

IN THE CHANCERY COURT FOR MONROE COUNTY, 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. 21,173

FILED

FEB 24 2023

TIME 10:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

**ORDER GRANTING RARITY BAY PARTNERS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

The parties appeared before this Honorable Court on November 2, 2022, for a hearing on *Rarity Bay Partners' Motion for Partial Summary Judgment* ("the Motion") and again on December 5, 2022, for further argument and a ruling on the Motion. Upon the Motion, the argument of counsel, the record as a whole, and for good cause shown, the Court finds that:

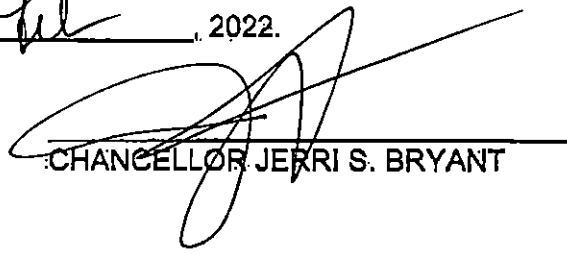
- (1) The Court has already ruled Monroe Chancery Case No. 20489 that Partners was in good standing and not in default and, therefore, Partners could vote and participate in 2019 election and attached hereto is the Court's previous Order in Case No. 20489, dated May 28, 2019, with the attached transcript of its findings of fact in support of its conclusions;
- (2) That the Rarity Bay Community Association, Inc. allowed Salem Pointe Capital, LLC to vote in the 2019 election for lots it did not own;
- (3) That Partners' candidate lost by two votes in the 2019 election;
- (4) That Partners' candidate would have won the 2019 election if Salem Pointe Capital, LLC was not allowed to vote on lots it did not own;
- (5) The 2019 election is invalid.

ENTERED
MINUTE BK. 162
PAGE 230-242
MONROE COUNTY
CHANCERY COURT

Accordingly, it is hereby, **ORDERED, ADJUDGED and DECREED** as follows:

- (1) The December 5, 2022, excerpted Transcript of Proceedings in Monroe Chancery Court No. 21173, attached hereto as **Exhibit 1**, is hereby incorporated by reference to serve as additional findings, conclusions and holdings of the Court; and
- (2) The Court's Order of May 28, 2019, in Case No. 20489, attached as **Exhibit 2**, is hereby incorporated by reference; and
- (3) The Motion is **GRANTED**.

Enter this 24 day of Feb, 2022.



CHANCELLOR JERRI S. BRYANT

APPROVED FOR ENTRY:

KENNERLY MONTGOMERY & FINLEY, P.C.

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 Email: kstevens@kmfpc.com
 Attorneys for Rarity Bay Community Association, Inc.

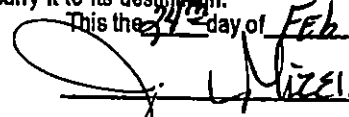
via email

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 Attorneys for Rarity Bay Community Association, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this the foregoing document have been served upon all parties of interest in this case by delivering a true and exact copy to the offices of said parties or by placing a copy in the United States mail addressed with sufficient postage thereon to carry it to its destination.

This the 24th day of Feb, 2023

 Clerk & Master

Emailed to EA. Atty listed HEREON.

ELMORE, STONE & CAFFEY, PLLC

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IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

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.

TRANSCRIPT OF PROCEEDINGS

DECEMBER 5, 2022

FILED

FEB 24 2023

TIME 10:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

LORA R. BOATMAN, LCR, CCR

GATEWAY COURT REPORTING & VIDEO, LLC
606 West Main Street, Suite 270
P.O. Box 950
Knoxville, Tennessee 37901
(865) 804-2500

Transcript of Proceedings

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1 final decision is made.

2 THE COURT: Okay.

3 Well, I think this case becomes more
4 difficult because the same issues come up in
5 other cases and I rule on the one time, and
6 then I come back into a new case, and then I'm
7 thinking I've already ruled on this, haven't
8 I? But I'm looking at the documents of that
9 other case, and I'm not seeing that and -- it
10 causes so much confusion because of the
11 interrelation of all three of these cases.

12 So I think if I am being consistent,
13 that I have already ruled that Partners was
14 not in default and, therefore, they could
15 vote. And that the facts that have been
16 raised in this case are such that the votes of
17 the 2019 election, where the Partners'
18 candidate lost by two votes, but RBCAI allowed
19 LLC to vote for lots it did not own; that
20 invalidated that election. And that's my
21 holding in that case.

22 Now, off that issue, we've got --
23 I'm wondering how it's best and this --
24 without Mr. Russell and Mr. Hale here, I'm
25 not -- I'm just going to throw these questions

Transcript of Proceedings

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C E R T I F I C A T E

STATE OF TENNESSEE:

COUNTY OF KNOX:

I, LORA R. BOATMAN, Licensed Court Reporter, in and for the State of Tennessee, do hereby certify that the above hearing was reported by me and that the foregoing pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the State of Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand this the 6th day of December, 2022.


LORA R. BOATMAN, LCR No. 106.
Expiration Date: 6/30/2024.

IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

RARITY BAY COMMUNITY
ASSOCIATION, INC.,

Plaintiff/Counter-Defendant,

v.

RARITY BAY PARTNERS F/K/A
SALEM POINTE CAPITAL PARTNERS,

Defendant/Counter-Plaintiff/
Third Party Plaintiff,

v.

SALEM POINTE CAPITAL, LLC, MICHAEL
AYRES and DOUG YOAKLEY,

Third Party Defendants.

CASE NO. 20489

FILED

MAY 28 2019

THOMAS A. GRIFFIN
CLERK & MASTER MONROE CTY.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION
FOR TEMPORARY INJUNCTION

Rarity Bay Partners' ("Defendant") Motion for Temporary Injunction filed April 15, 2019, came for a hearing before this Court on April 24, 2019. The Court, after reviewing the parties' briefs, hearing testimony and argument of counsel, grants in part and denies in part the Motion for the reasons stated in the Court's memorandum opinion, the transcript of which is attached hereto and incorporated into this Order.

SO ORDERED this 22 day of May, 2019.

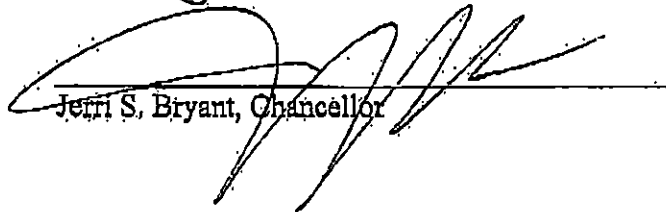

Jerri S. Bryant, Chancellor

Exhibit 2 to Order

CERTIFICATE OF SERVICE

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

John P. Konvalinka, Esq.
Harry R. Cash, Esq.
633 Chestnut Street, Suite 900
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Thomas M. Hale, Esq.
Kramer Rayson, LLP
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Knoxville, TN 37901

This 8th day of May, 2019.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this the foregoing document have been served upon all parties of interest in this case by delivering a true and exact copy to the offices of said parties or by placing it in the United States mail addressed with sufficient postage thereon to carry it to its destination.

File the 28th day of May, 2019
Clerk & Master

J. Mizell

To All 6 atty's listed hereon.

Mr. C. A.

RARITY BAY COMMUNITY ASSOCIATION vs. RARITY BAY PARTNERS
Ruling, -04/24/2019

1 IN THE CHANCERY COURT FOR HORN COUNTY, TENNESSEE

2 RARITY BAY COMMUNITY ASSOCIATION, INC.

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9 RARITY BAY PARTNERS, C/A/S SALEM POINT CAPITAL PARTNERS,

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1 (On the record at 4:36 p.m.)

2 THE COURT: All right. This cause

3 was heard today on two motions filed by the

4 party I'm going to refer to as Partners,

5 which is Rarity Bay Partners, formerly known

6 as Salem Pointe Capital Partners, for a

7 temporary injunction and a motion to lift a

8 lien.

9 I think the motion to lift the lien

10 will be the thing I deal with the first.

11 It's the least difficult of the two issues.

12 The motion to lift a lien that was

13 filed in this matter is one that I think

14 requires an injunction, which is an order by

15 this Court to require an affirmative action,

16 and I think at this point where we are in

17 showing of immediate and irreparable harm

18 such that this Court needs to order that

19 action.

20 Partners is still able to sell lots

21 and get individual releases of liens on each

22 lot as the lots are sold, and there is a

23 method for Partners to obtain whatever

24 damages they suffer because of a lien should

26 it later be determined by this Court to be

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1 inappropriate,

2 So the motion for that lift of

3 lien, which I'm interpreting as a motion for

4 an injunction requiring an affirmative act,

5 is denied.

6 The next part is the motion for

7 temporary injunction to stop the election

8 process.

9 That requires the Court to analyze

10 several documents between the parties.

11 Those documents become more convoluted

12 because of the positions of the parties in

13 2016 versus today.

14 The first document this Court looks

15 at which governs this situation is, of

16 course, the bylaws of Rarity Bay Community

17 Association, Inc. The parties have provided

18 me a 31-page document that they stipulate is

19 the bylaws of the 2016, going to call them

20 the Property Owners Association of the

21 Association.

22 The second document this Court has

23 reviewed is -- excuse me, and the bylaws

24 are -- while they are not signed, they were

25 recorded on September 28th, 1998,

RARITY BAY COMMUNITY ASSOCIATION vs RARITY BAY PARTNERS
Ruling, - 04/24/2019

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1 Sometime in 2015, Salem Pointe
2 Capital, LLC and Salem Pointe Capital
3 Partners formed a general partnership which
4 was collectively referred to in this
5 Settlement Agreement called SPC.
6 I'm sorry. That may be incorrect.
7 Sometime before December 7th, 2015
8 those two parties formed the general
9 partnership which was collectively called
10 SPC in the Settlement Agreement.
11 The Settlement Agreement was
12 between SPC and Rarity Bay Community
13 Association, Inc. That Settlement Agreement
14 declared certain rights of the parties
15 concerning the land.
16 They apparently were fussing at
17 that point in time about assessments. They
18 were also fussing about -- at that time
19 about who could run for the annual meeting,
20 and so they settled this, only four years
21 later to bring it back in front of me again.
22 Generally the 2015 Settlement
23 Agreement settled this controversy and
24 defined SPC as a partnership between
25 Partners and LLC and at that time those two

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1 parties were in partnership together. Today
2 they are no longer in a partnership
3 together, or at least they are litigating
4 their status in another lawsuit in this
5 court.
6 Both parties are exempt from
7 assessments in the document called
8 Settlement Agreement. The three parties
9 together, being -- excuse me. The two
10 parties being SPC as one party and the
11 Association agreed that they were exempt
12 from assessments, but they agreed to self
13 impose and pay, which is the only two things
14 I find that they agreed to do, and so I also
15 find that they have self imposed and paid.
16 The document doesn't say to whom
17 and the document doesn't say how, but it
18 says any and all payment of annual
19 assessment by the partnership not to be
20 confused with the defendant in this case,
21 are to go to a mutually agreed upon
22 infrastructure improvements. Not perfect
23 grammar, but not my grammar.
24 So they have -- Partners, the
25 defendant in this case, has tendered into an

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1 account an amount of money to cover that
2 self-imposed assessment. So I find that
3 that is not a basis for them not to be a
4 member in good standing.
5 In the same agreement -- and I'm
6 referring to the Settlement Agreement when I
7 talk about the agreement, and I was reading
8 from Paragraph 1.
9 In the same agreement in
10 Paragraph 4, the parties further agree that
11 SPC was going to do -- take certain action
12 in 2015 to effect the 2015 annual election.
13 For instance, it agreed that it
14 would slate no more than three candidates in
15 that election, and the parties, in the same
16 sentence with a comma -- and believe it or
17 not, a lot of times Chancery Court comes
18 down to sentence structure.
19 In that sentence with a comma, it
20 says, "As the parties acknowledge, SPC's
21 representatives are not subject to the
22 nomination process as set forth in the
23 association's bylaws."
24 Then it goes on. They talk about
25 the 2016 election again, and they say we are

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1 going to follow the normal nomination and
2 election procedures in those bylaws.
3 Then the next sentence, "The
4 parties further agree," meaning we're
5 changing topics, "that SPC," being the
6 partnership between RBC -- or between LLC
7 and Partners, "may nominate any number of
8 candidates in so choosing for all open
9 seats in the 2017 annual election and
10 thereafter." That sentence talks about how
11 they can nominate people for election.
12 Then the next sentence, when it
13 talks about future nominations, "shall
14 continue to be held in accordance with the
15 requirements of the bylaws for Rarity Bay."
16 Okay. With the next few years the
17 SPC entity did nominate and put some people
18 on the board but I don't find -- if they
19 did, it wasn't dispositive.
20 Now, SPC and the -- excuse me.
21 Partners and the LLC are no longer in a
22 partnership, and Partners has attempted to
23 use the word "defendant" to apply to them in
24 different parts of different ones of these
25 documents.

RARITY BAY COMMUNITY ASSOCIATION vs RARITY BAY PARTNERS
Ruling, 04/24/2019

1 But when I look at the bylaws, the
 2 next thing that Partner says -- or excuse
 3 me, that the Association says is that even
 4 if you say they are not the kind of their
 5 assessment they still can't run for our
 6 board because they aren't residents as was
 7 determined by Resolution No. 26.
 8 Well, the bylaws do not provide
 9 that the -- that they can be amended by
 10 resolutions of the board of directors. The
 11 bylaws require a 87 percent majority to be
 12 amended. So that Resolution 26 can't
 13 impose -- and it also would be inconsistent
 14 with the bylaws which wasn't amended in
 15 other parts to impose a residency
 16 requirement on the member who is not a
 17 natural person and strapping their ability
 18 to nominate a number of candidates for open
 19 seats.
 20 So when I go through the bylaws and
 21 disregard the resolution, we get to the
 22 place that who -- I go to the bylaws to see
 23 who can nominate and who can vote.
 24 And I find, therefore, by the
 25 payment of the money into the joint account,

1 entity may appoint.
 2 They can appoint an officer,
 3 director, partner, member, manager, employee
 4 or fiduciary, "shall be eligible to serve as
 5 a director provided that no member may have
 6 more than one such representative on the
 7 board at a time."
 8 So that's why I say you get one
 9 person. I am enjoining this election. You
 10 will go back and pick your one person and
 11 your one person can run and you can vote all
 12 of your lots one time.
 13 So in summation, the motion for
 14 injunction is granted in part and denied in
 15 part.
 16 Okay. Anything else?
 17 MR. LOCKETT: No, Your Honor.
 18 MR. STEVENS: Thank you, Your
 19 Honor.
 20 (Proceedings ended at 4:50 p.m.)

1 the person nominated by RPC is in good
 2 standing and can run.
 3 However, according to the bylaws
 4 they get one person on the board and they
 5 don't get five votes. The only person who
 6 can vote is the declarant and RPC is
 7 an exempt person but they are not the
 8 declarant under the provisions in the
 9 bylaws.
 10 They may be in the Settlement
 11 Agreement, but they are not defined as that
 12 person in the bylaws, and the bylaws
 13 requires the -- governs who gets to vote and
 14 what are they called. And RPC is a member
 15 under the bylaws. They can vote all of
 16 their properties and all of their lots get
 17 one vote and I believe, if I read it
 18 correctly, they get one slot under 8.1. "No
 19 member and resident representing the same
 20 unit may serve on the board at the same
 21 time."
 22 Let's see. "In the case of a
 23 member which is not a natural person,
 24 any" -- and they are defining who that
 25 natural -- who the unnatural person, who the

Page 10
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 CERTIFICATE
 STATE OF TENNESSEE
 COUNTY OF KNOX
 I, Jeffrey D. Rusk, Registered
 Professional Reporter and Notary Public, do hereby
 certify that I reported in machine shorthand the
 foregoing proceedings, that the foregoing pages,
 inclusive, were prepared by me using computer-aided
 transcription and constitute a true and accurate
 record of said proceedings.
 I further certify that I am not an
 attorney or relative of any attorney of counsel
 connected with the action, nor financially
 interested in the action.
 Witness my hand and official seal
 this 24th day of April, 2019.

RARITY BAY COMMUNITY ASSOCIATION vs RARITY BAY PARTNERS
 Ruling, #04/24/2019

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RARITY BAY COMMUNITY ASSOCIATION vs RARITY BAY PARTNERS
Ruling, - 04/24/2019

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