

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

AUGUST 7, 2023

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

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 & CAFFEY, PLLC
8 5616 Kingston Pike, Suite 301
9 Knoxville, Tennessee 37919
10 (865)766-0056

11 FOR COUNTER-DEFENDANT RARITY BAY
12 COMMUNITY ASSOCIATION, INC:

13 Dana S. Pemberton
14 STOKES, WILLIAMS, SHARP, COPE & MANN
15 920 Volunteer Landing Lane, Suite 100
16 Knoxville, Tennessee 37915
17 (865)544-3833

18 FOR PLAINTIFF RARITY BAY
19 COMMUNITY ASSOCIATION, INC:

20 Kevin C. Stevens
21 KENNERLY, MONTGOMERY & FINLEY, P.C.
22 550 Main Street, Suite 400
23 Knoxville, Tennessee 37902
24 (865)546-7311

25 FOR THIRD-PARTY DEFENDANTS
SALEM POINTE CAPITAL, LLC,
MICHAEL AYRES and DOUG YOAKLEY:

Adam Russell (By Zoom)
FISHER-RUSSELL
10265 Kingston Pike, Suite C
Knoxville, Tennessee 37922
(865)259-7777

Thomas M. Hale
KRAMER RAYSON, LLP
800 South Gay Street, Suite 2500
Knoxville, Tennessee 37929
(865)525-5134

1 (Whereupon, the aforementioned case
2 came on for hearing on August 7, 2023, before
3 Chancellor Jerri S. Bryant, Monroe County
4 Chancery Court, and the following proceedings
5 took place, to wit:)

6 * * * * *

7 THE COURT: Okay. Now, which motion
8 was filed first for me to review?

9 MS. PEMBERTON: My motion for
10 clarification, Your Honor.

11 THE COURT: All right. Let's hear
12 it. And, Ms. Pemberton, remind me which
13 person or entity you represent.

14 MS. PEMBERTON: I'm here on behalf
15 of the association, Your Honor.

16 THE COURT: I'm ready when you are.

17 MS. PEMBERTON: Okay. Your Honor,
18 this is my motion on behalf of the association
19 that I filed. It was prompted by a request by
20 the members to hold a special election. That
21 request was made on June 27, 2023.

22 Board members were consulted. All
23 board members were consulted, and this motion
24 followed in its path for Your Honor to
25 clarify.

1 THE COURT: What day did you file
2 the motion so I can find it in the file?

3 MS. PEMBERTON: It was July the 7th,
4 the day I filed the motion.

5 The motion was filed, Your Honor,
6 because, quite frankly, the board is tired of
7 being sued. The order that was entered in
8 this case stated that there are countervailing
9 affidavits concerning the legal status of
10 certain lots in Phase 16 and new Phase 17.
11 The status of lots under continued division
12 are important issues because -- and I'm --

13 THE COURT: Let me cut to some of
14 the chase on this.

15 MS. PEMBERTON: Okay.

16 THE COURT: I read it. And I agree,
17 there is some confusion now, not just -- not
18 necessarily because of the order, but because
19 the May trial date was continued. And that's
20 what's caused the confusion. Now --

21 MS. PEMBERTON: And let me say this,
22 Your Honor.

23 THE COURT: So tell me where you
24 want to go now. Do you want to have your
25 election?

1 MS. PEMBERTON: The board will do
2 whatever Your Honor allows --

3 THE COURT: What does the board --
4 okay.

5 MS. PEMBERTON: Whatever Your Honor
6 allows to be done. The board did not want to
7 run afoul of the Court's order.

8 THE COURT: Sure. I think that's an
9 issue that needs to be clarified, but it needs
10 to be clarified because we didn't do the trial
11 date in May.

12 MS. PEMBERTON: Sure. So just let
13 the board know, Your Honor, and we'll respond
14 accordingly.

15 THE COURT: Do you agree?

16 MS. CAFFEY-KNIGHT: Yes, Your Honor.
17 I didn't receive a phone call. I
18 wish we weren't here on a motion for
19 clarification. I think it's pretty clear, the
20 Court said there could be special elections.
21 It's very clear. I clarified that at the end
22 when you say, "Yes, that's correct with the
23 voting." And I'm not the one who filed the
24 petition for the special election or anything
25 about that, and I guess that's what prompted

1 this order. But I think Your Honor was very
2 clear and put context to how that order came
3 out.

4 We were not -- that order came out
5 of our motion for injunctive relief, and we
6 were not asking the Court to enjoin any annual
7 election --

8 THE COURT: All right. So let's go
9 ahead with any properly called elections.

10 You have a problem, Mr. Hale?

11 MR. HALE: Your Honor, I do. I'd
12 like to be heard.

13 THE COURT: Sure.

14 MR. HALE: When I first got this
15 motion, I looked at the order that you wrote,
16 and I thought, well, this should be about a
17 five-minute hearing because --

18 THE COURT: I tried to make it five
19 minutes.

20 MR. HALE: -- because of the
21 language -- the language in your order was
22 pretty clear. And I do understand Your
23 Honor's point about the trial didn't occur.
24 And that may change things a little bit. But
25 the point is this: The reason the Court did

1 not think there should be another election is
2 because there was disagreement and confusion
3 about the rights of the parties to vote. That
4 hasn't changed.

5 THE COURT: I agree.

6 MR. HALE: That remains the
7 situation. And to say that Rarity Bay
8 Partners did not have anything to do with this
9 petition for the special election is ignoring
10 the fact that, as I read the petition, it is
11 signed by Mr. Daniels, with his
12 300-and-some-odd votes. And that's how they
13 get the requisite number of votes to be able
14 to ask for the special election. So I think
15 it needs to be straightforward in what the
16 facts are.

17 And I think one of the things that
18 caused me to feel like I needed to be here
19 today, which I thought I didn't, but I got the
20 response of Partners last Thursday afternoon.
21 It's a 20-page response. It spends 10, 15
22 pages going through the whole history of
23 Case 21173, and then it goes into the Frisbey
24 case and the removal of the directors, and it
25 goes through all of that history. But then,

1 starting on page 13, it begins an
2 unsubstantiated -- there's no affidavits that
3 support it. It is counsel for Partners, who
4 is spending five pages talking about things
5 that are not in the record, and that I hope
6 the Court will not consider, because it is
7 suggesting that two of the board members have
8 been bought off with memberships, golf
9 memberships, premier golf memberships in the
10 club. Nothing could be further from the
11 truth. But Partners doesn't care about that,
12 Your Honor.

13 THE COURT: I don't consider facts
14 that are unsubstantiated.

15 MR. HALE: Okay.

16 THE COURT: This I put to me -- when
17 I read the motion, for clarification, when I
18 read this order right here, I'm like, okay, I
19 understand where we are, but I really -- it's
20 because you all didn't do that trial date the
21 first of May.

22 MR. HALE: I wanted to.

23 THE COURT: I know.

24 MR. HALE: I tried.

25 THE COURT: I wanted to.

1 MR. HALE: I wanted the Court to
2 bifurcate it and try the case.

3 THE COURT: I wanted to. Believe
4 me, nobody wants this one over more than me.

5 MR. HALE: Maybe me.

6 THE COURT: I agree. I mean, I say
7 it. You all know it.

8 MR. HALE: We all know it.

9 The only thing I would say about
10 having a special election now is the same
11 concern that the Court had --

12 THE COURT: Well, let's see what the
13 outcome is. I think let's see what the
14 outcome is.

15 MS. PEMBERTON: I've got a few more
16 issues I'd like to touch on of the special
17 election.

18 THE COURT: That's -- we don't even
19 have this case set for trial. Do we have it
20 set in February of next year or January?

21 MS. PEMBERTON: I think we can set
22 it right after the partnership case.

23 THE COURT: Well, I don't have five
24 days to give you until January or February.

25 MS. PEMBERTON: Well, all -- may I

1 approach the podium, Your Honor?

2 THE COURT: Sure.

3 I mean, we have four people on the
4 board whose terms have expired. We have two
5 people that Mr. Ayres removed that nobody did
6 the special election to replace. That's six
7 people.

8 MS. PEMBERTON: And -- and that's --
9 that's fine, Your Honor. We'll hold the
10 election. I have a few questions. I would
11 like to stave off additional lawsuits to this
12 board, to this association, if I can. And
13 that's with respect to voting rights for any
14 upcoming elections --

15 THE COURT: But aren't you asking me
16 for an advisory opinion?

17 MS. PEMBERTON: Well, Your Honor,
18 yes. Because what happens is we --

19 THE COURT: Put that in the record
20 so when I deny it, the Court of Appeals goes,
21 yes, you did the right thing. She's not
22 allowed to give advisory opinions.

23 MS. PEMBERTON: And here's -- here's
24 where the board -- I've been saying this over
25 and over and over. We're in the middle.

1 We're tired of getting sued. We do need some
2 direction, because no matter what direction we
3 go in, we -- we expose ourselves. And I do --
4 I did file a supplemental motion because now
5 we have a group, the self-governance group,
6 who has scheduled an election. The nonprofit
7 act in the bylaws don't allow for that.

8 THE COURT: I can't answer that
9 question. I've not read it. I've not been
10 briefed on it. I don't know the answer to
11 that. But I said -- I said let any properly
12 called election.

13 MS. PEMBERTON: Okay. Well, we'll
14 be back here because that's not a properly
15 called election.

16 THE COURT: When can we try this
17 thing and everybody agree that, yes, we're
18 ready, we're ready to go, let's get this over
19 with?

20 MS. PEMBERTON: I don't know. And
21 then another issue, Your Honor --

22 THE COURT: What is the five days --

23 MS. PEMBERTON: -- but Your Honor
24 ruled in the Frisbey case that this order
25 finds the bylaws relied upon by the board and

1 the declarant are inconsistent with Tennessee
2 law and the charter. So in the upcoming
3 election, do we rely on the sixth amendment or
4 not?

5 I mean, these are questions that the
6 board needs answered or the board subjects
7 itself to lawsuits. I mean, we just can't --
8 the community can't win here until a final
9 hearing.

10 THE COURT: Well, I think the
11 community can win, when they get a majority
12 vote on whatever they're voting on.

13 MS. PEMBERTON: But the voting
14 rights has to be resolved in order to do that;
15 or, as Your Honor said in your order, any
16 election would be suspect.

17 THE COURT: Let me -- let me go
18 back. What is 11943? What case is that?

19 MS. CAFFEY-KNIGHT: Partnership,
20 Your Honor. The partnership dispute is set
21 for December.

22 THE COURT: So why don't we do this
23 one in December?

24 MS. PEMBERTON: Because I think the
25 partnership issues are going to drive a lot

1 of...

2 MS. CAFFEY-KNIGHT: We've already
3 decided certain issues have to be tried in the
4 partnership case that give the association
5 that guidance that I think Ms. Pemberton is
6 asking about.

7 MS. PEMBERTON: Yeah. But I will
8 say this, Your Honor --

9 THE COURT: How much time is this
10 case going to try? Is it really five days?

11 MS. CAFFEY-KNIGHT: It...

12 MS. PEMBERTON: I doubt -- it --

13 MS. CAFFEY-KNIGHT: We don't know,
14 Your Honor. I think we go back and forth on
15 that.

16 MS. PEMBERTON: If you could put us
17 on the heels of that in December. Surely the
18 partnership case can be tried, and then that
19 would shorten the...

20 THE COURT: So you're thinking --
21 but you're not saying it out loud because you
22 don't want to jinx it, but you're thinking
23 19943 might not take five days.

24 MS. PEMBERTON: That's what I'm
25 thinking, and then we can roll right in.

1 MS. CAFFEY-KNIGHT: I disagree, Your
2 Honor.

3 THE COURT: I don't. Why would you
4 disagree?

5 MS. CAFFEY-KNIGHT: It depends on --
6 and we had an hour-long phone conversation on
7 Friday. It depends how proof is going to come
8 into the case, whether we can streamline some
9 things. We're going to have a number of
10 witnesses.

11 THE COURT: I'm going to order
12 counsel to sit down together and come up with
13 a list of stipulations in writing. We
14 stipulate these 150 facts. That will
15 certainly cut down on trial time.

16 MS. PEMBERTON: And, Your Honor, can
17 we go ahead and set the other two cases on the
18 heels of that one in December? And then if it
19 does get cut, we can roll in and then we can
20 bump it if it doesn't? Like a second setting
21 almost.

22 THE COURT: Sure.

23 How long will you take for these two
24 days, 21173?

25 MS. CAFFEY-KNIGHT: Your Honor, at

1 one time we had them set I think for three
2 days.

3 MS. PEMBERTON: I don't think it
4 will take three days.

5 THE COURT: Let's set it the 7th and
6 8th.

7 You know, here's -- this is not an
8 advisory opinion, but I'm just thinking out
9 loud. If there was a lawful election and that
10 board didn't do anything crazy, then maybe
11 whether the 16 -- is it Phase 16 and 17?
12 Whether Phase 16 and 17 voted or not could
13 become an issue that is not of importance if
14 everybody only did what everybody agreed on.
15 And then we'll decide who, what, and all the
16 others on the rest. You see what I'm saying?
17 If we're just mowing the grass, then it
18 doesn't matter which board says mow the grass.
19 If the board now -- the issue I thought was
20 the big red flag is when the board was going
21 to allow or voted to put a building on
22 Mr. Ayres' property or LLC's property. That
23 might be something that not everyone agrees
24 to.

25 MS. CAFFEY-KNIGHT: Well, there was

1 that, Your Honor, and doing away with certain
2 resolutions. That's what prompted all of
3 that. I think --

4 THE COURT: I'm just thinking out
5 loud. I'm not asking the lawyers to argue
6 about it.

7 MS. CAFFEY-KNIGHT: We support
8 having an election.

9 THE COURT: I'm going to ask, are
10 attorneys' fees being requested by any side in
11 this case?

12 MS. CAFFEY-KNIGHT: All sides.

13 THE COURT: Then I would like you
14 all to disclose what that is you're going to
15 be requesting in November. Because if you're
16 going to argue about that in December at all,
17 then I kind of want a heads-up on what I'm
18 looking at. I may have to appoint -- my
19 imagination says this bill is so big, I may
20 have to appoint a special master to do that.

21 And you all know -- these people
22 don't, but I haven't practiced law where I'm
23 billing in 25 years. I was shocked to learn
24 yesterday in a divorce case that the client
25 had paid half a million dollars in attorneys'

1 fees in a divorce case.

2 So I will probably be expecting on
3 that issue to at least be able to look at it
4 ahead of time. I want you all -- heads-up, I
5 may appoint a special master, and we may
6 require some expert testimony. Only because I
7 don't know -- I don't think I can -- I don't
8 have the resources to audit that kind of bill.

9 I can look at a bill, when I'm
10 supposed to, for indigent defense and when
11 somebody wants to charge an hour and a half on
12 a motion to continue, that that might be a
13 little excessive. But on the things that you
14 all are doing behind the scenes, there's no
15 way that I could probably audit it without
16 some expert proof and without having a special
17 master for that. So that's a heads-up on that
18 if that's going to be one of the issues in the
19 trial.

20 MS. CAFFEY-KNIGHT: May I ask a
21 question, Your Honor?

22 THE COURT: Uh-huh.

23 MS. CAFFEY-KNIGHT: Because if
24 there's ultimately a ruling not to award
25 attorneys' fees or to just respectfully --

1 THE COURT: You want to wait until
2 after that?

3 MS. CAFFEY-KNIGHT: It would make
4 more sense to do it after, and not take Your
5 Honor's time or the time of a special master.

6 THE COURT: Do you agree?

7 MS. PEMBERTON: I'm fine with that,
8 Your Honor.

9 THE COURT: All right.

10 MS. PEMBERTON: I think I would like
11 to brief the issue of whether they're even
12 entitled in the first place in this particular
13 case.

14 THE COURT: All right. Let's have
15 that issue ready.

16 MS. CAFFEY-KNIGHT: What is that?

17 THE COURT: Whether either side is
18 entitled to attorneys' fees.

19 MS. CAFFEY-KNIGHT: In which case
20 are we talking?

21 THE COURT: Whichever one you're
22 asking for. I'm trying two cases in December
23 hopefully, 19943 and 21173.

24 MS. PEMBERTON: Is the order -- Your
25 Honor's order about only keeping the lights

1 on, is that still in place, or is that going
2 to be altered by an election?

3 THE COURT: Let me hear you about
4 it.

5 MS. CAFFEY-KNIGHT: Your Honor --

6 THE COURT: It seems to be a
7 reasonable request.

8 MS. PEMBERTON: Well, your order is
9 in place, and we're fine with it being in
10 place. I just wanted to make sure that that
11 particular portion of the order will remain in
12 place until the trial date.

13 THE COURT: Okay.

14 MS. CAFFEY-KNIGHT: I think so, Your
15 Honor, because there are resolutions that were
16 taking away power from the board that they
17 wanted -- that was one of the main things that
18 prompted the motion. But I would say one
19 issue that comes up is the budget for the next
20 year.

21 Counsel, thoughts about that?

22 THE COURT: Well, there's lots of
23 different thoughts about budgets. Some people
24 say they're mandatory. Some people say
25 they're advisory. I don't know how this board

1 has treated their budget.

2 MS. PEMBERTON: I think keeping the
3 lights on. I mean, that would be -- that's
4 more Mr. Stevens.

5 THE COURT: All right. Well, let's
6 do that. Go ahead and have any properly
7 called elections for the new board. I think
8 you've got six seats up at this point.

9 MS. PEMBERTON: And with respect to
10 voting rights, do we need to come back in on
11 a...

12 THE COURT: It depends. I -- you're
13 asking me to go too far, farther than I'm
14 allowed to go. I'm not allowed to give
15 advisory opinions. And you all know that.

16 MS. PEMBERTON: But Your Honor has
17 given opinions on voting rights in this case
18 along the way.

19 MS. CAFFEY-KNIGHT: You said he
20 could not vote on Phase 17 special elections
21 pending the trial.

22 THE COURT: Pending the May hearing,
23 which we can't do.

24 MS. CAFFEY-KNIGHT: Which is now
25 December.

1 THE COURT: Which is now December.

2 MR. STEVENS: Your Honor, if I may,
3 the whole reason the Court wisely put down the
4 injunction was to maintain the status quo
5 until the Court can make final determinations
6 on who has what voting rights, who has what
7 voting allocation. And the concern is any
8 election between now and the trial of this
9 case is going to come under scrutiny
10 regardless of who wins and who loses.

11 THE COURT: And you know what?
12 There is no guarantee that I hear every case
13 that day and I make every ruling there is,
14 that this doesn't still continue on after my
15 orders. Because then there will be an appeal,
16 and there's still a cloud over this, and then
17 somebody will file something. I mean, this
18 case is one that doesn't seem like it's going
19 to stop.

20 So I think the threat that there's
21 a -- that, Judge, let us continue to operate
22 like we are is not appropriate. Now that
23 we've had to pass this from May to possibly
24 December, let's have an election and see what
25 happens.

1 MS. CAFFEY-KNIGHT: I guess I do
2 understand --

3 THE COURT: Keep the lights on.

4 MS. CAFFEY-KNIGHT: -- their
5 question about can LLC vote Phase 17 or not.
6 You all had previously said --

7 THE COURT: I don't know, do you all
8 want to hear that case now?

9 MS. CAFFEY-KNIGHT: No, Your Honor,
10 you already issued that in this case.

11 MS. PEMBERTON: It's not just that.
12 Your Honor has made a formal declaration that
13 the bylaw violates Tennessee law. The sixth
14 amendment violates Tennessee law.

15 THE COURT: That's another
16 appealable issue.

17 MS. PEMBERTON: That's what the
18 board is faced with now --

19 THE COURT: I understand.

20 MS. PEMBERTON: -- for an upcoming
21 election.

22 THE COURT: I understand.

23 MS. PEMBERTON: Okay.

24 MS. CAFFEY-KNIGHT: Your Honor, I
25 would just -- all I am asking, because you

1 already have an order in place that says he
2 cannot vote on those, that that is staying in
3 place. I'm not asking for anything new. I'm
4 asking just as I did at the end of that last
5 hearing for clarification. And that is in
6 Your Honor's order.

7 THE COURT: In the May -- or
8 February order?

9 MS. CAFFEY-KNIGHT: It is in the
10 February order, yes, Your Honor. And I
11 finished at the end of that, and you said,
12 "That's correct."

13 MS. PEMBERTON: Your Honor, if they
14 get advisory opinions, we would like some too.

15 MS. CAFFEY-KNIGHT: That's not an
16 advisory opinion. It's already in Your
17 Honor's order.

18 MS. PEMBERTON: Well, but it is.
19 It's declaring voting rights.

20 We would like --

21 MS. CAFFEY-KNIGHT: You ordered
22 that. It's not advisory.

23 THE COURT: I think I found it there
24 in the February 2023 hearing. This is what I
25 said: "There's a question as to whether the

1 two phases in controversy, and that's the 16
2 and 17, have been properly annexed and that no
3 supplemental declaration to cover these lots
4 have been filed." And so I go on to discuss
5 that, and then the last page, "With respect to
6 the request to put Crystal Pate --" I don't
7 know why that says "phonetic" after that --
8 "back on the board, the Court notes that any
9 attempt to do so would have to result in
10 specific notice to her to take her off." I
11 said I wasn't going to put her back on the
12 board. And Ms. Caffey said, "So if there is a
13 special election, am I to understand that LLC
14 cannot vote on the lots in 16 and 17?" I
15 said, "They cannot vote the lots in 17." So
16 that is part of the order that was already
17 down. Okay.

18 MS. CAFFEY-KNIGHT: Yes. Thank you,
19 Your Honor.

20 MR. HALE: Your Honor?

21 THE COURT: I answer a question, and
22 it gets another question.

23 MR. HALE: And I apologize. I
24 really do.

25 The reason the association hasn't

1 conducted an election is -- like the
2 organization typically does, when they --
3 there's a committee that manages the election
4 process for the association. That's not what
5 is being proposed here. What's being proposed
6 here is that this special election be held by
7 the --

8 THE COURT: Members.

9 MR. HALE: By the self-governance
10 group.

11 THE COURT: The members.

12 MR. HALE: No, it's not the members.
13 Because Mr. Daniels owns most of the lots, and
14 he doesn't pay any dues. So he's not part of
15 the community. He is a lot owner. He does
16 not pay.

17 THE COURT: He's a member, is he
18 not?

19 MR. HALE: He's a member.

20 THE COURT: Okay. Let's call him a
21 member.

22 MR. HALE: He has 370-some votes.
23 But he pays no dues. So he's not exactly like
24 the rest of the people who live in the
25 neighborhood who want to vote and get control

1 of the neighborhood.

2 THE COURT: All of these people
3 think they're the rest of the people.

4 MR. HALE: Well, Your Honor, and I
5 think that's -- there's some truth to that. I
6 think everybody has their own opinion about
7 this.

8 THE COURT: Right.

9 MR. HALE: My question is, who gets
10 to manage the election?

11 THE COURT: I don't know. I don't
12 know the answer to that.

13 What my order says, there can be any
14 properly called election. I didn't say the
15 members couldn't do it. I didn't say the
16 board couldn't do it or could do it. That's
17 the only ruling I've given today. There can
18 be any properly called election. That's what
19 you lawyers -- and I'm going to come off the
20 bench and let you all work all that out.

21 MS. CAFFEY-KNIGHT: With that
22 limitation on Phase 17, which is in your order
23 already?

24 THE COURT: Yes.

25 MS. CAFFEY-KNIGHT: Thank you.

1 THE COURT: That was the only order
2 I made.

3 MS. CAFFEY-KNIGHT: Thank you, Your
4 Honor.

5 THE COURT: Now, are there any other
6 motions today?

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

8 THE COURT: All right. I suggest
9 you all stay here with or without clients, and
10 let's get this case taken care of with 21173
11 to start on -- be ready on the 6th, but
12 probably the 7th of December. All right.

13 (Whereupon, the proceedings
14 concluded at 10:58 a.m.)
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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 9th day of August, 2023.



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