

IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

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

Plaintiff,

v.

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

Defendants.

No. 21,173

FILED
JUL 07 2023
3:50
TIME
TERESA A. CHOATE
CLERK & MASTER MONROE CTY

MOTION FOR CLARIFICATION OF ORDER FILED ON JUNE 7, 2023

Comes the Defendant, Rarity Bay Community Association, Inc. ("the Association"), by and through counsel, and respectfully moves the Court for clarification of its Order filed on June 7, 2023 stemming from its ruling on February 1, 2023. (See Order of June 7, 2023, attached as Exhibit A). The subject Order resulted from Rarity Bay Partners' ("Partners") request for Temporary Injunction filed on or about November 23, 2023. This is the Association's second motion for clarification of the Court's February 1, 2023 ruling. (See Motion for Clarification filed on or about April 28, 2023).

The present Motion concerns the Court's ruling with respect to the enjoinder of board of director elections. In support of this Motion, the Association states the following:

1. The current directors serving on the board for the Association are the following people: (1) Chad Story, President; (2) Terry Foreman, Treasurer; (3) Steve Wohlford, Secretary; (4) Kris Schuh, member at large; (5) Christen Floyd, member at large; and (6) Mike Frisbey, member at large. (See Exhibit B).

2. All current board of directors presently serving were either elected, or appointed by the directors of the board pursuant to Bylaw 8.5, following director(s) resignations. (Exhibit B).
3. Specifically, Chad Story was elected by the members in an annual election held in April 2021. (Exhibit B).
4. Both Mike Frisbey and Steve Wohlford were elected by annual election held in February 2022. (Exhibit B).
5. Christen Floyd was elected in a special election held November 2022, after receiving the second highest number of votes in an election with three (3) open seats, which election took place following the removal of directors by the declarant. (Exhibit B); (Order p. 7).
6. After resignations of certain board members following the February 2022 election, Terry Foreman and Kris Schuh were appointed to the board by remaining directors, as required by Bylaw 8.5. (Exhibit B).
7. Accordingly, none of the current directors were placed into his or her position by appointment of the declarant.
8. In the Court's ruling of February 1, 2023, it noted there was "[a] court date in May 2023¹ to determine the status of LLC as the declarant and his ability to control the board of RBCAY by removing board directors with whom he disagrees. There is an election set in April." (See Order p. 5).

¹ The May 2023 hearing was continued after a motion to continue was requested by Salem Pointe Capital, LLC in Monroe Chancery case no. 19943.

9. The Court further stated, “[t]here are countervailing affidavits concerning the legal status of certain lots in phase sixteen and the new phase seventeenThe status of lots and their continued division are important issues....” (Order p. 5-6).
10. The Court held: “Because these are important questions that need to be resolved the Court is holding that any votes by the declarant at any election shall be stayed until after the May 2023 hearing....” (Order p. 6).
11. The Court began to discuss special elections but then interrupted itself and held: “It’s staying **any** election until after the May 2023 hearing.” (Order p. 6)(emphasis added).
12. Due to the questionable voting rights in Phases 16 and 17, the Court found: “And for those reasons this Court finds that creates confusion as to the rights of the parties and holds any election between now and May would be suspect because it appears that the declarant does not have the right to vote at least the lots in plat 17 because no supplemental declaration has been filed.” (Order p. 7).
13. The candidates who won first and third place in the November 2022 special election were not approved by the declarant, and the next highest vote getters were then placed on the board. The Court ruled that placement was inappropriate; therefore, those directors were removed by the board following the Court’s ruling on February 1, 2023. (Exhibit B); (Order p. 7). The Court advanced those issue to the trial date that was set in May 2023 and stayed any action by the board except what was necessary to keep the lights on. (See Order, p. 7).
14. On or about June 27, 2023, the Board of Directors received a request by certain members, including a request by Partners, to hold director elections for all those

directors whose term expired, and for the two (2) open seats following the declarant's disapproval after the November 2022 election. (See statement by Secretary Steve Wohlford and selected examples of said request for brevity attached as Exhibit C).

15. The Board sought advice of counsel, and this Motion follows in order to receive clarification of the Court's Order given the Court's enjoinder of elections after finding voting rights of the parties remain at issue.

16. The Association believes the following sections of the Bylaws are relevant:

8.4. Term of Office. Each director shall serve a term commencing on the date of the annual meeting of the members at which such director is elected, and terminating on the second annual meeting of the members following the election of such director....All directors shall continue to hold office until their successors have been duly qualified and elected.

(Emphasis added).

8.5 Removal of Directors and Vacancies. Any director may be removed, with out without cause, by Members holding a Majority of the total votes in the Association....Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director.

...

In the event of the death, disability, or resignation of an elected director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

(Emphasis added).

9.1 Election and Term of office [For Officers]. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

8.19 Right of the Declarant to Disapprove Actions. During the Development Period, the Declarant shall have the right to disapprove any action, policy or program of the Association,....

- 17. The Association interpreted the Court's Order entered June 7, 2023 as an attempt to provide some stability in the Association by maintaining the status quo until final hearing in this matter; however, issues continue to arise.

WHEREFORE, for the foregoing reasons, the Association moves the Court for an Order clarifying its order as to whether or not any election may proceed prior to the final hearing in this matter.

Respectfully submitted this 7 day of July, 2023.

By: 

Dana Pemberton
Ellis A. Sharp, Esp.
Stokes, Williams, Sharp, Cope & Mann
P.O. Box 2644
Knoxville, TN 37901

Kevin C. Stevens (BPR #023035)
Kennerly, Montgomery & Finley, P.C.
550 Main Street
Bank of America Building, Suite 400
Knoxville, TN 37902

Attorneys for Plaintiff
Rarity Bay Community Association, Inc.


CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, an exact copy of this pleading has been emailed, faxed, hand-delivered and/or mailed to the following individual(s):

Wynne du M. Caffey-Knight, Esq.
Trent R. Kinkaid
ELMORE, STONE & CAFFEY, PLLC
5616 Kingston Pike, Ste. 301
Knoxville, TN 37919
wcaffey@esc-law.com
tkinkaid@esc-law.com

Thomas M. Hale
Kramer Rayson
800 South Gay Street, Suite 2500
Knoxville, TN 37929
TomHale@kramer-rayson.com

Adam G. Russell
Fisher Russell, PLLC
10265 Kingston Pike, Suite C
Knoxville, TN 37922
arussell@fisher-russell.com


Dana S. Pemberton