

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS)
ASSOCIATION, INC.,)

Plaintiff.)

vs.)

HENRY BENNAFIELD, JANICE)
BENNAFIELD, BELLA GOLDEN, JAMES)
HAWES, DENISE HAWES, VIC WARTHMAN,)
ELIZABETH WARTHMAN, TROY)
VANDERHOOF, PAM VANDERHOOF, ED)
LUND, LAKE FRONT RENDEZVOUS, LLC,)
M & G EAGLESNEST, LLC, B & M)
STORAGE, LLC, MICHAEL SISLOW,)
BRANDY SISLOW, JASON JORDAN, 836)
JACKSBLUFF, LLC, FRED MAESS, KRISTY)
WAMBOLD, JAMES SCRUGGS, DEBBIE)
HUNLEY, BRENDAN FRANTZ, AIMEE)
FRANTZ, DAVID LANG, DAVID)
NORCROSS, MICHELLE NORCROSS, PETE)
SZUCH, and CAROLINE SZUCH,)

Defendants.)

No. CV-2354

FILED
Claiborne County Circuit Civil Court

NOV 10 2022

Jackie Rosenbalm, Clerk
JS DC

AMENDED SWORN COMPLAINT FOR PERMANENT INJUNCTION

Comes now the Plaintiff, Lone Mountain Shores Owners Association, Inc. ("Plaintiff"), by and through counsel, and petitions this Court for issuance of a judgment in favor of Plaintiff and a permanent injunction against Defendants, Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Troy Vanderhoof, Pam Vanderhoof, Ed Lund, Lake Front Rendezvous, LLC, M & G EAGLESNEST, LLC, B & M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 JACKSBLUFF, LLC, Fred Maess, Kristy Wambold, James Scruggs, Debbie Hunley, Brendan Frantz, Aimee Frantz, David Lang, David Norcross, Michelle Norcross,

Pete Szuch, and Caroline Szuch (collectively referred to herein as "Defendants"), and for other relief that the Court deems appropriate. As grounds for the relief sought herein, Plaintiff would show as follows:

THE PARTIES

1. Plaintiff Lone Mountain Shores Owners Association, Inc. is a non-profit corporation formed in the State of Tennessee, located in Claiborne County on Norris Lake, whose registered agent is Sandra E. Cosby, 920 Patterson Road, Harrogate, TN 37752-8059. Plaintiff and its Members own real property situated in Lone Mountain Shores subdivision in Claiborne County, Tennessee.

2. Defendants Henry Bennafield and Janice Bennafield ("the Bennafield Defendants") are the Owners of real property located in Claiborne County identified as Lots 656 and 657 of the Lone Mountain Shores subdivision and known as 207 Cliffside Lane, New Tazewell, TN 37825. Upon information and belief, the Bennafield Defendants are residents of the State of Florida and may be served with process by Certified Mail at their residence address of 4009 W. Fielder Street, Tampa, FL 33611. A Summons and Complaint will also be served on the Bennafield Defendants at the address of the real property at issue, 207 Cliffside Lane, New Tazewell, TN 37825.

3. Defendant Bella Golden is the Owner of real property located in Claiborne County identified as Lot 332 of the Lone Mountain Shores subdivision and known as 125 Shoreside Road, New Tazewell, TN 37825. Upon information and belief, Defendant Golden is a resident of the State of Ohio and may be served with process by Certified Mail at her residence address of 1319 Hill Crest Road, Cincinnati, OH 45224. A Summons and Complaint will also be

served on Defendant Golden at the address of the real property at issue, 125 Shoreside Road, New Tazewell, TN 37825.

4. Defendants James Haws and Denise Haws ("the Haws Defendants") are the Owners of real property located in Claiborne County identified as Lot 41 of the Lone Mountain Shores subdivision and known as 1755 Mountain Shores Road, New Tazewell, TN 37825. Upon information and belief, the Haws Defendants are residents of the State of Ohio and may be served with process by Certified Mail at their residence address of 3652 Lytle Road, Waynesville, OH 45068-9642. A Summons and Complaint will also be served on the Haws Defendants at the address of the real property at issue, 1755 Mountain Shores Road, New Tazewell, TN 37825.

5. Defendants Vic Warthman and Elizabeth Warthman ("the Warthman Defendants") are the Owners of real property located in Claiborne County identified as Lot 860 of the Lone Mountain Shores subdivision and known as 205 Evergreen Way, New Tazewell, TN 37825. Upon information and belief, the Warthman Defendants are residents of the State of Ohio and may be served with proceed by Certified Mail at their residence address of 3079 Carroll Eastman Road, Carroll, OH 43112. A Summons and Complaint will also be served on the Warthman Defendants at the address of the real property at issue, 205 Evergreen Way, New Tazewell, TN 37825.

6. Defendants Troy Vanderhoof and Pam Vanderhoof ("the Vanderhoof Defendants") are the Owners of real property located in Claiborne County identified as Lot 283 of the Lone Mountain Shores subdivision and known as 231 Bluffview Road, New Tazewell, TN 37825. Upon information and belief, the Vanderhoof Defendants are residents of the State of Wisconsin and may be served with process by Certified Mail at their residence address of

W5132 Maple Ridge Drive, Fond du Lac, WI 54937. A Summons and Complaint will also be served on the Vanderhoof Defendants at the address of the real property at issue, 231 Bluffview Road, New Tazewell, TN 37825.

7. Defendant Ed Lund is the Owner of real property located in Claiborne County identified as Lot 834 of the Lone Mountain Shores subdivision and known as 265 Jacks Bluff Road, New Tazewell, TN 37825. Upon information and belief, Defendant Lund is a resident of the State of Ohio and may be served with process by Certified Mail at his residence address of 6452 Bridgeton Manor Court, Liberty Township, OH 45011. A Summons and Complaint will also be served on Defendant Lund at the address of the real property at issue, 265 Jacks Bluff Road, New Tazewell, TN 37825.

8. Defendant Lake Front Rendezvous, LLC ("Lake Front Rendezvous"), is the Owner of real property located in Claiborne County identified as Lot 355 of the Lone Mountain Shores subdivision and known as 272 Morning Glory Road, New Tazewell, TN 37825. Upon information and belief, Lake Front Rendezvous is an Ohio limited liability company, which is licensed to do business in Tennessee, and may be served with process by Certified Mail at the address of its Registered Agent: Debra Hays at 2540 State Route 235 Ada, OH 45810. A Summons and Complaint will also be served on Defendant Lake Front Rendezvous at the address of the real property at issue, 272 Morning Glory Road, New Tazewell, TN 37825.

9. Defendant M & G Eaglesnest, LLC ("M & G Eaglesnest"), is the Owner of real property located in Claiborne County identified as Lot 68 of the Lone Mountain Shores subdivision and known as 473 Ridgecrest Drive, New Tazewell, TN 37825. Upon information and belief, the M & G Eaglesnest purports to be a Kentucky limited liability company, but it does not appear to be licensed to do business either in Kentucky or Tennessee. Because there is

no registered agent for service of process listed on either the Kentucky or Tennessee Secretary of State's website, service will be attempted by Certified Mail at the residential address of Mark Kling and Sandra Kling (believed owners of M & G Eaglesnest, LLC), 7024 Fort Scott Blvd., Harrison, OH 45030. A Summons and Complaint will also be served on M & G Eaglesnest at the address of the real property at issue, 473 Ridgecrest Drive, New Tazewell, TN 37825.

10. Defendant B & M Storage, LLC ("B & M Storage"), upon information and belief, is the Owner of real property located in Claiborne County identified as Lot 824 of the Lone Mountain Shores subdivision and known as 609 Wildcat Hollow Road, New Tazewell, TN 37825. Upon information and belief, B & M Storage is a Kentucky limited liability company, which is not licensed to do business in Tennessee, and may be served with process by Certified Mail at the address of its Registered Agent: Bill Barton at 37 ½ Old Pineville Pike, Middlesboro, KY 40965. A Summons and Complaint will also be served on Defendant B & M Storage at the address of the real property at issue, 609 Wildcat Hollow Road, New Tazewell, TN 37825.

11. Defendants Michael Sislow and Brandy Sislow ("the Sislow Defendants") are the Owners of real property located in Claiborne County identified as Lot 819 of the Lone Mountain Shores subdivision and known as 616 Wildcat Hollow Road, New Tazewell, TN 37825. Upon information and belief, the Sislow Defendants are residents of the State of Texas and may be served with process by Certified Mail at their residence address of 219 Clubhouse Drive, Lakeview, TX 78734. A Summons and Complaint will also be served on the Sislow Defendants at the address of the real property at issue, 616 Wildcat Hollow Road, New Tazewell, TN 37825.

12. Defendant Jason Jordan is the Owner of real property located in Claiborne County identified as Lot 823 of the Lone Mountain Shores subdivision and known as 629 Wildcat Hollow Road, New Tazewell, TN 37825. Upon information and belief, the Defendant Jordan is

a resident of the State of Colorado and may be served with process by Certified Mail at his residence address of 10385 Grand Vista Court, Lone Tree, CO 80124. A Summons and Complaint will also be served on Defendant Jordan at the address of the real property at issue, 629 Wildcat Hollow Road, New Tazewell, TN 37825.

13. Defendant 836 JACKSBLUFF, LLC ("836 Jacksbluff"), upon information and belief, is the Owner of real property located in Claiborne County identified as Lot 836 of the Lone Mountain Shores subdivision and known as 221 Jacks Bluff Road, New Tazewell, TN 37825. Upon information and belief, 836 Jacksbluff is a Nevada limited liability company, which is licensed to do business in Tennessee, and may be served with process by Certified Mail at the address of its Registered Agent: Registered Agent, Inc. c/o Shawnda Purdy, 769 Basque Way, Suite 330, Carson City, NV 89706. A Summons and Complaint will also be served on Defendant 836 Jacksbluff at the address of the real property at issue, 221 Jacks Bluff Road, New Tazewell, TN 37825. A Summons and Complaint will also be served upon 836 Jacksbluff's owner, Charles Bryan, at 900 Crosswinds Drive, Unit D-1, Greenacres, FL 33413.

14. Defendants Fred Maess and Kristy Wambold ("the Maess Defendants") are the Owners of real property located in Claiborne County identified as Lot 825 of the Lone Mountain Shores subdivision and known as 605 Wildcat Hollow Road, New Tazewell, TN 37825. Upon information and belief, the Maess Defendants are residents of the State of Kentucky and may be served with process by Certified Mail at their residence address of 2235 Forest Pond Drive, Hebron, KY 41048. A Summons and Complaint will also be served on the Maess Defendants at the address of the real property at issue, 605 Wildcat Hollow Road, New Tazewell, TN 37825.

15. Defendant James Scruggs is the Owner of real property located in Claiborne County identified as Lot 856 of the Lone Mountain Shores subdivision and known as 385

Wildcat Hollow Road, New Tazewell, TN 37825. Upon information and belief, Defendant Scruggs is a resident of the State of North Carolina and may be served with process by Certified Mail at his residence address of 5226 Addison Drive, Charlotte, NC 28211. A Summons and Complaint will also be served on Defendant Scruggs at the address of the real property at issue, 385 Wildcat Hollow Road, New Tazewell, TN 37825.

16. Defendant Debbie Hunley is the Owner of real property located in Claiborne County identified as Lot 284 of the Lone Mountain Shores subdivision and known as 117 Cantilever Lane, New Tazewell, TN 37825. Upon information and belief, Defendant Hunley is a resident of the State of Tennessee and may be served with process by Certified Mail at her residence address of 4071 Highway 63, Speedwell, TN 37870. A Summons and Complaint will also be served on Defendant Hunley at the address of the real property at issue, 117 Cantilever Lane, New Tazewell, TN 37825.

17. Defendants Brendan Frantz and Aimee Frantz ("the Frantz Defendants") are the Owners of real property located in Claiborne County identified as Lot 329 of the Lone Mountain Shores subdivision and known as 114 Shoreside Road, New Tazewell, TN 37825. Upon information and belief, the Frantz Defendants are residents of the State of Ohio and may be served with process by Certified Mail at their residence address of 625 Grand Wood Court, Springboro, OH 45066. A Summons and Complaint will also be served on the Frantz Defendants at the address of the real property at issue, 114 Shoreside Road, New Tazewell, TN 37825.

18. Defendant David Lang is the Owner of real property located in Claiborne County identified as Lot 357 of the Lone Mountain Shores subdivision and known as 307 Morning Glory Road, New Tazewell, TN 37825. Upon information and belief, Defendant Lang is a resident of

the State of Tennessee and may be served with process by Certified Mail at his residence address of 2757 Folts Drive, Chattanooga, TN 37415. A Summons and Complaint will also be served on Defendant Lang at the address of the real property at issue, 307 Morning Glory Road, New Tazewell, TN 37825.

19. Defendants David Norcross and Michelle Norcross ("the Norcross Defendants") are the Owners of real property located in Claiborne County identified as Lot 201 of the Lone Mountain Shores subdivision and known as 203 Nightshade Lane, New Tazewell, TN 37825. Upon information and belief, the Norcross Defendants are residents of the State of Ohio and may be served with process by Certified Mail at their residence address of 42 McCormick Trail, Milford, OH 45150. A Summons and Complaint will also be served on the Frantz Defendants at the address of the real property at issue, 203 Nightshade Lane, New Tazewell, TN 37825.

20. Defendants Pete Szuch and Caroline Szuch ("the Szuch Defendants") are the Owners of real property located in Claiborne County identified as Lot 842 of the Lone Mountain Shores subdivision and known as 136 Landmark Drive, New Tazewell, TN 37825. Upon information and belief, the Szuch Defendants are residents of the State of Colorado and may be served with process by Certified Mail at their residence address of 2944 Elk View Drive, Evergreen, CO 80439. A Summons and Complaint will also be served on the Szuch Defendants at the address of the real property at issue, 136 Landmark Drive, New Tazewell, TN 37825.

FACTUAL BACKGROUND

21. Plaintiff Lone Mountain Shores Owners Association, Inc., brings this action to preserve its Members' rights to quiet enjoyment of their property and to preserve its Members' rights under the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores ("the Declaration of Covenants") as filed with the

Claiborne County Register of Deeds Office in Book 1388, Pages 649-684. A true copy and accurate copy of the current Declaration of Covenants is attached hereto as Exhibit A.

22. The Declaration of Covenants, Section 2.14 states:

"Single Family Residential Purposes" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "single family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. **Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.**

See Exhibit A (emphasis added).

23. Further, the Declaration of Covenants, Section 6.04 states: "All Lots shall be used for single family residential purposes only, and **no commercial use is permitted.**" See Exhibit A (emphasis added).

24. Further, the Declaration of Covenants, Section 10.01: "**Every violation of any of the LMS Governing Documents is deemed to be a nuisance** and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed by law or in equity against anyone in violation of the LMS Governing Documents shall be available to the Association." See Exhibit A (emphasis added).

25. Further, the Declaration of Covenants, Section 10.02 states: "Each Owner or other occupant of any Lot shall comply with the provisions of the LMS Governing Documents as the same may be amended from time to time." See Exhibit A.

26. Further, the Declaration of Covenants, Section 10.03 states: "Failure to comply with the LMS Governing Documents shall be grounds by the Association to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing before the Board shall be given to delinquent party prior to commencing any legal proceedings." See Exhibit A (emphasis added).

27. All of Defendants' properties in Lone Mountain Shores as referenced in Paragraphs 2-20 of this Sworn Complaint were purchased or otherwise acquired subject to the Declaration of Covenants set forth in Exhibit A.

28. Plaintiff, through its Members, has continually witnessed the operation of unauthorized commercial rental businesses out of the homes owned by Defendants in Lone Mountain Shores. Recently, numerous customers of Defendants' rental businesses have temporarily occupied the Defendants' properties at issue and have caused significant excessive noise and congestion. Defendants' customers also frequently enter upon and use common areas owned by Plaintiff to which they are not entitled to use – all to the detriment of Plaintiff and its Members.

29. Most, if not all, of Defendants advertise or have advertised their homes in Lone Mountain Shores as short-term or vacation rentals through websites or services such as VRBO (Vacation rentals by owner), Airbnb, and other similar services. See Exhibit B.

30. The Declaration of Covenants were placed on Lone Mountain Shores to insure and protect the owners from any commercial and/or business intrusions that would disrupt the owners' quiet enjoyment of their real property.

31. The operation of Defendants' short-term rental businesses is not a single-family residential use of the properties under the Declaration of Covenants. Moreover, it is a specifically prohibited commercial activity. See Exhibit A, sections 2.14 and 6.04.

32. Plaintiff notified the Defendants by letters dated August 8, 2022 (Szuch Defendants on October 19, 2022), of their violations of the Declaration of Covenants (the "Cease and Desist Letters"). The Cease-and-Desist Letters requested that Defendants stop using their homes in Lone Mountain Shores as short-term rental properties. True and accurate copies of a few of the identical Cease and Desist letters are attached hereto as See Exhibit C.

33. Pursuant to Section 10.03 of the Declarations and Covenants, the Cease-and-Desist Letters provided an opportunity for Defendants to have a hearing before the Lone Mountain Shores Owners Association, Inc.'s Board of Directors at a Special Meeting, which was held on September 14, 2022. See Exhibit C.

34. Defendants' operation of unauthorized vacation and overnight rental businesses in Lone Mountain Shores constitutes a nuisance to Plaintiff's Members because: (i) it is an improper use of the properties as short-term/vacation rental businesses are in violation of the plain language of the Declaration of Covenants, and (ii) the significant harm to Plaintiffs' Members from the loss of quiet enjoyment and reduction in value of their real property.

35. Defendants (other than Szuch Defendants) have had more than three (3) months since being formally notified that the operation of their businesses violates the Declaration of Covenants yet continue to operate.

36. Since the transmittal of the Cease-and-Desist letter to the Szuch Defendants, there has been no response from the Szuch Defendants, thus indicating that they intend to continue

with the operation of their rental business. Nor have the Szuch Defendants requested a hearing before the Lone Mountain Shores Owners Association, Inc.'s Board of Directors.

37. Defendants' continued violation of the Declaration of Covenants by operating prohibited commercial vacation rental businesses has caused and will continue to cause Plaintiffs' Members to suffer significant and irreparable harm and damage through (i) the loss of quiet enjoyment of their real property by the violation of the Declaration of Covenants, (ii) continued nuisance resulting from excessive noise and congregation of Defendants' prohibited rental customers, and (iii) by the subsequent reduction in the value of their real property.

WHEREFORE, the Plaintiff prays as follows:

1. That process be issued and served upon the Defendants requiring them to file a verified answer to this Amended Sworn Complaint;
2. That a judgment be entered in favor of Plaintiff;
3. That the Court issue a final injunction permanently enjoining the Defendants from operating prohibited commercial vacation or short-term rental businesses within Lone Mountain Shores;
4. That the Plaintiff be awarded its reasonable attorney's fees, expenses, and all costs as provided in the general provisions of the Declaration of Covenants;
5. That the Court award the Plaintiff its court costs, discretionary costs, and such other, further, relief to which it is or may be entitled.

LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC.

Mark Jonckheere
Mark Jonckheere

LMSOA Mark Jonckheere
Its: President

OATH

STATE OF TENNESSEE)
 : ss
COUNTY OF GRAINGER)

Before me, the undersigned, a Notary Public in and for the state and county aforesaid, personally appeared MARK JONCKHEERE, with whom I am personally acquainted, or proved to me on a basis of satisfactory evidence, and who, upon oath: 1) acknowledged that he has read the foregoing Complaint and that the facts contained therein are true to the best of his knowledge, information, and belief, and 2) acknowledged himself to be the President of the within named Plaintiff and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of LONE MOUNTAIN SHORES OWNERS ASSOCIATION, INC., by himself as President.

Witness my hand and official seal at office, this 8th day of November 2022.

[Signature]
Notary Public

My commission expires: 2/20/2024



Respectfully submitted this 10th day of November 2022.

Preston A. Hawkins

Preston A. Hawkins, Esq. (BPR #022117)

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Attorneys for Plaintiff

COST BOND

We acknowledge ourselves as surety for all court costs and taxes in this cause and in accordance with Tennessee Code Annotated § 20-12-120.

This 10th day of November 2022.

LEWIS THOMASON, P.C.

Preston A. Hawkins

Preston A. Hawkins, Esq.