using

20 partnership assets.

21 THE COURT: Okay. That's still a

22 legal argument. If they stipulate one thing,

23 you want to still be able to argue something

24 else.

25 MR. STEVENS: Correct, Your Honor.

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1 THE COURT: Okay.

2 MS. CAFFEY-KNIGHT: Except that it

3 was absolutely never pled. It's never been

4 pled.

5 THE COURT: All right. Tell me

6 where it's pled.

7 MR. STEVENS: Well, we pled the

8 collection of assessments under the settlement

9 agreement. The settlement agreement, the

10 Court found, was only applicable to lots held

11 by the partnership. So based on that finding,

12 the Court has to make a factual determination

13 about whether the partnership held lots; and

14 if so, whether they would be required to pay

15 assessments pursuant to the settlement.

16 THE COURT: Okay.

17 MR. STEVENS: So it's just a natural

18 progression from the settlement agreement

19 itself.

20 THE COURT: All right.

21 MS. CAFFEY-KNIGHT: But we've sued

22 Partners here, Your Honor, not the

23 partnership.

24 MR. STEVENS: And the Court has also

25 found very clearly that in a partnership case,

Page 48

1 you can sue one or both or either. And in

2 this instance, Partners has then sought

3 contribution from LLC.

4 THE COURT: Well, I've questioned

5 that. I don't think I've ever fully ruled

6 that. I don't think I've made a finding of

7 that. And I looked at something yesterday, a

8 partnership act. So you all be ready to argue

9 that act, what it says about joint and several

10 liability. If you have any law, to bring it.

11 And when I say bring some law, that's like a

12 half a page. Don't write a brief. Don't put

13 a styling caption on it. Don't -- just give

14 me -- I don't care if you lay the TCA down,

15 copy it on a copy machine and underline it.

16 That's -- I really don't want a ton of work.

17 All right. I think No. 2 and 3 are

18 fact questions.

19 MS. CAFFEY-KNIGHT: I'm sorry.

20 You're on page 2?

21 THE COURT: I'm on page 2,

22 paragraph 2.

23 MR. STEVENS: Okay. I see it.

24 MS. CAFFEY-KNIGHT: We agreed, yes.

25 THE COURT: Fact issues.

Page 49

1 MR. STEVENS: Yes.

2 THE COURT: And I had a question --

3 because I didn't go back and pull all the

4 pleadings when I was looking at some of this.

5 Has individual liability of Partners been

6 pled, or has just the liability of the

7 partnership been pled?

8 MR. STEVENS: The individual

9 liability of the partnership has been pled.

10 THE COURT: You agree. Okay.

11 MS. CAFFEY-KNIGHT: I'm sorry, Your

12 Honor. I'm not tracking. Which one?

13 THE COURT: We're on Docket

14 No. 20489, page 2, I'm at No. 4, because I

15 already said that No. 2 and 3 we're going to

16 need to have facts on, and I'm assuming I am

17 going to hear testimony.

18 MS. CAFFEY-KNIGHT: Okay. I

19 apologize.

20 THE COURT: No problem. And it will

21 be a fact question on amounts. Paragraph 4,

22 if so, what amount.

23 I think No. 5 is both a question of

24 fact and a question of law.

25 Number 6, obviously, is a question

Page 50

1 of fact.

2 Number 7. I'm not sure -- I'm not

3 sure what you all want me to do with No. 7.

4 Mr. Hale, is that your paragraph?

5 MR. STEVENS: It is. I can't take

6 credit for that one.

7 THE COURT: I hate to say I've seen

8 your all's pleadings enough I probably could

9 tell.

10 MR. HALE: That's mine. You guessed

11 it.

12 I mean, I think the point there --

13 it's probably a question of law -- is, can an

14 individual member of an organization --

15 THE COURT: Create liability for the

16 organization.

17 MR. HALE: Well, or be held liable

18 because the organization makes a decision

19 through its board of directors to do

20 something. I mean, I just never have been

21 involved in a case where a shareholder or a

22 partner was sued because the partnership did

23 something or the corporation did something

24 through its act of its board of directors.

25 If it can prove that the only person

Page 51

1 that had anything to do with the decision was

2 that individual, then maybe that's so. But

3 there's a board of directors here that made

4 this decision. They needed money. We've

5 heard them in here. They needed money to pay

6 the bills, and RBP wasn't paying it to them,

7 and so they brought a lawsuit to try to

8 collect it. That's not -- but how that

9 becomes the liability of a person that is --

10 I'm not even sure at this point, I guess he

11 was on the board of directors.

12 THE COURT: Mr. Ayres? Yes, he was.

13 MS. PEMBERTON: He's been dismissed,

14 Your Honor.

15 THE COURT: Well, it says -- and

16 that's why I wasn't sure I understood this

17 question. I think they're -- if he's out of

18 the case, then I'm not sure what that question

19 was going to.

20 MS. CAFFEY-KNIGHT: Your Honor, I

21 might shed. I think that's his phrasing of

22 it. We sued him, and I think it's similar to

23 the partnership case where it --

24 (interruption). Oh, my God. Sorry. I

25 apologize. There's some word I say that

Page 52

1 triggers that.

2 It's similar to the allegation in

3 the partnership case of breaching fiduciary

4 duty and assignment of right by getting the

5 LLC -- or, excuse me, the association to sue.

6 THE COURT: All right. But do we

7 all agree the third-party defendants are out?

8 MR. RUSSELL: No.

9 MS. PEMBERTON: No.

10 THE COURT: All right. So the

11 third-party defendants are who?

12 MR. RUSSELL: LLC, Michael Ayres,

13 and Doug Yoakley.

14 MS. PEMBERTON: Your Honor, I

15 misspoke. I'm thinking about the other case.

16 THE COURT: All right. LLC, Ayres,

17 and?

18 MR. RUSSELL: Yoakley.

19 THE COURT: Yoakley. Okay. Now I

20 understand what you're talking about. So you

21 want to know as a matter of law if those three

22 can be held responsible for what the board

23 did.

24 MR. RUSSELL: That's right.

25 THE COURT: I can do that. All

Page 53

1 right.

2 MS. CAFFEY-KNIGHT: So this is a

3 matter of law?

4 THE COURT: Yes.

5 The next three I think are all just

6 argument.

7 MS. CAFFEY-KNIGHT: Your Honor, may

8 I just back up?

9 THE COURT: Sure.

10 MS. CAFFEY-KNIGHT: What I was

11 getting to in terms of seven being similar to

12 what we have in the partnership case, maybe it

13 would already be resolved in the partnership

14 cases, the control of the board and then

15 getting the board to sue. So there may be

16 facts on that as well.

17 THE COURT: Bring me some law on

18 that.

19 MS. CAFFEY-KNIGHT: Okay.

20 THE COURT: I mean, I can see a fact

21 as there's only three members on the board at

22 the time the decision's made, and two of them

23 are Ayers and Yoakley as a fact. I'm not sure

24 that it can go much more than that if they are

25 not in the majority.

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1 MS. CAFFEY-KNIGHT: I believe they

2 were, and that's the proof.

3 THE COURT: Okay. If there were

4 seven or eight members on the board and

5 they're only two, the board's decision is

6 going to be bound by -- bounding the board,

7 not by these two individuals.

8 MS. CAFFEY-KNIGHT: I think some of

9 those were appointed and not even elected.

10 THE COURT: Okay.

11 MR. HALE: I think when we took the

12 depositions, what I finally figured out is

13 that the allegation is that we removed -- LLC

14 removed directors and then replaced them.

15 That didn't happen.

16 THE COURT: The board replaced them.

17 MR. HALE: No. The people --

18 THE COURT: They did a new election?

19 MR. HALE: No. Matt Graves ran --

20 his term ran out. And the other, Ray Herron,

21 who is their employee, Apex Bank's employee,

22 he resigned because he resigned his position

23 at Apex Bank. So we didn't remove anybody.

24 THE COURT: Okay. All right. So I

25 can see there may be some facts in that case.

Page 55

1 All right. Eight, 9 and 10 is

2 argument, are argument numbers, issues.

3 Whether Partners is a declarant-related entity

4 I think is a question of law. It's just

5 contract interpretation.

6 Do you think something else,

7 Mr. Stevens? You're shaking your head.

8 MR. STEVENS: No, no, I was about to

9 get up. There could be some facts given

10 Mr. Daniels' admissions in the course of

11 deposition that he believed they were a

12 declarant-related entity. But the facts are

13 in the record.

14 MS. CAFFEY-KNIGHT: Your Honor, this

15 is something that's not pled as a basis for

16 our liability.

17 THE COURT: I don't -- I don't much

18 care what somebody believes. I think I am --

19 you know, I could think I'm the Queen of

20 England, but that doesn't make it so.

21 MR. STEVENS: I agree.

22 THE COURT: I mean, I'm just saying,

23 so help me -- where do you think we're going

24 besides that?

25 MR. STEVENS: I think to the extent

Page 56

1 that there are party admissions both in

2 pleadings and in depositions, there are

3 admissions from counsel that they were a

4 declarant-related entity in pleadings. I

5 think that's relevant, potentially, for the

6 Court's determination. Again, I agree it's a

7 legal issue.

8 MS. CAFFEY-KNIGHT: Your Honor, I

9 would say it's not an issue remaining for

10 trial because you have already found Partners

11 never individually agreed to pay the

12 self-imposed assessments and have found that

13 Partners is an exempt person, and they are

14 defined as an exempt person. So that makes

15 any "declarant related" immaterial. You have

16 already found no liability, and that's a --

17 THE COURT: I don't know that that

18 makes it immaterial. I'm not prepared to go

19 that far.

20 MS. CAFFEY-KNIGHT: Yes, Your Honor.

21 THE COURT: But we've already called

22 it a duck, and we've already called it a cat,

23 and you're just wondering if we can call it a

24 dog also.

25 MR. STEVENS: Well, it's all in the

Page 57

1 same paragraph.

2 THE COURT: Okay. That's fine.

3 I'm not foreclosing, for instance,

4 Mr. Stevens wants to put in some of that

5 proof. If you object, then I have to make a

6 decision at that point based on what I'm

7 hearing whether that's admissible. I'm not

8 going to give, I wouldn't think -- I won't

9 predict it all the way -- a lay person's

10 opinion of, yes, I am a declarant-related

11 entity. I'm not going to give that much

12 weight. I think it's going to be mostly

13 controlled by the documents.

14 MR. STEVENS: Okay.

15 THE COURT: Matt Daniels, that's the

16 one you're talking about?

17 MR. STEVENS: Yes, Your Honor.

18 THE COURT: Yeah. I wrote in here

19 that's just his opinion.

20 Number 2, that's fact. That's going

21 to take some facts, isn't it?

22 MR. STEVENS: It is, Your Honor.

23 THE COURT: Is there not a lot that

24 we can stipulate to?

25 MR. STEVENS: I think so, Your

Page 58

1 Honor, and I think two is going to be resolved

2 to some extent through a lot of these legal

3 issues.

4 THE COURT: Yes.

5 MR. STEVENS: I mean, ultimately,

6 the Court is going to determine some of these

7 legal issues. And then to the extent the

8 Court finds one way, two may not be an issue

9 at all. If the Court finds another way, it's

10 accounting, basically.

11 THE COURT: All right. So it just

12 dawned on me, were you all expecting me to

13 tell you today the answers to these questions?

14 MR. STEVENS: No, Your Honor.

15 MS. CAFFEY-KNIGHT: No, Your Honor.

16 THE COURT: I was assuming you

17 wanted at least an opportunity to argue them.

18 MR. STEVENS: Absolutely.

19 MS. CAFFEY-KNIGHT: Yes.

20 THE COURT: Okay. I was just

21 thinking on that, am I further behind the

22 eight ball?

23 MR. STEVENS: No, no, no.

24 MS. CAFFEY-KNIGHT: And our position

25 is just simply your rulings have already shut

Page 59

1 down this particular issue on summary

2 judgment. And so proof shouldn't be coming

3 in. That's the purpose of summary judgment.

4 THE COURT: All right. Bring your

5 orders with you that day that you argue these.

6 MS. CAFFEY-KNIGHT: Okay.

7 THE COURT: And --

8 MS. CAFFEY-KNIGHT: I think that's

9 our objection to pretty much every one that

10 they have raised.

11 THE COURT: Yes. I have a whole

12 book of orders. But bring them with you so

13 that you can look at the same one that I'm

14 looking at and that we're not fishing through

15 a box to find an order. I tried to

16 specifically pull the orders that you

17 referenced.

18 I did have some confusion on one or

19 two of these that says March of 2021, because

20 that order -- I had the March of 2021 order,

21 but it was for a hearing in November of 2020.

22 MS. CAFFEY-KNIGHT: Apparently so,

23 Your Honor. That -- that's pre-me, but I

24 think that's the case. But we tried in our

25 comments to each of these cite the specific

Page 60

1 orders and specific paragraphs with your

2 findings.

3 THE COURT: Just bring those with

4 you so that -- I think I have them all in this

5 third notebook, all the orders.

6 Question of fact, number three,

7 whether they established a valid partnership

8 prior to the date of the settlement agreement.

9 I think that's got to have some facts.

10 MR. STEVENS: Yes. And as I was

11 just listening, it may to some extent be

12 decided in the 19943 trial, potentially.

13 THE COURT: Well, I thought we were

14 going to try all three of these together.

15 MR. STEVENS: No, Your Honor. The

16 19943 is in May. These next two are in

17 August. So some of these partnership issues I

18 suspect will be resolved to some extent, and

19 then we may have argument as to the

20 implications.

21 THE COURT: Yeah. The only thing

22 that I could foresee to make that more

23 efficient on that issue is to stipulate the

24 facts that you say were operative prior to the

25 signing of the settlement agreement.

<p>1 I mean, it may be that you all agree 2 that -- and I know this is not one of the 3 facts, that you all bought a piece of land 4 together, built a house on it together, sold 5 it, and then all talked about it and said, oh, 6 well, now we need to sign a partnership 7 agreement. So if that's something that can be 8 stipulated to, that would save everybody time 9 and would go under the definition of the law 10 of a partnership, which is co-owners of a 11 business for profit. 12 MS. CAFFEY-KNIGHT: Your Honor, I 13 would say -- respectfully, Your Honor, I don't 14 think that is an issue for trial because Your 15 Honor's order of March 25 has already 16 specifically found that there was a valid 17 partnership, and you granted summary judgment 18 on that. And that there was a partnership 19 prior to the execution of the settlement 20 agreement, and it was that partnership that 21 executed the settlement agreement. 22 THE COURT: But I didn't ever say 23 here's when it began and here's what they did 24 to begin it. 25 MS. CAFFEY-KNIGHT: No, Your Honor,</p>	<p>Page 61 1 THE COURT: Did that document -- was 2 that the May document, or is that the January 3 document? 4 MR. STEVENS: It was December of 5 2015 settlement agreement. 6 THE COURT: And there was some 7 pleading somewhere that said we really started 8 before December. 9 MR. STEVENS: Correct. That's 10 correct. They had a partnership -- the 11 settlement agreement in December of 2015; then 12 they signed the partnership agreement in 13 January of 2016. 14 THE COURT: In January, yes. 15 MR. STEVENS: And then they alleged 16 that there was something beforehand. 17 THE COURT: Yes. I think that you 18 all do get to put in some proof about what if 19 there was anything other than the two facts 20 that were done before the signing of the 21 agreement. 22 MS. CAFFEY-KNIGHT: Respectfully, 23 Your Honor, if we were on summary judgment at 24 that time, that was the time for them to try 25 to put on any contrary proof.</p>
<p>Page 62 1 but you did find there was a valid partnership 2 prior to the execution of the settlement 3 agreement. 4 THE COURT: Give me the paragraph. 5 MS. CAFFEY-KNIGHT: March 25 order. 6 THE COURT: I'm in it. 7 MS. CAFFEY-KNIGHT: Paragraphs 2, 4, 8 6, and 16. 9 THE COURT: All right. 10 That doesn't say when it began, 11 paragraph 2, does it? 12 MS. CAFFEY-KNIGHT: It doesn't. But 13 you say there was a partnership and it was 14 that partnership that entered the settlement 15 agreement. So for purposes of this case, your 16 finding that the party that executed the 17 document was the SPC partnership between the 18 two entities. And that's that common law 19 partnership. 20 MR. STEVENS: Respectfully, I think 21 the only thing the Court found was that on the 22 face of the document, it was the named 23 partnership. That's all the Court found. 24 There was no finding about the validity of the 25 partnership.</p>	<p>Page 63 1 THE COURT: Two, four. What else? 2 MS. CAFFEY-KNIGHT: Six and 16. 3 THE COURT: All right. 4 All right. And then where did you 5 all plead that they were in partnership before 6 the signing of this SPC agreement? 7 MR. STEVENS: We didn't, Your Honor 8 because in fact we argued originally in our 9 pleading that they were an individual party to 10 the document. 11 THE COURT: All right. So why are 12 we arguing over this now, then? 13 MS. CAFFEY-KNIGHT: Right. 14 THE COURT: Why do you want to put 15 in proof that the partnership began before the 16 signing of the document? 17 MR. STEVENS: I don't, Your Honor. 18 I think what it does is it impacts the 19 enforceability of the document. If there was 20 no partnership, and they signed it in the name 21 of the partnership, there's a question of the 22 validity of the document. 23 THE COURT: So who wants to put in 24 proof on No. 3 on page 4, whether Partners and 25 LLC established a partnership prior to the</p>
<p>Page 64</p>	<p>Page 64</p>



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1 execution of the settlement agreement?

2 MR. STEVENS: I expect that proof

3 will come in in 19943, Your Honor, frankly.

4 THE COURT: So that is not an issue

5 for this case.

6 MR. STEVENS: Well, I think we need

7 to -- it's an issue based upon the Court's

8 determination as to whether or not there was a

9 partnership. That will have implications as

10 to the enforcement of the settlement

11 agreement.

12 MS. CAFFEY-KNIGHT: And it will

13 because the whole course of conduct with the

14 CAI treated them, acknowledged them as a

15 partnership for a long time before the

16 execution of this. So, you know, whether all

17 the proof comes in in the partnership case or

18 in the other, we frankly thought the summary

19 judgment had resolved this.

20 THE COURT: I don't think it

21 resolved that issue. I do not think that the

22 summary judgment from this order resolved

23 whether there was a partnership before the

24 execution of the settlement agreement.

25 I did not say -- I'm looking at your

Page 66

1 paragraph, No. 2, I said the settlement

2 agreement says it's being signed by these

3 partners.

4 Number 4, the settlement agreement

5 at issue made references to this document of

6 duties.

7 Number 6, the Court holds based on

8 the usage that the SPC is the partnership.

9 And number -- what was it you

10 said -- 16, that I find that they continue to

11 be a partnership called SPC.

12 I did not find that there was a

13 beginning point or said a beginning point of

14 whether or not they were partners before that.

15 MR. RUSSELL: Your Honor, I would

16 like to point out, too, to the extent that

17 Partners is arguing that this is a foreclosed

18 issue, that November hearing that resulted in

19 that March order was a motion for summary

20 judgment between Partners and CAI. No relief

21 or judgment.

22 THE COURT: You're saying LLC did

23 not get to argue anything on that.

24 MR. RUSSELL: We weren't a part of

25 that. In fact, when the Court ruled in the

Page 67

1 March order with respect to the common law

2 partnership, I believe that that's the first

3 time that that had come up from the Court's

4 perspective. And so what I would suggest is

5 that Partners has made a third-party claim for

6 indemnity for contribution. In order for them

7 to prove that there would be any indemnity of

8 contribution, they would have to prove the

9 existence of this common law partnership,

10 which we intend to put on proof to show that

11 that there are no facts to support any common

12 law partnership.

13 THE COURT: Okay. I still -- I said

14 I don't think I've ruled or foreclosed the

15 issue that there was some sort of partnership

16 before the signing of the settlement

17 agreement.

18 MS. CAFFEY-KNIGHT: Isn't it all

19 that matters is that execution of it? The

20 fact you have found --

21 THE COURT: Not if somebody is

22 asking for recovery inside a partnership out

23 of the cause of action that began before the

24 settlement agreement.

25 MS. CAFFEY-KNIGHT: It all arises

Page 68

1 from that settlement agreement and that

2 partnership.

3 THE COURT: Well, okay, now let me

4 go back and ask my question again. Who's

5 wanting to argue that there was a partnership

6 before the signing of the settlement

7 agreement? They say they're not.

8 MS. CAFFEY-KNIGHT: They want to try

9 to show there wasn't. We're standing by Your

10 Honor's summary judgment ruling that the party

11 that entered -- the party that entered the

12 settlement agreement was a partnership.

13 THE COURT: Okay. And if the

14 settlement agreement was signed at 12:02, you

15 all could have formed a partnership at 12:01

16 and signed it. The question I'm asking is, is

17 somebody trying to put in proof that in

18 December there was a partnership?

19 MS. CAFFEY-KNIGHT: We are just

20 standing by the ruling that Your Honor has

21 found the partnership entered that, and

22 therefore, nothing else matters.

23 THE COURT: Well, that's what they

24 say. They're not trying to put in the proof

25 that there was a partnership before the

Page 69

1 signing.

2 MS. CAFFEY-KNIGHT: They're trying

3 to put in proof there wasn't.

4 THE COURT: Before the signing of

5 the agreement.

6 MS. CAFFEY-KNIGHT: Or at any point.

7 But you have already found there was.

8 THE COURT: Well, they're not going

9 to put in and say -- well, I guess if they

10 didn't get to file anything on that motion for

11 summary judgment, I don't know about that.

12 MS. CAFFEY-KNIGHT: Right. And I

13 was going to say, that's an issue in the case.

14 We're claiming that this is a partnership. If

15 they chose not to take a position, that's on

16 them. This is summary judgment. You can't

17 sit idly quietly by. Nothing foreclosed them

18 from coming in and intervening on that motion.

19 You have found there was a partnership.

20 THE COURT: I found that that

21 document was entered into by three people, two

22 of whom call themselves a partnership. That

23 finding is already there.

24 MS. CAFFEY-KNIGHT: You --

25 THE COURT: I'm asking the question,

Page 70

1 though, who's going to try to put in proof

2 that prior to the execution of that document,

3 that there was a partnership?

4 MS. CAFFEY-KNIGHT: In this case?

5 THE COURT: Yes.

6 MS. CAFFEY-KNIGHT: Not us.

7 THE COURT: Then that can strike

8 that issue.

9 MR. STEVENS: No. From our

10 perspective, we want to put in proof that

11 there wasn't a partnership. I think LLC is --

12 MR. HALE: The problem is, with the

13 conclusion that there's a partnership, then

14 the issue -- at least for the association

15 would become, it's sort of indirectly for us,

16 is the association -- that this so-called

17 partnership owns no property, has no lots. So

18 the reality of the finding that there's a

19 partnership is that the association doesn't

20 get the benefit of the agreement that it

21 negotiated and agreed not to contest the sixth

22 amendment as it did. And it is expecting to

23 receive the assessments from RBP based on

24 the -- there's plenty of stuff in the record

25 about RBP admitting that they had agreed to

Page 71

1 pay those assessments.

2 So if the partnership issue there

3 stands, then it becomes, oh, this partnership

4 is the one that's agreeing to pay the money on

5 the lots it owns over 250. Well, it doesn't

6 own any lots. RBP and SPC don't -- they

7 didn't form a partnership to purchase any

8 lots.

9 THE COURT: So I need some law on

10 whether you should be allowed to put on any

11 proof on the partnership issue, because I have

12 already made a determination in March that

13 that was a partnership and whether you all

14 waived that issue by not responding to the

15 motion for summary judgment on those facts.

16 MR. HALE: Well, again, Your Honor,

17 it wasn't the motion for summary judgment

18 directed at us on our third-party complaint.

19 So we'll give you some -- we'll give you some

20 case law on that. But I think it's a little

21 bit in the complexity of this case to expect

22 us to read every other pleading involving the

23 association and make every argument that we

24 may not like when it comes up in the case.

25 THE COURT: "We" being -- you mean

Page 72

1 LLC?

2 MR. HALE: LLC, yes. I'm sorry.

3 MS. CAFFEY-KNIGHT: The whole

4 contention is they're a party -- a

5 partnership, a partnership as a party to this

6 agreement and to say we didn't have to respond

7 to summary judgment. Everything they're

8 raising now, every argument should have been

9 raised on summary judgment. And Your Honor

10 has foreclosed all of those. You found we are

11 exempt. You found there was a partnership.

12 You have gone on to say other holdings in

13 here, Partners individually had no obligation

14 to pay.

15 THE COURT: Send me a copy of the

16 motion for summary judgment and the response.

17 I have the order.

18 MS. CAFFEY-KNIGHT: Yes, Your Honor.

19 MR. STEVENS: Your Honor, if I may

20 add. The issue of whether or not Partners

21 individually was a party to the agreement was

22 complicated by the fact that even up until

23 July of 2022, Partners has filed pleadings in

24 this court alleging that they individually

25 were a party to this agreement. And, in fact,

Page 73

1 are seeking recovery individually under this  
 2 agreement. So --

3 THE COURT: Because you all sued  
 4 them individually.

5 MR. STEVENS: Right. And they  
 6 admitted in a pleading, in the amended  
 7 pleading in July of 2022, that RBCAI and  
 8 Partners, the individual entity, were parties  
 9 to the settlement agreement.

10 THE COURT: Have that document  
 11 ready.

12 MR. STEVENS: I will.

13 MR. RUSSELL: Your Honor, if you  
 14 look on page 15.

15 THE COURT: Of?

16 MR. RUSSELL: The same document.

17 THE COURT: Yes.

18 MR. RUSSELL: If you look on  
 19 page 15, paragraph 1, that's the proof that we  
 20 would intend to show.

21 MS. CAFFEY-KNIGHT: What are you on,  
 22 Mr. Russell? I'm sorry.

23 MR. RUSSELL: Page 15 of the issues  
 24 for trial in 20489. So one and two, that's  
 25 the proof that we would be putting on.

Page 74

1 THE COURT: Yes.

2 MR. RUSSELL: In other words,  
 3 there's going to be proof that if the Court  
 4 were to find that the ruling with respect to  
 5 common law partnership on the settlement  
 6 agreement is a ruling that would control, we  
 7 can still put on proof that the parties to  
 8 that common law partnership had an agreement  
 9 and understanding amongst themselves as to who  
 10 would be responsible for those obligations.  
 11 And we would submit that the CAI was the third  
 12 party to the three-party agreement, and all  
 13 three parties had understandings as to their  
 14 obligations.

15 THE COURT: Well, I'm going to be  
 16 real interested in the fact that I have held  
 17 what this agreement is on a motion for summary  
 18 judgment, you all didn't respond back then,  
 19 and should you be allowed to now challenge  
 20 that first finding.

21 MR. RUSSELL: Your Honor --

22 THE COURT: Of course, we won't be  
 23 doing this in May. But I would like to hear  
 24 this in June so that you all know, okay, we  
 25 are bringing proof to trial or we are not

Page 75

1 bringing proof to trial.

2 MR. RUSSELL: And pardon my  
 3 ignorance, Your Honor, but if there is a  
 4 motion for summary judgment directed at one  
 5 party and there's statements of undisputed  
 6 facts, how does a third party respond?

7 THE COURT: That's why I said bring  
 8 me some law. Is that -- does that become --  
 9 I'm not necessarily thinking about how does  
 10 the third party respond. I'm thinking about  
 11 what is the effect of the court order making  
 12 that finding.

13 MR. RUSSELL: Okay.

14 THE COURT: What's some law on that  
 15 issue.

16 MS. CAFFEY-KNIGHT: Yes.

17 THE COURT: It may be it's  
 18 foreclosed between the two people that were  
 19 involved in the motion and it's not otherwise.  
 20 I don't know what the law is on that, and I  
 21 think that would be helpful.

22 But I would also like us to get back  
 23 together in June or early July, after we've  
 24 heard 19943, and see where we are on this.  
 25 Because I think if I can make some legal

Page 76

1 rulings, then you all will know whether you're  
 2 going to bring -- because this is one of the  
 3 biggest issues, whether you're going to need  
 4 to bring in 27 witnesses, or it's been  
 5 foreclosed and we're not.

6 MR. STEVENS: Absolutely.

7 THE COURT: All right. Can we go  
 8 back to page 4?

9 Question of law, do you all think?  
 10 You need argument?

11 MR. STEVENS: Which number?

12 THE COURT: Page 4, paragraph 4. I  
 13 think there is some fact in there. That's  
 14 really going to be tied to how we resolve the  
 15 one before that.

16 MR. STEVENS: I agree, Your Honor.

17 THE COURT: I think No. 5 -- can  
 18 that just be a stipulation whether Partners  
 19 and LLC held any lots jointly?

20 MR. STEVENS: I think 5 is kind of a  
 21 continuation of 4.

22 THE COURT: It is. It is. But the  
 23 fact can be stipulated that there is no deed  
 24 out there that says Partners and LLC both on  
 25 it.

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1 MR. STEVENS: So 4 would be  
2 controlling.

3 THE COURT: Yes.

4 All right. I think No. 6 is still  
5 going to go back to No. 3 or 4. But I think  
6 there's going to be probably some proof,  
7 meaning maybe even a quantity of proof on if  
8 there is room for argument that there is this  
9 other agreement between Partners and LLC.

10 MS. CAFFEY-KNIGHT: Your Honor, may  
11 I?

12 THE COURT: Uh-huh.

13 MS. CAFFEY-KNIGHT: But that would  
14 be on any claim, like contribution claim,  
15 because Your Honor has found that we had no  
16 individual liability to the CAI. There's a  
17 specific finding in Your Honor's summary  
18 judgment ruling.

19 THE COURT: And that's going to go  
20 back to what is the holding of that as a  
21 summary judgment and how does that affect LLC.

22 MS. CAFFEY-KNIGHT: Okay.

23 THE COURT: Do they have a duty to  
24 respond, or do they -- or is that finding in a  
25 case binding on them or not? And for some

Page 78

1 reason somewhere I think that they have an  
2 argument that it's not, but I'll need to see  
3 the case law.

4 MS. CAFFEY-KNIGHT: I will agree if  
5 they had not been a party.

6 THE COURT: Yeah, I agree if it's  
7 not a party. I just can't remember the law  
8 close enough that if they are a third party  
9 and see stuff going on, do they have a duty to  
10 say something or intervene or want to respond,  
11 or can they sit back and watch the finding and  
12 attack it later.

13 All right. Number 7. These are  
14 still going to be intertwined with that first  
15 argument.

16 MR. STEVENS: Yes, Your Honor.

17 MS. CAFFEY-KNIGHT: Yes.

18 THE COURT: All right. Can we  
19 then -- I think I'm going to wait and say  
20 let's not answer these until I've answered  
21 that first one.

22 MS. CAFFEY-KNIGHT: Oh. Right. I'm  
23 sorry, Your Honor, but back up. We have to  
24 recognize that these are the RBCAI's, these  
25 issues here that we're going through now, for

Page 79

1 example, No. 7, whether we're judicially  
2 estopped from No. 9. Again, you have found no  
3 matter what that we're exempt, not bound.

4 THE COURT: I think that's a legal  
5 argument, at least on that part.

6 MS. CAFFEY-KNIGHT: Okay.

7 THE COURT: They're going to argue  
8 course of conduct, I bet, at least through  
9 2016 or 2017 when assessments were paid. That  
10 maybe can have some facts with it. But I  
11 think if you can stipulate that these were  
12 paid. This is on the argument of the mutually  
13 agreed-upon improvements, isn't it?

14 MR. STEVENS: Yes, Your Honor.

15 THE COURT: Yeah, I think that's  
16 mostly a legal argument.

17 MS. CAFFEY-KNIGHT: Number 7?

18 THE COURT: Yes. And I think both  
19 of you all agreed to that.

20 If we can stipulate -- if you all  
21 are going to argue course of conduct at all --  
22 that these were the two things that you say  
23 are course. And we don't have to have proof  
24 on that.

25 What amount, if any. That's a

Page 80

1 question of fact.

2 And RBCAI, which order are you  
3 referring to?

4 MR. STEVENS: Uh, let's see. Are we  
5 on?

6 THE COURT: I'm on No. 8, the blue  
7 comments from RBCAI. It said the Court  
8 previously held Partners jointly and several.

9 MR. STEVENS: Yes, referring to the  
10 same, March 25.

11 THE COURT: All right. And you'll  
12 be able to point out the paragraph where you  
13 say that I said they are jointly and  
14 severally.

15 MR. STEVENS: Yes, Your Honor.

16 THE COURT: Yeah, that -- No. 9 I  
17 think is a real legal argument. We have -- we  
18 have -- I feel like we have kind of looked at  
19 it and flicked it away several times because  
20 we didn't want to deal with it and we were  
21 dealing with other things. And I need a  
22 citation on RBCAI. The Court has not made any  
23 legal determination regarding the termination.  
24 Rendered them jointly and severally liable.  
25 That still goes back up to the same order

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1 above. Is that correct?

2 MR. STEVENS: Yes, Your Honor.

3 THE COURT: 3/25.

4 All right. Then the settlement

5 agreement, whether it's valid and enforceable.

6 Where was it pled?

7 MR. STEVENS: Your Honor, this was

8 only discovered in the party depositions on

9 September 29 of 2022. So it was after the

10 close of -- or after the scheduling order.

11 This allowed further amendments. But this was

12 the first time that we learned that the

13 partners of Partners were, in fact, not Matt

14 Daniels and other individuals, but they were

15 two new entities we had never even heard of

16 before.

17 THE COURT: Okay. Who has standing

18 to raise that issue? I think that it's

19 Partners. If Partners says, hey, we'll let

20 Donald Duck sign the contract, then can't

21 Donald Duck sign the contract?

22 MR. STEVENS: Well, I think it's

23 a -- it was signed as "Matt Daniels, managing

24 partner," and he in fact was not. And he

25 acknowledged that.

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1 THE COURT: Well, but they are

2 agreeing to be bound by the contract.

3 MR. STEVENS: Well.

4 THE COURT: So that's a question.

5 Bring me some law on that.

6 MR. STEVENS: It's a legal question,

7 absolutely.

8 THE COURT: Yeah, I don't think you

9 all have standing to plead that. I think that

10 they can let anybody sign a contract.

11 Certainly, if they said, well, we never signed

12 that contract, we're not involved in that at

13 all, then you might be saying, well, I think

14 there's judicial estoppel for that or they're

15 estopped from denying his authority now. So I

16 have a question on that.

17 I think that's just argument.

18 MR. STEVENS: On 11, Your Honor?

19 THE COURT: Uh-huh.

20 MS. CAFFEY-KNIGHT: I'm not sure

21 that I understand what that is, respectfully.

22 THE COURT: Page 10.

23 MS. CAFFEY-KNIGHT: No, I see

24 No. 11, but maybe to understand what

25 counsel's...

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1 MR. STEVENS: Sure. The master

2 declaration technically only applied to

3 Phases 6 and above. And the settlement

4 agreement was executed with respect to the

5 master declaration.

6 However, to the extent that there

7 are -- that Partners is not an individual

8 party to the settlement agreement, there may

9 be some legal implication of their liability

10 under the separate phase declarations only as

11 to lots in Phases 1 through 5. So that's,

12 again, a legal question for the Court.

13 MS. CAFFEY-KNIGHT: Okay.

14 THE COURT: All right. Number 12, I

15 don't know that I have addressed this issue.

16 I allowed the amendment. It was entered in

17 September of 2022. I think that's the order

18 you're really referring to when you say "See

19 July 18, 2021, order." I didn't -- look at

20 your documents and see if that's correct. I

21 have a question about what order that is.

22 MS. CAFFEY-KNIGHT: It certainly

23 wouldn't be 2021.

24 THE COURT: Well, your comment says,

25 "See July 18, 2021."

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1 MS. CAFFEY-KNIGHT: Clearly, the

2 year is wrong.

3 THE COURT: Okay.

4 MS. CAFFEY-KNIGHT: Yeah. So it

5 must be July 18, 2022, and then there's a

6 subsequent --

7 THE COURT: I have a September. I

8 don't have a stamped copy. I signed it

9 September 27, 2022, order from the hearing on

10 July 21st.

11 MS. CAFFEY-KNIGHT: I think you kind

12 of find -- I think you find it two times. But

13 in that order that you just mentioned, and

14 this is the July 18, 2022.

15 THE COURT: Yes. Yes.

16 MS. CAFFEY-KNIGHT: I have the year

17 wrong here. I only cited one of the two

18 orders. But this one is the July 18, 2022,

19 order. Because we had the hearing on the

20 motion to amend I think around the 14th of

21 July. You granted it. We got the order

22 entered.

23 THE COURT: Okay.

24 Brice, get me a copy of that order.

25 Not right now.

Page 85

1 MS. CAFFEY-KNIGHT: It's here if it  
 2 makes it easy for you to copy.  
 3 THE COURT: Yeah, that would be  
 4 great.  
 5 MS. CAFFEY-KNIGHT: And that's the  
 6 order that's entered into the 20489.  
 7 THE COURT: Okay.  
 8 I think that standing is an issue  
 9 that can be raised at any time. And so I  
 10 think that you all still get to raise that  
 11 issue. But I think it is still a legal  
 12 argument. I don't think there's any facts  
 13 that are necessary to be put in there.  
 14 All right. The doctrine of unclean  
 15 hands, page 11, No. 1 at the bottom. That's  
 16 just, I think, an argument. Estoppel is an  
 17 argument on No. 2 and No. 3. That's a legal  
 18 argument. But if I remember correctly, hasn't  
 19 LLC also said Partners breached? I think I  
 20 still got to hear maybe some argument or if  
 21 the facts can be stipulated on who breached  
 22 first.  
 23 MR. RUSSELL: That was our defense  
 24 in a counterclaim that we asserted, Your  
 25 Honor, as to the issue of whether Partners was

Page 86

1 required to put mandatory membership language  
 2 in the deeds.  
 3 THE COURT: Yes.  
 4 MR. RUSSELL: And Your Honor found  
 5 that that -- if it was a breach, it wasn't the  
 6 first material breach. I don't know if that's  
 7 what you're referring to.  
 8 THE COURT: It may be. Now that you  
 9 mentioned it, I remember doing it. Gosh, that  
 10 was years ago.  
 11 MR. RUSSELL: That was years ago.  
 12 MS. CAFFEY-KNIGHT: In the  
 13 partnership case.  
 14 MR. RUSSELL: In the partnership  
 15 case.  
 16 But I would point out, Your Honor,  
 17 that No. 3 here on page 12 I think is going to  
 18 be addressed in the 1993 trial in May.  
 19 MS. CAFFEY-KNIGHT: It is as long as  
 20 Your Honor agrees -- yeah, I think that  
 21 specifically pled on whether it's a breach of  
 22 fiduciary duty as well.  
 23 THE COURT: Sure. All right.  
 24 MS. CAFFEY-KNIGHT: So it may be  
 25 addressed in the 19943.

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1 THE COURT: That would be argument  
 2 on No. 4. Number 5 is argument but facts on  
 3 amount.  
 4 Number 6, remind me what the  
 5 pleadings are on that and what kind of proof  
 6 I'm going to need about Yoakley and Ayers  
 7 being liable to Partners for their actions to  
 8 compel the board. I think that's another  
 9 question in 19943.  
 10 MS. CAFFEY-KNIGHT: I know we  
 11 discussed it earlier this morning perhaps in  
 12 19943.  
 13 MR. HALE: We did.  
 14 MS. CAFFEY-KNIGHT: Yes.  
 15 THE COURT: All right. I'm on  
 16 page 15, if you all agree that's where we are.  
 17 That one we've already talked about just a few  
 18 minutes ago, No. 1.  
 19 MR. RUSSELL: Yes.  
 20 MS. CAFFEY-KNIGHT: That comes back  
 21 to the finding of the summary judgment motion.  
 22 THE COURT: Yes. Yes.  
 23 MR. RUSSELL: Two and 3 are pretty  
 24 much the same.  
 25 THE COURT: Yes. And her response

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1 is on 3 at least it's not pled. Was it pled?  
 2 MR. HALE: Your Honor, part of  
 3 whether -- I've got to go back and read this  
 4 motion for summary judgment that was asserted  
 5 by Partners against the association and study  
 6 that, because I don't think there was ever any  
 7 contention that there was a partnership that  
 8 entered into that settlement agreement until  
 9 Your Honor, in reading the -- and I could be  
 10 wrong about this. I admit. There's too much  
 11 stuff that's gone on in this case. I think  
 12 when Your Honor read the pleading and saw the  
 13 language "a Tennessee" -- or "a general  
 14 partnership," I think you concluded, partly  
 15 reached the decision there on that. And I  
 16 don't know that that issue was ever really put  
 17 at issue in that motion. It certainly wasn't  
 18 as to us because we weren't a part of that  
 19 motion.  
 20 THE COURT: Oh, I think there was an  
 21 argument. I think there was an argument.  
 22 MR. HALE: I could be wrong.  
 23 MR. STEVENS: In fact, there were  
 24 competing motions for summary judgment, and  
 25 the Court considered argument and ruled on

Page 89

1 them collectively.

2 THE COURT: There was a big argument

3 about where the comma was placed. And I think

4 Mr. Stevens made the argument that the comma

5 might be misplaced.

6 MR. STEVENS: There was a lot of

7 discussion about the comma.

8 MS. CAFFEY-KNIGHT: But then there

9 were repeated references throughout the

10 document of the obligation of SPC. Yes, there

11 were competing motions on that, to the

12 interpretation of the agreement and who's

13 liable.

14 THE COURT: Yes. I would expect

15 that you all would bring that back up when we

16 go back to the finding, if that finding bound

17 the party who wasn't a party to that motion.

18 That almost makes my head hurt. I'm

19 sure it does your all's.

20 All right. I asked for the cite of

21 where the LLC pled this issue about joint

22 liability or responsibility to RBCAI.

23 MS. CAFFEY-KNIGHT: Which one?

24 THE COURT: I'm on page 15 and 16,

25 No. 2 and 3.

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1 MR. RUSSELL: I don't have it in

2 front of me, Your Honor, but we pled that

3 Partners and LLC had -- they had their own

4 obligations with respect to the settlement

5 agreement. The settlement agreement said that

6 LLC is enjoined to pay \$100,000.

7 THE COURT: Right.

8 MR. RUSSELL: And we've pled that

9 LLC did pay that \$100,000.

10 THE COURT: I don't think there was

11 ever a contest on that.

12 MR. RUSSELL: But I guess the point

13 of this would be, is that falling under the

14 facts of did they have separate obligations

15 and they understood what those obligations

16 were.

17 THE COURT: It probably goes to the

18 joint liability or the indemnity.

19 MR. RUSSELL: Correct.

20 THE COURT: Okay.

21 MR. RUSSELL: So I don't think we

22 specifically said this exact phrase, but we

23 did talk in the answer that the parties did

24 have separate obligations. And they actually

25 followed through with those obligations by the

Page 91

1 way of LLC paying the \$100,000 and Partners

2 paying the CAI for at least one year.

3 MS. CAFFEY-KNIGHT: And we would

4 maintain that's covered by the summary

5 judgment because they didn't plead that. What

6 they pled was there were three parties to the

7 document. Again, squarely placing that at

8 issue before the summary judgment was ruled

9 upon.

10 THE COURT: Well, I still think I

11 can rule on just a stipulation that the LLC

12 paid their \$100,000 pursuant to the settlement

13 agreement.

14 MS. CAFFEY-KNIGHT: Your Honor, just

15 as you found that Partners -- when Partners

16 made a payment of \$31,000 or something, you

17 said that it did so as a partner on behalf of

18 the partnership. I think we agree the

19 \$100,000 was paid. Not backing off whose

20 obligation --

21 THE COURT: Yeah, I would be

22 interested if you all could bring the

23 pleadings to show what am I -- what of those

24 issues of indemnity and what was paid between

25 partnership and -- Partners and LLC. That can

Page 92

1 still be a different -- if that was pled

2 somewhere and how I'm supposed to deal with

3 that in this case. And that goes with

4 Number 4 I think.

5 MR. RUSSELL: Correct.

6 THE COURT: I think I can answer --

7 I think I'm going to need some facts, but I

8 think that can be a stipulation of whether the

9 SPC partnership owned any assets in its own

10 name. And, you're right, it goes back to

11 paragraph 1 above when I said we can stipulate

12 that Partners and LLC put no deeds in their

13 joint names.

14 MR. RUSSELL: And, Your Honor, I

15 bring this up because we're discussing the

16 case.

17 THE COURT: Sure.

18 MR. RUSSELL: We've thought about

19 that stipulation. But the consequence is,

20 what is at least a concern to me, if we

21 stipulated that the parties, LLC and Partners,

22 had no assets and owned no lots jointly, if we

23 stipulate to that, then what is the

24 consequence of knowing you don't own any lots,

25 entering into an agreement saying we'll pay

Page 93

1 money on lots we own in excess of 250.

2 THE COURT: That's still, I think, a

3 legal argument of what is the effect of that.

4 MR. RUSSELL: That's an issue.

5 THE COURT: Yeah, I don't disagree

6 that that's an issue.

7 MR. RUSSELL: And so what I would

8 suggest would be the stipulation might reflect

9 that the parties going into the agreement

10 owned what they owned.

11 THE COURT: And they intended to own

12 jointly?

13 MR. RUSSELL: And they -- I don't

14 think they intended.

15 THE COURT: You want to make that

16 same argument back in 19943 about the

17 declarant rights?

18 MR. RUSSELL: You see where I'm

19 going with this.

20 THE COURT: I do. I do.

21 MR. RUSSELL: And I think that's why

22 it's important that --

23 THE COURT: I think that's why it

24 was important these parties settle this case.

25 MR. STEVENS: Amen.

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1 MS. CAFFEY-KNIGHT: I think the

2 practical effect of it is it doesn't void that

3 contract. I'll save that argument for later.

4 MR. STEVENS: It doesn't void?

5 I respectfully say it renders it a

6 sham.

7 MS. CAFFEY-KNIGHT: I say read it as

8 written. No, it doesn't.

9 THE COURT: Well, I'm not asking for

10 posturing. It won't do any good because I

11 won't remember it later.

12 I'm going to Denver in the morning

13 to see my baby child, and I am not looking at

14 this, and I'm not looking at Metro. I'm

15 already told them, I'm not looking at this

16 case over the weekend. I'm sorry.

17 MR. RUSSELL: I think really these

18 all kind of fall, six and seven, they're all

19 the same argument.

20 THE COURT: And I think I'm going

21 to -- yes. But No. 7 I wasn't sure I

22 understood.

23 MR. RUSSELL: It's Mr. Hale's

24 wording, but I think --

25 THE COURT: Mr. Hale, do you -- you

Page 95

1 do it the way you speak. I can hear this

2 coming out of your mouth.

3 MR. RUSSELL: He -- I think the

4 point is what I kind of just argued, which is

5 if we didn't have any lots jointly and we

6 entered into this thing, what's the effect?

7 Right? Should we go back and say knowing that

8 the parties each owned certain things and they

9 knew what they owned and they knew what they

10 were agreeing to, can they now come back and

11 say we never meant what we understood to mean?

12 I think that's the point.

13 MR. HALE: Gotcha.

14 THE COURT: And I can go back and

15 think about that same argument going the

16 opposite way in the declarant right case.

17 I did corporate work in private

18 practice, and I know you all have. How many

19 of your clients ever came back to you on a

20 yearly basis to update their corporate minutes

21 and go through these things before they worked

22 out these deals out in the field? I mean, it

23 just -- there's the reality of what they've

24 gone through.

25 All right. Let's look at No. 21173.

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1 Mine didn't come through in color on this one.

2 Tell me about No. 3.

3 MS. PEMBERTON: Number 3, Your

4 Honor, on page 1?

5 THE COURT: Yes.

6 MS. PEMBERTON: It's an estoppel

7 argument that the issues that Partners is

8 complaining about in this case, all of them,

9 that certain directors were serving who were

10 not elected. There was not an election to

11 replace certain directors who were

12 overstaying. They did it all the years past.

13 Voting on lots that they were not allowed to

14 vote on. Partners did it as well.

15 So I think some proof needs to come

16 in after we've now had the opportunity for

17 depositions. I think proof needs to come in

18 for the Court to show the course of conduct

19 that was taken by Partners when they thought

20 they had declarant rights versus what they're

21 complaining about now.

22 THE COURT: I wrote down "question

23 of fact."

24 MS. PEMBERTON: It is.

25 THE COURT: I had a question of



<p>1 could there be a stipulation on that. <span style="float: right;">Page 97</span>  2 there's like three or four facts, then I'm  3 certainly willing to listen. I would like you  4 all to consider I guess -- stipulations are  5 kind of the last thing lawyers think about.  6 And I'm asking maybe it should be the first  7 thing, because I think it will save a lot of  8 trial time. You all know the cases now. I  9 will say most all of these kinds of cases  10 aren't won or lost on Sterling's  11 cross-examination. You already know what  12 everybody is going to say.  13 MS. PEMBERTON: We may be able to  14 stipulate to some facts and at least short  15 circuit some of the proof at trial. I would  16 think so.  17 THE COURT: If we're talking about a  18 good faith reasonable argument, I'm going to  19 have to have some facts on that as well as  20 No. 5, probably four and five hooked together.  21 It's probably the same facts that you're going  22 to use for those for me to make a legal  23 conclusion on whether I feel like things were  24 done in good faith or bad faith.  25 MS. PEMBERTON: Okay.</p>	<p><span style="float: right;">Page 99</span>  1 THE COURT: Because when I looked at  2 that, I'm going, okay, are you asking for  3 attorneys' fees under a contract? I don't  4 think Partners and RBCAI had a contract except  5 they were --  6 MS. PEMBERTON: It's the derivative  7 action.  8 THE COURT: -- part of the three --  9 the two partners. Is it settlement agreement,  10 or is it statutory?  11 MS. PEMBERTON: No contract. It  12 will be statutory.  13 THE COURT: All right. The same  14 thing with Partners? The other way around,  15 they are both statutory?  16 MS. PEMBERTON: Both statutory.  17 THE COURT: All right. Number 1,  18 whether Matt Daniels has standing to bring  19 this cause of action. That goes back to my  20 answer earlier of who has standing to question  21 that. You're just saying that based on Matt  22 Daniels signing the complaint?  23 MS. PEMBERTON: Yes, Your Honor.  24 Number 1, it goes back to what you have  25 already addressed in 20489.</p>
<p><span style="float: right;">Page 98</span>  1 THE COURT: Attorneys' fees. Is  2 this different from in the previous case?  3 MS. PEMBERTON: I think attorneys'  4 fees, Your Honor, will be factual in nature as  5 well. The attorneys' fees that Partners is  6 asking for, it's under the Nonprofit Act,  7 which also encompasses the good faith of the  8 board. It's also under the Derivative Action  9 Act, which there is also I think a number of  10 facts that are relevant.  11 The derivative action, Your Honor, I  12 think it's a little complicated, and I think  13 will require some facts because you have  14 standing, you have whether standing continues,  15 and then you also have are the claims that  16 were brought derivative or are they direct  17 claims, which requires a finding of fact.  18 THE COURT: Sure.  19 MS. PEMBERTON: And all that really  20 ties into -- but it would allow the attorneys'  21 fees, because that's the other --  22 THE COURT: If it's statutorily  23 based or requested attorneys' fees, bring the  24 statute with you as well.  25 MS. PEMBERTON: Okay.</p>	<p><span style="float: right;">Page 100</span>  1 THE COURT: Yes.  2 MS. CAFFEY-KNIGHT: It's not in the  3 name of Matt Daniels to begin with. He's not  4 the plaintiff.  5 THE COURT: I think if you all just  6 say we affirm what Matt Daniels signed.  7 MS. CAFFEY-KNIGHT: We have. And  8 we've told them -- we have all kinds of  9 testimony on that.  10 THE COURT: All right. I don't need  11 testimony. Just a stipulation.  12 MS. CAFFEY-KNIGHT: We'll stipulate.  13 THE COURT: We gave him permission.  14 MS. CAFFEY-KNIGHT: Yes.  15 THE COURT: Or if we didn't have  16 permission, we ratified it.  17 Rarity Bay Partners' standing  18 argument. That will go back to the other case  19 too, won't it, or is it different here?  20 MS. PEMBERTON: Let me see if I  21 separated them out. It does go back to the  22 other case in respect to whether they had --  23 whether they were in good standing to vote or  24 serve as a director.  25 THE COURT: Not a payment of fees.</p>

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1 MS. PEMBERTON: Right. There were  
 2 also the other issues in the derivative action  
 3 of whether they lost standing along the way  
 4 due to a conflict of interest, which will be  
 5 factually based. But in large part, it will  
 6 be determined in the other case.

7 THE COURT: And again, about halfway  
 8 down that page, page 3, it says "The Court  
 9 again found Partners in good standing." When  
 10 you all make those statements, I need a  
 11 citation to the record when you do that in  
 12 argument.

13 MS. CAFFEY-KNIGHT: I think ours are  
 14 there, Your Honor.

15 THE COURT: "See proposed order."  
 16 That's not a finding of the Court.

17 MS. CAFFEY-KNIGHT: I'm sorry. I  
 18 think it's been submitted, Your Honor, but  
 19 it's just not been entered.

20 THE COURT: All I know is when I'm  
 21 reading this and I see the word "proposed,"  
 22 I'm saying the Court doesn't speak through  
 23 proposed orders.

24 MS. CAFFEY-KNIGHT: Right. I guess  
 25 what I'm saying is that means it's been

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1 submitted. It just hasn't been executed by  
 2 the Court, so we'll follow up on that.

3 THE COURT: Okay.

4 Well, I know you all talked about an  
 5 order that went back and forth between you  
 6 guys and you didn't get an agreement, so it  
 7 just disappeared.

8 RBCAI comment. I agree there's  
 9 going to have to be some finding of fact.

10 All right. Anything else on page 3,  
 11 page 4?

12 MS. CAFFEY-KNIGHT: When we say  
 13 "findings of fact," Your Honor, there are two  
 14 bases, whether it's a derivative action or  
 15 does this come back to --

16 THE COURT: Standing.

17 MS. CAFFEY-KNIGHT: Well, standing,  
 18 but you already found that we were in good  
 19 standing in terms of assessments, et cetera,  
 20 and had the right to vote, et cetera. We're  
 21 not getting all back into that, are we?

22 We're getting into whether this is a  
 23 derivative claim.

24 THE COURT: I think this is talking  
 25 about the derivative claim.

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1 MS. PEMBERTON: Yeah, and the  
 2 derivative claim, with all due respect, I  
 3 think it's a little more complicated. If you  
 4 need a brief, I'll be happy to brief the  
 5 issue. But I think that --

6 THE COURT: I've made a couple of  
 7 notes. I have to make a finding of whether  
 8 it's an adverse action or not. And I have to  
 9 make a finding if it's -- they're exempt under  
 10 the statute or not. But, yes, a brief,  
 11 meaning one page, so I can read it into the  
 12 record as I make my appropriate findings on  
 13 the derivative issue. That would be helpful.

14 MS. CAFFEY-KNIGHT: I know we've  
 15 argued the cases, but we've not had that kind  
 16 of finding.

17 MS. PEMBERTON: Well, I think -- as  
 18 I said, there's standing as to whether they  
 19 owed assessments. That's an issue. Whether  
 20 they had a conflict of interest to bring and  
 21 maintain this case. And I think there will be  
 22 some factual testimony.

23 THE COURT: I agree. I agree. I  
 24 agree all that needs facts.

25 MS. CAFFEY-KNIGHT: We can cite in

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1 the record where you've already made rulings  
 2 to that.

3 THE COURT: So when she tries to put  
 4 in a fact that you think has already been  
 5 subject to a finding, then you can make that  
 6 objection and cite me to the record.

7 MS. CAFFEY-KNIGHT: Okay.

8 THE COURT: Number 3, standing.  
 9 Isn't that the same?

10 MS. PEMBERTON: Yeah, it's the same.

11 THE COURT: And I'm sure Partners is  
 12 going to argue at least we did have standing,  
 13 but if not, there was a course of conduct. Is  
 14 that part of that?

15 MS. CAFFEY-KNIGHT: Where are we?

16 THE COURT: Where you all were on  
 17 the board and voting.

18 MS. CAFFEY-KNIGHT: Are you on  
 19 No. 3, Your Honor?

20 THE COURT: I'm on No. 3.

21 MS. CAFFEY-KNIGHT: You have already  
 22 found on summary judgment that that's this  
 23 whole lawsuit, you ordered, yes. You ordered  
 24 the 2019 election to occur. You ordered that  
 25 we could have --

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1 THE COURT: I didn't have a  
 2 transcript, or at least my transcript wasn't  
 3 the same as yours. So I couldn't look at that  
 4 ahead of time.

5 MS. PEMBERTON: And I think Your  
 6 Honor's ruling was based upon the fact that  
 7 Partners had put money into an escrow account  
 8 so they were in good standing, and then that  
 9 subsequently stopped. So I think that issue  
 10 is still a live issue for trial that will  
 11 require some facts.

12 THE COURT: So that means -- you're  
 13 talking about not the initial finding of  
 14 standing, but continuing to have standing?

15 MS. PEMBERTON: That's right.

16 MS. CAFFEY-KNIGHT: Your Honor, you  
 17 found it again on -- they filed another  
 18 summary judgment motion that you heard, I  
 19 believe, in November of this year, and you  
 20 again found standing. It's been found twice.

21 MS. PEMBERTON: Your Honor, you  
 22 denied our summary judgment. That's  
 23 different. That leaves the issue for trial.

24 THE COURT: It does.

25 MS. CAFFEY-KNIGHT: Yeah, Your

Page 106

1 Honor, you actually entered an order  
 2 invalidating that election. So we had to have  
 3 had standing for Your Honor to have found  
 4 that.

5 THE COURT: That was in 2019.

6 MS. PEMBERTON: Which?

7 MS. CAFFEY-KNIGHT: No, you did it  
 8 again. You did an order invalidating --

9 THE COURT: Bring it with you.  
 10 Bring it with you. I'm not ruling on it  
 11 today. You all are making arguments. I'm  
 12 going to say bring it with you, and I'll make  
 13 some findings.

14 MS. PEMBERTON: And this may -- this  
 15 dovetails into No. 4. Even if you have  
 16 standing to bring a derivative claim, even if  
 17 you maintain standing to bring a derivative  
 18 claim, it still has to be a derivative claim.  
 19 So each claim that is made, there needs to be  
 20 an analysis is it a direct claim or is it a  
 21 derivative claim under the standards set forth  
 22 by the Tennessee Supreme Court. So that's  
 23 what No. 4 will deal with that Your Honor will  
 24 need to make findings of fact as to is it a  
 25 direct claim to rule on, or is it derivative.

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1 MS. CAFFEY-KNIGHT: Well, that's  
 2 what I'm --

3 THE COURT: Number 3 I need a copy  
 4 of because you've again cited "See proposed  
 5 order," and Exhibit 2, Transcript of  
 6 Proceedings. I don't have either one of  
 7 those. So you'll need to...

8 MS. CAFFEY-KNIGHT: Yeah, that's  
 9 something I believe we submitted is where you  
 10 find you invalidate the election and found we  
 11 have the right to pursue this claim.

12 THE COURT: You all are arguing the  
 13 case today.

14 MS. CAFFEY-KNIGHT: I'm sorry, Your  
 15 Honor.

16 THE COURT: Bring me a copy of the  
 17 order.

18 MS. PEMBERTON: And I'll give you a  
 19 copy of the Supreme Court case I think would  
 20 be very helpful. It even gives examples of  
 21 what are direct claims and what are derivative  
 22 claims.

23 THE COURT: Great. I've read so  
 24 many Supreme Court cases in the last  
 25 five days.

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1 MS. PEMBERTON: One more.

2 THE COURT: Yes, direct or  
 3 derivative.

4 MS. PEMBERTON: That's a common law  
 5 factual determination on that.

6 THE COURT: I agree.

7 MS. CAFFEY-KNIGHT: On Number 4?

8 THE COURT: Four.

9 All right. LLC's issues. Oh, and  
 10 RBCAI says I didn't use the appropriate  
 11 standard or I need to be aware of the  
 12 appropriate standard. And you're going to  
 13 bring these standards.

14 MS. PEMBERTON: Your Honor, I didn't  
 15 say you didn't use it. I just said what they  
 16 are citing is not appropriate.

17 THE COURT: Kind of. Judge didn't  
 18 do it right.

19 MS. PEMBERTON: No, I didn't say  
 20 that.

21 THE COURT: I want to do it right,  
 22 so bring the appropriate standard.

23 All right. Statement of additional  
 24 issues. My question on this was if it's --  
 25 don't I have to make a finding of whether it's

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1 ambiguous or not; and if it's not, then you  
 2 just argue?

3 MR. RUSSELL: On whether the  
 4 language in the document is ambiguous?

5 THE COURT: Yes.

6 MR. RUSSELL: Well, I think that  
 7 would permit us to, yes, provide proof if it's  
 8 ambiguous.

9 THE COURT: What would that proof  
 10 consist of? I think it means this and I think  
 11 it means that?

12 MR. RUSSELL: Well, I'm not sure.

13 THE COURT: I mean, Smith says it  
 14 means this, and Jones says it means that.  
 15 That's how you say it's ambiguous?

16 MR. RUSSELL: No, I don't think  
 17 the -- I think what we're trying to suggest in  
 18 No. 1 is that when the Court ruled that LLC  
 19 was only entitled to five votes for which --  
 20 for lots in which it held the membership  
 21 interest entitled to vote, that was during a  
 22 temporary injunction hearing. So it's not  
 23 timely.

24 THE COURT: I gotcha.

25 MR. RUSSELL: So we believe it

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1 should be heard for part of the final hearing  
 2 on that issue.

3 THE COURT: I'm saying isn't that  
 4 just legal argument?

5 MS. CAFFEY-KNIGHT: Your Honor,  
 6 respectfully --

7 MR. RUSSELL: Yes. Yes.

8 MS. CAFFEY-KNIGHT: -- you  
 9 subsequently then adopt that finding in a  
 10 ruling on summary judgment last fall of 2022.  
 11 So it's already been -- it has now the force  
 12 and effect of summary judgment.

13 THE COURT: Bring the transcript  
 14 with you for that.

15 MS. CAFFEY-KNIGHT: Yes. You  
 16 invalidated that election and --

17 THE COURT: And the order.

18 MS. CAFFEY-KNIGHT: -- cast those  
 19 votes.

20 THE COURT: Bring that transcript  
 21 and the order, and we'll argue it that day.

22 MS. CAFFEY-KNIGHT: Okay.

23 THE COURT: All right. And then LLC  
 24 will be arguing that was just a temporary  
 25 injunction hearing, the standard's different

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1 under 65.04, and they get to put in proof on  
 2 that issue.

3 MR. RUSSELL: It's legal argument,  
 4 yes.

5 THE COURT: Yes, I agree. I think  
 6 you all make the legal argument.

7 Number 2 is legal argument. And  
 8 what about this Bald Eagle, No. 3? Is that in  
 9 Knoxville?

10 MS. PEMBERTON: Your Honor, I don't  
 11 know why we continue to argue over Bald Eagle.  
 12 We have already said -- we answered the  
 13 complaint saying Bald Eagle only gets 102  
 14 votes. That's all they got.

15 We did a stipulation that they only  
 16 get 102. We tried to. They got 102 votes. I  
 17 don't know why we're still arguing over that.

18 MR. RUSSELL: We put down an order,  
 19 though, didn't we, dismissing them from the  
 20 case?

21 THE COURT: Yes.

22 MS. CAFFEY-KNIGHT: Your Honor?

23 THE COURT: Yes, I think Bald Eagle  
 24 was dismissed.

25 MS. CAFFEY-KNIGHT: And I'm the one

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1 who procured the stipulation and requested it  
 2 so we could dismiss them. The stipulation was  
 3 that they were only entitled to 102 votes. We  
 4 believe there's a question of fact that they  
 5 cast or that -- they maybe cast only 102, but  
 6 the association counted more than that. They  
 7 don't agree there's a dispute over that. It's  
 8 just another basis to invalidate the 2019  
 9 election. And we may pull that. Okay?  
 10 That's the only reason that's in. We didn't  
 11 want to foreclose that.

12 MS. PEMBERTON: Your Honor has  
 13 already invalidated that election, and so I  
 14 really don't know why we are continuing to  
 15 argue this. They cast only 102 --

16 THE COURT: That's the same argument  
 17 you were making a few minutes ago. Judge, is  
 18 there not an order down already saying that?

19 MS. CAFFEY-KNIGHT: Well, not as to  
 20 this, no, because if they get that set aside  
 21 the invalidation on one basis, we've got it on  
 22 another.

23 THE COURT: But did I not already  
 24 invalidate it? We've already revoted it.

25 MS. CAFFEY-KNIGHT: You did.

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1 THE COURT: So then why do we need  
2 to talk about Bald Eagle?

3 MS. CAFFEY-KNIGHT: Because the one  
4 just before, counsel is saying, well, that  
5 really the effect of that is only on the  
6 temporary injunction. And so you really  
7 haven't ruled that, that finding.

8 MS. PEMBERTON: They only got 102  
9 votes. I mean, that's it.

10 MS. CAFFEY-KNIGHT: We agree with  
11 that. But the question is how many were  
12 counted.

13 MS. PEMBERTON: 102.

14 THE COURT: Okay. If you all can  
15 stipulate that fact, then that ought to take  
16 that out.

17 All right. Does that get us all --  
18 can we get a court date?

19 MS. CAFFEY-KNIGHT: We do, Your  
20 Honor.

21 MR. RUSSELL: A court date for the  
22 June?

23 THE COURT: Yes. Where we can come  
24 back after we've heard the hearing in May.  
25 And to the extent that I can't rule from the

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1 bench in May, I will rule in June. It will  
2 need to be towards the end of June.

3 MR. STEVENS: If we're waiting, I  
4 have a small issue.

5 THE COURT: A vacation?

6 MR. STEVENS: Hopefully. I'd love  
7 to have a vacation.

8 This is an issue I don't take a  
9 position on, but the board has been asking for  
10 clarification on Your Honor's injunction.  
11 Your Honor had, as you recall, entered an  
12 injunction in 21173 basically stating any  
13 action by the board except those that are  
14 necessary, as Mr. Story said, to keep the  
15 lights on. If you recall that order.

16 THE COURT: Vaguely.

17 MR. STEVENS: There are two budgeted  
18 projects, one for road maintenance and one for  
19 greenway extension. And the board was just  
20 wanting clarification as to whether or not the  
21 intent of Your Honor's order was to preclude  
22 them from proceeding with budgeted projects.

23 THE COURT: I don't know.  
24 Can you all not agree on that?

25 MS. CAFFEY-KNIGHT: Yeah. Because I

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1 would have to say that, quote-unquote, budget  
2 that was approved, was approved by the board  
3 that you ruled in the Frisbee case when the  
4 LLC recently appointed three people. That's  
5 the board that approved the budget. So we do  
6 think we need to deal with that.

7 THE COURT: Can we not agree on  
8 whether the roads need to be fixed now or not?

9 MS. CAFFEY-KNIGHT: The problem is  
10 the budget is approved by an illegitimate  
11 board that Your Honor has said was an  
12 illegitimate board.

13 THE COURT: Okay, so what?  
14 Can we not fix the roads?

15 MS. CAFFEY-KNIGHT: Well, we don't  
16 know really what that proposal is because our  
17 rep was kicked off the board and didn't get to  
18 participate in that.

19 THE COURT: Everybody should be able  
20 to get to go to board meetings whether they're  
21 on the board or not.

22 MS. CAFFEY-KNIGHT: No, they're not  
23 holding board meetings -- they're holding them  
24 in secret.

25 THE COURT: Aren't they supposed to

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1 be in public? Isn't that what your bylaws  
2 say?

3 MR. STEVENS: The budget is a public  
4 document that adopted both of these elements.  
5 I don't know who adopted and who didn't. But  
6 the board at that time has taken the position  
7 that --

8 THE COURT: Then you all will just  
9 have to file a motion. That's all I can say.

10 MR. STEVENS: Okay. Fair enough. I  
11 will report that back.

12 THE COURT: And when I have to start  
13 refereeing things like that, I'm going to be  
14 looking at attorneys' fees. So have them  
15 ready for attorneys' fees.

16 MR. RUSSELL: For Your Honor?

17 THE COURT: If there's a basis to  
18 award it, I may very well consider it. And if  
19 it's frivolous, I may consider it the other  
20 way. But I don't know. I don't have that  
21 order in front of me and --

22 MR. STEVENS: That's fair, Your  
23 Honor.

24 THE COURT: -- I'm just too fried to  
25 answer that.

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1 June 23rd.

2 MR. STEVENS: I think I'm leaving --

3 that's, I think, vacation. I hope.

4 MS. PEMBERTON: I'm out as well on

5 the 23rd.

6 THE COURT: All right. I don't have

7 any other time in June. Then we start in

8 July, and I've not set a docket yet.

9 MS. CAFFEY-KNIGHT: Your Honor, when

10 we were previously trying to reset the trial,

11 we determined that the weeks of the 17th

12 through 21 and 24 through the 28th, I guess

13 the beginning of 17th through 31st of July are

14 out.

15 THE COURT: All right. So when did

16 we set this trial?

17 MS. CAFFEY-KNIGHT: August 29.

18 THE COURT: Okay. How about the

19 11th of July? You said 17 through 31 is out.

20 MS. CAFFEY-KNIGHT: Yes, Your Honor.

21 THE COURT: How about the 11th?

22 MS. CAFFEY-KNIGHT: That's fine.

23 MS. PEMBERTON: I can do the 11th.

24 MR. RUSSELL: Same.

25 THE COURT: All right. Put down

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1 July 11 for this. I'm thinking we will have

2 already had the May hearing. We will have

3 already had a ruling. And so this shouldn't

4 take more than, what, a couple of hours?

5 MR. RUSSELL: Yeah.

6 THE COURT: I think we'll be able to

7 agree what the issues are going to be --

8 MR. STEVENS: Your Honor, I'm sorry.

9 THE COURT: Two vacations?

10 MR. STEVENS: No, I'm here on the

11 23rd. It's that week of the 10th. I

12 apologize, I had that wrong. I'm out the week

13 of the 10th.

14 THE COURT: She's out the next

15 two weeks.

16 MR. STEVENS: I apologize.

17 THE COURT: That's all right. I

18 think your personal time is more important.

19 MR. STEVENS: I'm available 17th,

20 18th, and 21st the following week.

21 THE COURT: Wynne is out 17 to 31.

22 MS. CAFFEY-KNIGHT: Someone on our

23 side is.

24 MR. STEVENS: How about August 1st,

25 2nd, or 4th?

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1 THE COURT: Yep.

2 MR. STEVENS: August 1st.

3 MS. PEMBERTON: I can do the 1st.

4 THE COURT: When does football

5 season start?

6 MR. RUSSELL: I'm out of town that

7 week.

8 THE COURT: Well, I have to get a

9 vacation in before football season starts.

10 You're on vacation, Mr. Russell?

11 MR. RUSSELL: I am.

12 THE COURT: That first week?

13 MR. RUSSELL: Yeah, right before

14 school starts.

15 THE COURT: All right. Seven? Are

16 you back by then?

17 MR. RUSSELL: Yes. Yes, ma'am.

18 Yes, Your Honor.

19 THE COURT: You were in front of

20 Sharon Bell.

21 MR. RUSSELL: I just -- I corrected

22 myself. I was looking at my phone. Yes, Your

23 Honor.

24 MR. STEVENS: August 7th is fine

25 with me.

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1 THE COURT: These younger lawyers

2 have no idea what I'm talking about.

3 MR. RUSSELL: I know who she is.

4 I've heard stories.

5 THE COURT: She broke through a lot

6 of glass ceilings, so she had a few stitches.

7 That's okay. She was like a state rep. One

8 of the first women state reps. Then she was

9 the first woman judge.

10 So we've got August 1st -- no, I'm

11 sorry. August 7th. All right. Tracy, get

12 that down, August 7. Set this for a couple of

13 hours. Tell Kelly that we've got August 7.

14 So in light of what we've talked

15 about today, we think we're still gonna need

16 all five days in May?

17 MR. HALE: I never thought we would

18 take five.

19 THE COURT: It's better to have it

20 and not need it than not have it.

21 MR. HALE: Yeah. Well, we rely so

22 heavily on the documents and how they are

23 interpreted we don't -- we're not going to be

24 putting on a whole lot of proof. We have some

25 to put on. I don't -- I don't think five days

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1 would be required, but that's just me.

2 THE COURT: All right. Well, thank

3 you. That was very productive, I hope.

4 MS. PEMBERTON: Thank you.

5 MR. STEVENS: Thank you, Your Honor.

6 MS. CAFFEY-KNIGHT: We'll talk, Your

7 Honor, about the trial dates and see if we

8 can't narrow that down for May.

9 THE COURT: All right.

10 MS. CAFFEY-KNIGHT: Today may have

11 helped some with that.

12 Your Honor, we have a motion to

13 compel. Is there an hour or something next

14 week we could be heard? It's on the Jonas.

15 THE COURT: Oh, on the motion to

16 compel?

17 MS. CAFFEY-KNIGHT: I know you don't

18 have time for that right now. And we have

19 been talking since.

20 THE COURT: You all can hang around

21 until 2:00 if, if the Metro case can be talked

22 about with us by -- I have a meeting at 1:00.

23 MS. CAFFEY-KNIGHT: I know you do.

24 THE COURT: So you're welcome to

25 wait until after that. You can go eat lunch.

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1 Go to Tellico, get a really good lunch. I

2 think they are -- they opened up the 31st.

3 Whatever you all want to do.

4 MS. CAFFEY-KNIGHT: I know you've

5 had enough.

6 THE COURT: I'm not going to be back

7 here next week, I don't think.

8 Do I have an hour on the 12th?

9 I am back on day three of the trial

10 on Friday, so I don't have time then.

11 MS. CAFFEY-KNIGHT: I think I'll

12 just stick around this afternoon, then,

13 because especially with our trial.

14 THE COURT: Unless you want to do it

15 by Zoom on Monday.

16 MS. CAFFEY-KNIGHT: I can do that.

17 THE COURT: Or you all can hang

18 around today. I really would suggest that you

19 all drive up to Tellico Plains Bakery and have

20 lunch.

21 MR. HALE: So Zoom, that would be on

22 the 10th?

23 THE COURT: I would have to have

24 Zoom later in the afternoon on the 10th

25 because I'm not in court. That's an office

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1 day.

2 MR. HALE: Let's do that. Because

3 we're talking about -- we're trying to --

4 THE COURT: Work it out?

5 MR. HALE: We're trying to.

6 THE COURT: Okay. That's fine. You

7 can do it in the afternoon if you want to set

8 up something.

9 MS. CAFFEY-KNIGHT: What we're

10 asking for is can we come sit and look at your

11 database with the Jonas rep and figure out if

12 we can't get what we want.

13 THE COURT: Now you're eating into

14 my lunch time.

15 MR. RUSSELL: What time on the 12th?

16 THE COURT: 3:00.

17 MR. RUSSELL: That works.

18 THE COURT: Send me a Zoom invite.

19 The 10th, a Monday.

20 MR. HALE: Oh, it's Monday.

21 THE COURT: Monday.

22 (Whereupon, the proceedings

23 concluded at 12:34 p.m.)

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C E R T I F I C A T E

1 STATE OF TENNESSEE:

2 COUNTY OF KNOX:

3 I, LORA R. BOATMAN, Licensed Court

4 Reporter, in and for the State of Tennessee, do

5 hereby certify that the above hearing was reported

6 by me and that the foregoing pages of the transcript

7 is a true and accurate record to the best of my

8 knowledge, skills, and ability.

9 I further certify that I am not related to

10 nor an employee of counsel or any of the parties to

11 the action, nor am I in any way financially

12 interested in the outcome of this case.

13 I further certify that I am duly licensed

14 by the State of Tennessee Board of Court Reporting


15 as a Licensed Court Reporter as evidenced by the LCR

16 number and expiration date following my name below.

17 IN WITNESS WHEREOF, I have hereunto set my

18 hand this the 13th day of April, 2023.

19

20 

21

22

23 LORA R. BOATMAN, LCR No. 106.

24 Expiration Date: 6/30/2024.

25