

August 20, 2024

Ryan Sarr, Esq.
TRAMMELL, ADKINS, & WARD, PC
1900 N. Winston Road, Suite 600
Knoxville, Tennessee 37919
ryansarr@tawpc.com

Richard E. Grave, Esq.
FRANTZ MCCONNELL & SEYMOUR, LLP
550 West Main Street, Suite 500
Knoxville, Tennessee 37902
Rgraves@fmsllp.com

Kevin C. Stevens
KENNERLY, MONTGOMERY, & FINLEY, P.C.
550 Main Street, Fourth Floor
Knoxville, Tennessee 37902
kstevens@kmfpc.com

RE: *Beck, et al. v. Lone Mountain Shores Owners Association, Inc.*
Claiborne County Chancery Court No. 20259

Gentlemen:

Please find enclosed *Motion for Joinder and Injunctive Relief* that has been filed in the above referenced matter. Should you have any questions please feel free to contact our office.

Sincerely,



Joy R. Bray, ACP
PARALEGAL TO JIMMY G. CARTER, JR.

IN THE CHANCERY COURT FOR CLAIBORNE COUNTY, TENNESSEE

MARY JOSEPH BECK; JANICE E.)
BENNAFIELD REVOCABLE LIVING TRUST)
DATED SEPTEMBER 16, 2003; TEN)
MOUNTAIN, LLC; 835 JACKSBLUFF, LLC;)
NATHAN CHERRY AND MARY CHERRY;)
JULIE DILLARD; DAVID DILLARD; RUSSELL)
EVANS AND LAURIE EVANS; BRANDEN)
FRANTZ AND AIMEE FRANTZ; BELLA)
NOMBERG GOLDEN; PHILIP HAMILTON)
AND KATHLEEN HAMILTON; JAMES HAWS)
AND DENISE HAWS; LAKE FRONT)
RENDEZVOUS, LLC; BRADLEY D. HAYS)
LIVING TRUST; JASON JORDAN; MARGARET)
KANIECKI; M&G EAGLES NEST, LLC;)
EDWARD LUND; EDWARD LUND AND)
MICHELLE LUND; FREDERICK MAESS)
AND KRISTY WAMBOLD MAESS;)
LUKE MAXWELL AND DORINDA MAXWELL;)
MICHELLE NORCROSS AND DAVID)
NORCROSS; DAVID JAMES AND GAIL)
ROBINSON; DAVID SCHELL AND ANNETTE)
SCHELL; PAUL SCHMUTZLER AND RUTHANN)
GEIB; PETER F. SCHWINKLE, NICOLE)
SCHWINKLE, AND PLB REAL ESTATE)
INVESTMENTS, LLC; JAMON SELLMAN;)
MICHAEL SISLOW AND BRANDY SISLOW;)
MICHAEL THEYE AND TANNI THEYE; MICHAEL)
THEYE; GWL PROPERTIES, LLC; BILLY BELT JR.;)
ELIZABETH R. WARTHMAN AND)
VIC S. WARTHMAN, TRUSTEES OF THE VIC)
AND ELIZABETH WARTHMAN JOINT)
REVOCABLE TRUST DATED APRIL 22, 2011,)

Plaintiffs,)

vs.)

LONE MOUNTAIN SHORES OWNERS)
ASSOCIATION, INC.,)

Defendant,)

No. 20259

vs.)
)
DEBRA JONCKHEERE,)
)
Respectful Intervening)
Plaintiff.)

MOTION FOR JOINDER AND INJUNCTIVE RELIEF

Comes now the indispensable and necessary or, in the alternative, permissive plaintiff, Debra Jonckheere (hereinafter “Intervenor”), by and through counsel, and respectfully moves this Court, pursuant to Rule 19 and, in the alternative, Rule 20 of the Tennessee Rules of Civil Procedure, for an order requiring or permitting joinder of Intervenor as an indispensable or permissive party to this action along with a request for injunctive relief pursuant to Rule 65.01. As grounds for this *Motion* and request for Injunctive Relief, Intervenor would show this Court as follows:

I. Rule 19 Indispensable Party

1. Intervenor is not a party to this action;
2. Intervenor is subject to service of process by this Court. Tennessee Rule of Civil

Procedure 19.01 provides a mandatory directive on who should be joined as a party, stating:

A person who is subject to service of process shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person properly should join as a plaintiff but refuses to do so, he or she may be made a defendant, or in a proper case, an involuntary plaintiff.

Love v. McDowell, No. E2019-00177-COA-R3-CV, 2019 Tenn. App. LEXIS 414, at *1 (Ct. App. Aug. 26, 2019).

3. Intervenor claims an interest relating to the subject of the action as she is the owner of real property in the Lone Mountain Shores and is a member of the Lone Mountain Shores Homeowners Association, Inc. (the “Association”) in good standing and as such, holds a direct interest in the outcome of this litigation. Her property rights and interests could be substantially impacted by the Court’s decision, particularly with respect to the on-going dispute related to the efficacy of short-term rentals in the community, the propriety of votes and elections by the Association and the protection of her property’s value.

4. Persons whose real property interests may potentially be affected by a trial court’s ruling have consistently been recognized as indispensable and necessary parties. *Baker*, 2010 Tenn. App. LEXIS 20, 2010 WL 174773, at *5. (citations omitted).

5. Both Plaintiffs and Intervenor are property owners within and Members of the Association, which was formed to fund, oversee, and maintain, common areas within the community, and protect the property values of the real property in Lone Mountain Shores.

6. The disposition of this action in the Intervenor’s absence would impede or impair her ability to protect her interests and the property values of the owners for present and future purposes.

7. The absence of the Intervenor would only allow Plaintiffs, who are already parties in the action, the ability to impede, erode, and/or substantially harm Intervenor’s value in her property and interest.

8. Failure to join Intervenor risks leaving the existing parties subject to inconsistent obligations and undermines the comprehensive resolution of this matter.

10. Intervenor asserts ownership interests that are directly impacted by the outcome of this litigation. Without her participation, any judgment rendered might not effectively resolve disputes over property boundaries, access rights, or maintenance obligations concerning common areas within the resort and her due process rights would be adversely affected by her exclusion.

II. Rule 20 Permissive Joinder

11. In the alternative, Intervenor moves for joinder under Rule 20.01 of the Tennessee Rules of Civil Procedure, which allows permissive joinder of parties who assert any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions or occurrences, and where a question of law or fact common to all parties exists.

12. Plaintiffs and Intervenor are property owners in the same community and assert rights, albeit similar and separate, related to the propriety of past Association elections, the integrity of future elections, the on-going dispute regarding short term rentals within the community, and the protection of property values. These issues present common questions of law and fact that are central to this litigation.

13. The claims in this case arise from the same transactions or occurrences—specifically, the management and maintenance of Lone Mountain Shores and the preservation of its property values.

14. Rule 20 does not require that every party have an identical interest in all aspects of the relief sought. It is sufficient that Intervenor's participation would aid in resolving the core issues surrounding the shared property rights and obligations within the community along with providing her proper due process for her own unrepresented property rights.

15. In conclusion, the joinder of Intervenor is necessary under Rule 19 to ensure that all interests are adequately protected, due process is achieved, and that the Court can grant complete and consistent relief. Alternatively, under Rule 20, Intervenor's participation is appropriate given the shared legal and factual issues that arise from the same set of circumstances. Without her inclusion, the Court's ability to render a comprehensive judgment could be compromised, and inconsistent obligations might be imposed on the existing parties.

16. Accordingly, Intervenor respectfully requests that this Court enter an order finding that she is an indispensable party to this action and requiring her joinder as a plaintiff. Alternatively, if the Court finds that Rule 19 does not mandate joinder, Intervenor requests permissive joinder under Rule 20.

III. Request for Injunctive Relief.

17. The Intervenor respectfully seeks injunctive relief to stay the 2024 Lone Mountain Shores Homeowners Association election and any referenda until the legal uncertainties surrounding the enforceability of the association's governing documents are resolved by the Tennessee Court of Appeals. There are several critical outstanding issues that could fundamentally alter the validity and efficacy of the election and subsequent actions taken by the post-election iteration of the Board.

18. Rule 65.01 allows a party relief through a (1) restraining order, (2) temporary injunction, or (3) permanent injunction in a final judgment. A restraining order shall only restrict the doing of an act while an injunction may restrict or mandatorily direct the doing of an act. Tenn. R. Civ. P. 65.01

19. The ongoing appeal in Lone Mountain Shores Owner's Association, Inc. v. Henry Bennafield et al., Claiborne County No. CV-2354 (the "Short Term Rental Lawsuit") underscores the legal uncertainty facing the association. The Opinion issued by this Honorable Court on March 1, 2024, found ambiguity in the Declaration of Covenants, Conditions, and Restrictions regarding short-term rental prohibitions. This ambiguity directly impacts homeowners on both sides of the argument or those without a strong opinion, as well as their rights in governance matters. The risk of proceeding with the election while these ambiguities remain unresolved is substantial: candidates may take office whose positions conflict with the final legal determination of the covenants. Such a scenario would undermine the legitimacy of any governance decisions made during this period of legal flux.

20. Furthermore, proceeding without awaiting appellate resolution could result in inconsistent obligations for homeowners, exacerbating governance instability. This Court's authority to maintain consistency and clarity in the association's operations could be seriously undermined if an election proceeds prematurely. If injunctive relief is not granted, the election could result in a newly elected Board of Directors whose actions may be inconsistent with the appellate court's eventual ruling on the enforceability of the covenants. For example, the Court of Appeals could determine that short-term rentals are permissible under the current covenants, while a newly elected Board might enact policies or rules that directly conflict with such a ruling or vice versa. This would create significant legal uncertainty, increase the risk of further litigation, and undermine the legitimacy of the association's governance.

23. Should the election proceed, a newly elected Board of Directors could enact policies contrary to the forthcoming appellate ruling. For instance, if the Court of Appeals rules in favor of allowing short-term rentals, yet a newly elected Board enforces prohibitions, this

contradiction would create significant governance chaos and expose the association to further litigation. The legal uncertainty and risk of inconsistent enforcement would undermine the integrity of the association's governance and subject homeowners to conflicting obligations. Therefore, staying the election pending the appellate decision is critical to avoiding such chaos and ensuring that governance remains legally sound and consistent with final court rulings.

24. Beyond the ongoing appellate litigation, this present suit, and *Frantz v. Lone Mountain Shore Owner's Association, Inc.*, Claiborne County No. 20170 (the "Branden Frantz Records Lawsuit") are pending, with the potential for binding arbitration in each. The outcomes of these cases will likely shape the governance structure, operations, and election procedures of the association. By conducting an election while these disputes remain unresolved, the association risks entrenching governance practices that could be overturned by future legal or arbitration outcomes. It is essential that the Court ensure a legally sound governance framework is in place before any election proceeds, so that the resulting Board and the decisions they make are not undermined by subsequent rulings or arbitration outcomes.

25. Injunctive relief is warranted where there is a likelihood of immediate and irreparable harm. Here, the harm extends not only to the Intervenor but also to the entire community. Allowing an election to proceed under these conditions risks not just legal uncertainty but also significant financial and operational disruptions to the association and its members who pay assessments. If the election results in a Board with conflicting legal positions, the community may face adverse effects on property values, increased legal expenses, loss of confidence in governance, and the invalidation of key policies or rules. The Lone Mountain Shore Owner's Association has published an accounting of its legal expenses from February 2022 through May 2024 which reflects the association spent a substantial amount of money during that period to

finance the various legal disputes, some of which remain unresolved. With numerous outstanding legal issues, all parties stand to incur substantial unnecessary costs if the election is not stayed pending legal finality. These risks, when counterbalanced with the nonexistent potential harms the injunctive relief could create if granted, clearly demonstrate the necessity of granting this request to stay the election.

24. For these reasons, the Intervenor respectfully requests that the Court delay the 2024 election until the legal uncertainties currently under review by the Tennessee Court of Appeals and related litigation are resolved. Proceeding with the election at this time would introduce significant risks of inconsistency, legal challenges, along with immediate and irreparable harm to both the association and its members. Maintaining the status quo until final rulings are issued ensures that future elections and governance decisions are legally sound, aligned with the final interpretation of the association's covenants, and minimizes unnecessary litigation costs—all without causing undue harm.

THIS PLEADING CONSTITUTES THE INTERVENOR'S FIRST APPLICATION FOR INJUNCTIVE RELIEF WITH RESPECT TO THE SUBJECT MATTER STATED HEREIN. NO COURT HAS PREVIOUSLY REFUSED TO GRANT INTERVENOR SUCH INJUNCTIVE RELIEF.

Respectfully submitted the 19th day of August, 2024.



Jimmy G. Carter, Jr., BPR No. 032026
Shelley S. Breeding, BPR No. 024330
Stephen M. Boyette, BPR No. 039459
Breeding Carter, PC
Attorneys for Intervening Plaintiff
800 S. Gay St., Ste. 1200
Knoxville, Tennessee 37929
(865) 670-8535
(865) 670-8536 (fax)
jimmy@breedinglaw.com
shelley@breedinglaw.com
stephen@breedinglaw.com

INJUNCTIVE BOND

KNOW ALL PERSONS BY THESE PRESENTS that we, Debra Jonckheere as Principal, and Breeding Carter, PC, as Surety, are held and firmly bound unto the named Defendants and named Plaintiffs as Obligee, in the sum of One Hundred Dollars (\$100), for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

WHEREAS, the Principal has applied to the Chancery Court of Claiborne County, Tennessee, for a temporary injunction to stay the 2024 Lone Mountain Shore Owner's Association election, and the Court has ordered that the Principal shall give bond in the sum of One Hundred Dollars (\$100), conditioned as required by law.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay any damages and costs which the named Defendants and named Plaintiffs may sustain by reason of the wrongful issuance of the injunction, if the same is finally dissolved, then this obligation shall be void; otherwise, to remain in full force and effect.


I, the principal, Debra Jonckheere, declare under penalty of perjury, that the forgoing are true and correct.


Debra Jonckheere (Aug 19, 2024 14:55 EDT)

Debra Jonckheere
Principal

08/19/2024

Date


Breeding Carter, PC
Surety

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and exact copy of the foregoing pleading has been sent via U.S. Mail, facsimile, or electronic mail to the following on this 19th day of August 2024.

Ryan Sarr, Esq.
TRAMMELL, ADKINS, & WARD, PC
1900 N. Winston Road, Suite 600
Knoxville, Tennessee 37919
ryansarr@tawpc.com
*Attorney for all Plaintiffs except
Brandon Frantz and Aimee Frantz*

Richard E. Grave, Esq.
FRANTZ MCCONNELL & SEYMOUR, LLP
550 West Main Street, Suite 500
Knoxville, Tennessee 37902
Rgraves@fmsllp.com
Phone: (865) 546-9321
Fax: (865) 637-5249
*Attorney for Plaintiffs Brandon Frantz
and Aimee Frantz*

Kevin C. Stevens
KENNERLY, MONTGOMERY, & FINLEY, P.C.
550 Main Street, Fourth Floor
Knoxville, Tennessee 37902
kstevens@kmfpc.com
Attorney for Defendant



Jimmy G. Carter, Jr.

Confirmation of Filing by Fax

☒ This confirms your facsimile filing was processed by Melissa House, with the filing date of 19th day of August, 2024 at 4:00 PM.

Docket Number: 20259

Your service charge pursuant to T.R.C.P. 5A.04 is \$15.00.

Please send your payment along with this cover sheet within 10 days to:

Patricia Simmons
Clerk & Master
P.O. Box 180
Tazewell, TN 37879

Denied for Filing

Your facsimile WAS NOT FILED OR PROCESSED due to the following deficiency:

Docket Number: _____

- ☐ This facsimile filing was longer than 50 pages and not pre-approved by the Court.
- ☐ The document you attempted to file by facsimile transmission is prohibited from filing in this manner by T.R.C.P. 5A.02 (4).

AudioCodes ATA Connector

FAX DELIVERY NOTIFICATION

Account: 18656708536
8/19/2024 3:42:32 PM

The following fax was **successfully** sent to the specified recipient.

Fax Number: 4236263604
Remote CSID: 4236263604 (station ID of receiving fax device)
Pages: 11
Status: No errors

FAX TRANSMISSION DETAILS

Sent On: 8/19/2024 3:47:10 PM
Duration: 237 seconds
Speed: 14400 bps
Retries: 0
Event ID: 8bd2c813-39d5-4f90-aea6-ef47984782e1



Aug. 19, 2024 4:00PM

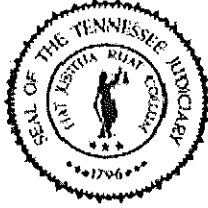
Ac. 4583 P. 1/11



TENNESSEE COURTS
UNIFORM FACSIMILE FILING COVER SHEET

TO (COURT CLERK): Patricia Simmons
WITH (COURT): Claiborne County Chancery Court
CLERK'S FAX NUMBER: 423-626-3604
CASE NAME: Beck, et al v. Lone Mountain Shores Owners Assoc.
DOCKET NUMBER: 20250
TITLE OF DOCUMENT: Motion for Joinder and Injunctive Relief
FROM (SENDER): Breeding Carter, PC
SENDER'S ADDRESS: 800 South Gay Street, Suite 1200
Knoxville, TN 37929
SENDER'S VOICE TELEPHONE NUMBER: 865-670-8536
SENDER'S FAX TELEPHONE NUMBER: 865-670-8536
DATE: August 19, 2024
TOTAL PAGES, INCLUDING COVER PAGE: 11
FILING INSTRUCTIONS/COMMENTS (attach additional sheet if necessary):

Unless authorized by the Court, a facsimile transmission exceeding fifty (50) pages, including the cover page, shall not be filed by the clerk.



TENNESSEE COURTS
UNIFORM FACSIMILE FILING COVER SHEET

TO (COURT CLERK): Patricia Simmons

WITH (COURT): Claiborne County Chancery Court

CLERK'S FAX NUMBER: 423-626-3604

CASE NAME: Beck, et al v. Lone Mountain Shores Owners Assoc.

DOCKET NUMBER: 20259

TITLE OF DOCUMENT: Motion for Joinder and Injunctive Relief

FROM (SENDER): Breeding Carter, PC

SENDER'S ADDRESS: 800 South Gay Street, Suite 1200
Knoxville, TN 37929

SENDER'S VOICE TELEPHONE NUMBER: 865-670-8535

SENDER'S FAX TELEPHONE NUMBER: 865-670-8536

DATE: August 19, 2024

TOTAL PAGES, INCLUDING COVER PAGE: 11

FILING INSTRUCTIONS/COMMENTS (attach additional sheet if necessary):

Unless authorized by the Court, a facsimile transmission exceeding fifty (50) pages, including the cover page, shall not be filed by the clerk.