

IN THE CHANCERY COURT OF MONROE COUNTY  
STATE OF TENNESSEE

RARITY BAY PARTNERS, formerly known as  
SALEM POINTE CAPITAL PARTNERS

Plaintiff

v.

RARITY BAY COMMUNITY ASSOCIATION, INC.  
and  
SALEM POINTE CAPITAL, LLC

Defendants

Docket No. 21173

**FILED**

FEB 22 2023

TIME 5:14  
TERESA A. CHOATE  
CLERK & MASTER MONROE CTY.

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JOINT STATEMENT OF ISSUES OUTSTANDING FOR TRIAL

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The parties, Rarity Bay Partners f/k/a Salem Pointe Capital Partners (“Partners”), Rarity Bay Community Association, Inc. (“RBCAI”), and Salem Pointe Capital, LLC (“LLC”), by and through counsel, pursuant to the Honorable Court’s directive to provide the Court a document titled “Issues Outstanding” in the above styled case.

The parties submit the following issues are jointly agreed to as issues for trial:

1. Whether Partners is entitled to costs (including reasonable attorney fees) incurred to obtain the order that Partners was entitled to the production of all election records for the 2019 Election.
2. Whether Salem Pointe Capital, LLC (“LLC”) is entitled to vote on lots it owns in purported Phase 16 and Phase 17.
3. Whether Partners is equitably estopped from complaining of the RBCAI’s allowance of actions taken by LLC as declarant, when Partners took same or similar actions when sharing in declarant rights.

4. Whether the RBCAI's allowance of voting rights by LLC on lots in Phase 16 was in good faith/reasonable.
5. Whether the RBCAI's decisions complained of were made in good faith and protected under the governing documents and/or applicable Tennessee law.
6. Whether Partners is entitled to recover attorney fees from the RBCAI.
7. Whether the RBCAI is entitled to recover attorney fees from Partners.

Statement of additional issues that RBCAI believes are appropriately pled and are issues to be decided at trial.

1. Whether Matt Daniels had standing to bring this cause of action.
  - Partners' Comment: Rarity Bay Partners is the named plaintiff, not Mr. Daniels, who executed the Complaint "as an authorized representative of Plaintiff Rarity Bay Partners." Association did not raise this issue in its Amended Answer, but only for the first time in a September 30, 2022 motion to supplement its motion for summary judgment. Association did not raise the issue during argument on the motion, which the Court ultimately denied. See December 5, 2022 Order Denying Motion for Summary Judgment with Excerpts of Transcript of Proceedings Exhibit 1 and 2. This issue is also not material to this case.
  - RBCAI Comment: When a statute creates a cause of action, the issue of standing is interwoven with subject matter jurisdiction and is nonwaivable. Further, any order denying summary judgment simply leaves the issues for trial.
2. Whether Rarity Bay Partners ("Partners") had standing to bring this cause of action.
  - Partners' Comment: The Court has held that Partners is in good standing in the community and has had a right to vote throughout the duration of this litigation.

The Court held that Partners were in good standing. See May 28, 2019 Order in Monroe Chancery No. 20489, transcript at p. 133: 13-16. The Court further held that Partners could nominate one person for the board. Id. at 134: 22 – 135: 1. The Court has held that this ruling will affect future elections, that the court ruling would not be an advisory opinion, this case involves a matter of public interest, and that this case is a matter capable of repetition if the Court does not address the issues. See July 18, 2022 Order Denying Rarity Bay Community Association, Inc. Motion to Dismiss. In granting summary judgment declaring the 2019 election to be invalid, the Court again found Partners was in good standing to bring this action. . See proposed Order Granting Rarity Bay Partners' Motion for Partial Summary Judgment with Exhibit 1 (May 28, 2019 Order in 204890 and Exhibit 2 (Excerpt from December 5, 2022 Transcript of Proceedings at p. 10:12-15).

- RBCAI Comment: When a statute creates a cause of action, the issue of standing is interwoven with subject matter jurisdiction and is nonwaivable. Further, any order denying summary judgment and/or a motion to dismiss simply leaves the issues for trial. Finally, there remain issues in dispute regarding standing, such as Partners' standing to bring/maintain a derivative action due to a conflict of interest with RBCAI, which determination will require findings of fact after hearing the trial proof. Additionally, there remain outstanding issues in case no. 20489 pertaining to whether Partners owed any money to the Association pursuant to the Settlement Agreement or as a regular lot owner pursuant to the RBCAI governing documents. Such determination could affect Partner's

eligibility to vote in elections or have a representative serve on the board of directors.

3. Whether Partners had standing to vote or have a representative serve as director at all material times pursuant to the governing documents of the RBCAI.

- Partners' Comment: The Court has held that Partners is in good standing in the community and has had a right to vote throughout the duration of this litigation. The Court held that Partners were in good standing. See May 28, 2019 Order in Monroe Chancery No. 20489, transcript at p. 133: 13-16. The Court further held that Partners could nominate one person for the board. *Id.* at 134: 22 – 135: 1. The Court has found that the Association did not have right to prohibit Partners from participating in the election for board. See March 25, 2021 Order in Monroe Chancery No. 20489 at ¶ 19. The Court has held that the Association did not have right to strip Partners of voting in elections or its right to nominate a candidate for board. *Id.* at ¶¶ 53 and 54. The Court reiterated its finding that Partners was not in default when it granted summary judgment invalidating the 2019 election results because LLC voted on lots it did not own. See proposed Order Granting Rarity Bay Partners' Motion for Partial Summary Judgment with Exhibit 1 (May 28, 2019 Order in 204890 and Exhibit 2 (Excerpt from December 5, 2022 Transcript of Proceedings at p. 10:12-15).
- RBCAI Comment: A final determination has not been made regarding whether Partners owes assessments or money to the Association in case no. 20489. The Court held that Partners was in good standing in 2019 in case no. 20489 based explicitly upon Partners' payment into a separate bank account of funds sufficient

to cover its potential RBCAI annual assessment obligation for 2018 under the Settlement Agreement. Partners has not made any payments into any separate bank account since 2019 to cover its potential RBCAI annual assessment obligation for the years 2019 through 2022 under the Settlement Agreement. Until a final determination is made regarding Partners' RBCAI annual assessment obligation to RBCAI under the Settlement Agreement in case no. 20489, Partners' standing to vote or have a representative on the Board remains an issue for final hearing at trial.

4. Whether Partners claims are direct or derivative and if derivative, specifically which ones.

- Partners' Comment: The Court has found that this case will affect future elections, that the court ruling would not be an advisory opinion, this case involves a matter of public interest, and that this case is a matter capable of repetition if the Court does not address the issues. See July 18, 2022 Order Denying Rarity Bay Community Association, Inc. Motion to Dismiss. The Court has held in the November 2, 2022 hearing denying Association's motion for summary judgment that "I think that as far as the derivative action is concerned, I've already said that I think this is a public interest." See December 5, 2022 Order Denying Motion for Summary Judgment with Excerpts of Transcript of Proceedings Exhibit 1 and 2.
- RBCAI Comment: A determination of whether specific claims asserted by Partners are direct or derivative has not been made in this case. Such a determination is not statutory but rather is controlled by common law according to

the standard adopted by the Tennessee Supreme Court in 2016. Whether a claim is a matter of "public interest" is not the applicable test. Findings of fact and conclusions of law will need to be made based upon the appropriate standard after hearing the proof at trial.

Statement of additional issues that LLC believes are appropriately pled and are issues to be decided at trial.

1. The Court's previous ruling on the question of the number of votes to which Class B member interests were entitled was a Motion for Temporary Injunction. LLC seeks a final hearing on the injunction sought by Partners to prohibit the interpretation of the governing documents of the Rarity Bay Development in the way it was intended by the parties who negotiated the 6th amendment. Whether giving the declarant, as the holder of Class B membership, interests, the number of votes calculated or determined, pursuant to the following formula, constitutes a violation of the charter of the association:

The sum of the total memberships held by the Declarant, Declarant-related entities, all Builders and any Exempt Person multiplied by five equals the number of votes that the holder of the class B membership interest is entitled to vote.

- Partners Comment: The Court has already found that "the governing documents of the Association do not allow LLC to have voting rights for property it does not own. . ." See July 21, 2021 Order at pg. 2. Furthermore, the Court has relied on that finding that LLC could not vote on lots it did not own in its recent ruling on Rarity Bay Partners' Motion for Partial Summary Judgment finding that "RBCAI allowed LLC to vote for lots it did not own; that invalidated that election." The Court has thereby granted summary judgment on this issue. See proposed Order

Granting Rarity Bay Partners' Motion for Partial Summary Judgment with Exhibit 1 (May 28, 2019 Order in 204890 and Exhibit 2 (Excerpt from December 5, 2022 Transcript of Proceedings at p. 10:12-15). LLC did not oppose Rarity Bay Partners Motion Partial Summary Judgment on this issue, and therefore should be estopped from raising it now.

- LLC's Comment: The Order of July 21, 2021 was with respect to a hearing on a Motion for Temporary Injunction sought by Partners, pursuant to T.R.C.P. 65.04 and was not a final hearing on the merits. The proposed Order referenced as resulting from the December 5, 2022 hearing was Partners' motion seeking "Partial Summary Judgment against Rarity Bay Community Association, Inc." and was not directed to the LLC.

2. Whether Partners is equitably estopped from disputing the foregoing interpretation of the provisions determining the number of votes to which the Declarant is entitled by reason of Partner's adoption of the same interpretation.

- Partners Comment: See comment immediately above. The Court thereby granted summary judgment on this issue. See proposed Order Granting Rarity Bay Partners' Motion for Partial Summary Judgment with Exhibit 1 (May 28, 2019 Order in 204890 and Exhibit 2 (Excerpt from December 5, 2022 Transcript of Proceedings at p. 10:12-15). LLC did not oppose Rarity Bay Partners Motion Partial Summary Judgment on this issue, and therefore should be estopped from raising it now.
- LLC's Comment: The Order of July 21, 2021 was with respect to a hearing on a Motion for Temporary Injunction sought by Partners, pursuant to T.R.C.P. 65.04.

and was not a final hearing on the merits. The proposed Order referenced as resulting from the December 5, 2022 hearing was Partners' motion seeking "Partial Summary Judgment against Rarity Bay Community Association, Inc." and was not directed to the LLC.

Statement of additional issues that Partners believes are appropriately pled and are issues to be decided at trial:

1. Whether Bald Eagle received additional votes for Unit 1414, Unit 1415, and Unit 1462 and if so, that the Court declare that any additional votes cast in the 2019 election in connection with those lots shall be void and not counted, (This is pled in the Complaint at Count 4. The parties filed a Stipulation that Bald Eagle was only entitled to cast 102 votes but Partners has not stipulated that Bald Eagle only cast 102 votes or that Association only counted 102 votes).

- RBCAI Comment: RBCAI remains willing, as previously offered, to stipulate that Bald Eagle only cast 102 votes and that RBCAI only counted 102 votes in the 2019 election. Thus, this issue is not disputed for purposes of trial.

This 22<sup>nd</sup> day of February, 2023.

**RARITY BAY PARTNERS, formerly known as SALEM POINTE CAPITAL PARTNERS**

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