



KIZER & BLACK, ATTORNEYS, PLLC
217 E. BROADWAY AVENUE
MARYVILLE, TENNESSEE 37804

December 9, 2022

Jackie Rosenbalm
Claiborne County Circuit Civil Court Clerk
Claiborne County Courthouse
1740 Main Street, Suite 201
Tazewell, TN 37879

Re: *Lone Mountain Shores Owners Association v. Bennafield, et al.*
Claiborne County Court, No. CV-2354

Dear Clerk:

Please find enclosed for filing in the above referenced matter:

- Motion for Admission Pro Hac Vice
- Notice of Appearance
- Defendants' Motion to Dismiss Plaintiff's Amended Sworn Complaint for Permanent Injunction

I have also enclosed a self-addressed stamped envelope for the return of the extra copies.

Thank you for your assistance and please contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Leslie Rowland'.

Leslie Rowland
Legal Assistant to Joel E. Reeves

/lgr

Enclosures

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS
ASSOCIATION, INC.

Plaintiff,

vs.

No.: CV-4354

HENRY BENNAFIELD, JANICE
BENNAFIELD, BELLA GOLDEN, JAMES
HAWS, DENISE HAWS, VIC WARTHMAN
ELIZABETH WARTHMAN, TROY
VANDERHOOF, PAM VANDERHOOF, ED
LUND, LAKE FRONT RENDEZVOUS, LLC,
M & C 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,

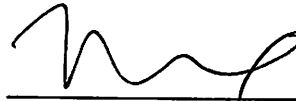
Defendants.

NOTICE OF APPEARANCE

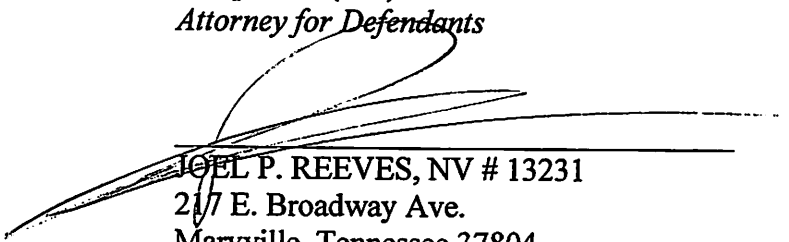
Please be advised that Melanie E. Davis, Joel P. Reeves, and the law firm of Kizer & Black, Attorneys, PLLC, enter their appearance on behalf of Defendants, Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Vic Warthman, Elizabeth Warthman, Troy Vanderhoof, Pam Vanderhoof, Ed Lund, Lake Front Rendezvous, LLC, M & C Eaglesnest, LLC, B & M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 Jacksbluff, LLC, Fred Maess, Kristy Wambold, James Scruggs, Brendan Frantz, Aimee Frantz, David Norcross, Michelle Norcross, Pete Szuch, and Caroline Szuch (hereinafter collectively "Defendants").

SUBMITTED this the 4 day of December, 2022.

KIZER & BLACK, ATTORNEYS, PLLC



MELANIE E. DAVIS, TNBPR # 017947
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1625
Attorney for Defendants



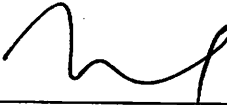
JOEL P. REEVES, NV # 13231
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins, Esq.
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 9 day of December, 2022.



Melanie E. Davis

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS
ASSOCIATION, INC.

Plaintiff,

vs.

HENRY BENNAFIELD, JANICE
BENNAFIELD, BELLA GOLDEN, JAMES
HAWS, DENISE HAWS, VIC WARTHMAN
ELIZABETH WARTHMAN, TROY
VANDERHOOF, PAM VANDERHOOF, ED
LUND, LAKE FRONT RENDEZVOUS, LLC,
M & C 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

**HEARING DATE:
JANUARY 13, 2023
@ 9:00 A.M.**

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED SWORN
COMPLAINT FOR PERMANENT INJUNCTION**

Come now, Defendants Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Vic Warthman, Elizabeth Warthman, Troy Vanderhoof, Pam Vanderhoof, Ed Lund, Lake Front Rendezvous, LLC, M & C Eaglesnest, LLC, B & M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 Jacksbluff, LLC, Fred Maess, Kristy Wambold, James Scruggs, Brendan Frantz, Aimee Frantz, David Norcross, Michelle Norcross, Pete Szuch, and Caroline Szuch (hereinafter collectively "Defendants") and move this Honorable Court to Dismiss

Plaintiff's Amended Sworn Complaint for Permanent Injunction pursuant to Tenn. R. Civ. Pro. Rule 12.02(7) for failure to join indispensable parties under Rule 19.

MEMORANDUM OF LAW

I.

Standard of Review

Tennessee Rule of Civil Procedure 12.02 provides in pertinent part as follows:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion in writing:...(7) failure to join a party under Rule 19....A motion making any of these defenses shall be made before pleading if a further pleading is permitted

Tennessee Rule of Civil Procedure 19.01 provides in pertinent part as follows:

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.

When dealing with property owners and determining whether they should be made a party under the constructs of Rule 19, "the joinder should occur when there is some indication in the record that an identifiable landowner exists whose interests *might* be affected by the lawsuit, even if it appears likely that the third party landowner might agree with the trial court's judgment."

Simpkins v. Ward, No. M2018-01327-COA-R3-CV, 2019 Tenn. App. LEXIS 462, at *6 (Ct. App. Sep. 17, 2019)(remanded to join absent third parties)(emphasis added).

II.

Legal Argument

1. Public Record Background

The subject lawsuit relies on Plaintiff's interpretation of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores (the "Declaration of Covenants"). Plaintiff posits that its interpretation of the Declaration of Covenants prevents Defendants, and indeed all residents in the Lone Mountain Shores community, from renting their homes on a short-term basis. However, this is a novel interpretation of a document that has been of record with the Claiborne County Register of Deeds Office for almost a decade. Such a dramatic shift in the interpretation of a document that has been of record for so long substantially affects the property rights of not just the named Defendants but indeed all residents of the Lone Mountain Shores community. It is for that reason that this lawsuit must be dismissed for failure to add necessary and indispensable parties under TRCP Rule 19. Without the necessary parties, this Court lacks subject matter jurisdiction to afford complete relief to the parties currently pled.

As noted in the Amended Complaint (the "Complaint") at paragraph 21, the Declaration of Covenants was recorded at the Claiborne County Register of Deeds Office in Book 1388, Pages 649-684. (Attached to Complaint as Exhibit A) What is not mentioned in the Complaint is the fact that the Declaration of Covenants was recorded at the Claiborne County Register of Deeds Office on August 12, 2013, well over nine (9) years before the filing of this lawsuit. For those entire nine (9) years, Defendants and many other residents of Lone Mountain Shores have been renting their

homes on a short-term basis and were given tacit if not explicit approval from the Association that they could do so. And indeed, the first time that the Plaintiff has attempted to enforce the interpretation espoused in this lawsuit did not begin until August 8, 2022 when Plaintiff's counsel sent the cease and desist letter referenced in paragraph 32 of the Complaint. That letter is the first time any of the Defendants herein, in all their years of using their properties for short-term rentals, have ever been told by the Plaintiff that the subject use of their property was in violation of the Declaration of Covenants.

The Declaration of Covenants is attached to the Complaint as an exhibit and is indeed of record in the Claiborne County Register's Office. As such, this Court can consider that document without converting this motion into a Motion for Summary Judgment because it is of public record and therefore subject to judicial notice. See Stephens v. Home Depot U.S.A., 529 S.W.3d 63, 74 (Tenn. Ct. App. 2016) (holding that "Courts resolving a motion to dismiss may consider 'items subject to judicial notice [and] matters of public record . . . without converting the motion into one for summary judgment").

Another matter that is public record and therefore subject to judicial notice is the paper trail of lawsuits filed by Plaintiff in Claiborne County. The undersigned contacted the Claiborne County Circuit Court, Chancery Court, and Sessions Court and there is no record of the Plaintiff ever seeking to interpret the Declaration of Covenants in the way that they are currently choosing to do so. The only lawsuit filed by Plaintiff that even comes close to the present issue was filed in the Claiborne County Chancery Court in November 2014 (No. 18369)(Complaint attached hereto as Exhibit 1). That case dealt with a "commercial resort" which was operating in the Lone Mountain Shores community which had, among things, staff on site which did cooking and cleaning for the guests. However, that case dealt with the *prior* version of the Declaration of Covenants which is

of record in the Claiborne County Register of Deeds Office in Book 1059, Pages 728-764 and was recorded on March 7, 2001. Indeed, based on information and belief, it was that lawsuit which prompted the present version of the Declaration of Covenants which was instituted to ban commercial resorts. Now, almost a decade later, those restrictions which bind all residents in Lone Mountain Shores are being used in a way that it was not intended, a way that affects the property rights of all residents in the community.

2. This Lawsuit Affects the Property Rights of All Residents in Lone Mountain Shores

a. Judicial Economy

With all of the aforementioned public record information as the backdrop, many if not all of the residents of the Lone Mountain would be quite taken aback to learn that a document that has been of record for almost a decade is suddenly being used to strip away a property right that they may have previously taken for granted and they are not even being given notice that it is threatened. This is not a mere enforcement action as Plaintiff would have this Court believe. Indeed, this “Complaint for Permanent Injunction” is a thinly veiled attempt at an action for declaratory relief seeking this Court’s validation of Plaintiff’s novel interpretation of an almost decade old document that has never been interpreted in the way that Plaintiff is now seeking.¹

Surely, Plaintiff will protest in response that they are only seeking an adjudication against the currently named Defendants and that if someone else “violates” the Declaration of Covenants in the future that the Plaintiff will treat them in the same manner as they did with the current Defendants. However, this is the argument that veils the attempt at a declaratory relief action

¹ See TCA 29-14-103 of the Declaratory Judgments Act:

“Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

without having to conform to the more stringent joinder provisions inherent with declaratory relief. Indeed, if this matter were filed as it should have been as a declaratory relief action, TCA 29-14-107 would apply and require that “all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings.” Plaintiff appears to be attempting to sidestep this requirement by styling this case as a “Complaint for Injunctive Relief” and not one for declaratory relief.

And on the subject of the style of this case, note this lawsuit was indeed filed as a “Complaint for Injunctive Relief.” However, “[i]njunctive relief . . . is a remedy, not an independent cause of action.” City of Leb. ex rel. Craighead v. Dodson, No. M2016-01745-COA-R3-CV, 2018 Tenn. App. LEXIS 240, at *14 (Ct. App. Apr. 30, 2018). The quiet part that Plaintiff is not saying loudly in their Complaint is that the underlying cause of action here is a request for this Court to interpret the Declaration of Covenants and to then make a declaration that the instrument supports Plaintiff’s new found reading of the same to ban short term rentals. This lawsuit is a declaratory relief action in all but name. Your Honor should require joinder of all those who are affected by Plaintiff’s interpretation of the Declaration of Covenants, i.e. all residents of Lone Mountain Shores.

And indeed, one of the reasons why declaratory relief actions have stricter joinder provisions is to curtail repetitive litigation which could result in inconsistent rulings. Huntsville Util. Dist. of Scott Cnty., Tenn. v. General Trust Co., 839 S.W.2d 397, 404 (1992)(stating that failure to join necessary parties “could result in inconsistent rulings and unnecessary duplicative litigation”) As stated by the Court in Tenn. Farmers Mut. Ins. Co. v. DeBruce, 586 S.W.3d 901, 906 (Tenn. 2019):

To achieve the goal of finality and certainty in a declaratory judgment action, all necessary parties must be joined. Parties are

determined to be necessary when their absence from the action could cause recurring litigation on the same subject because the declaratory judgment, if rendered, "would not terminate the uncertainty or controversy giving rise to the proceedings."

When determining the proper posture of this case and its gravamen, the question arises, does the Plaintiff's interpretation of the Declaration of Covenants apply to only the named Defendants or does it apply to all residents of Lone Mountain Shores? Clearly, Plaintiff would argue that it applies to all residents. Otherwise, Plaintiff is selectively enforcing the Declaration of Covenants. As such, the other residents of the community should be put on notice of the Plaintiff's intention to curtail their property rights. The failure to join the other residents will result repetitive litigation of the same issue.

The present case also has parallels to the case of Scandlyn v. McDill Columbus Corp., 895 S.W.2d 342 (Tenn. Ct. App. 1994) which involved a dispute over access to a lake. The court held in that case that property owners who would be affected by a change in who had a right to access the lake were indispensable and must be added. Here, the lake is the right to use property as a short-term rental. Plaintiff is attempting to restrict access to short-term rentals but is doing so in a piece-meal fashion to avoid having to add all residents subject to the Declaration of Covenants.

b. Issue Preclusion/Collateral Estoppel

What's more, there could also be an issue preclusion/collateral estoppel concern for those who are not added to this lawsuit. Indeed, Plaintiff could very well attempt to use any judgment from the instant case against other Lone Mountain Shores residents by virtue of the fact that they are parties to the Declaration of Covenants which are necessarily going to be interpreted in the present case. In essence, though Defendants would argue against such a theory, Plaintiff may attempt to argue that other non-party residents were in privity with party residents by virtue of the common tie to the Declaration of Covenants:

Issue preclusion requires a litigant to establish the following four elements: (1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; (2) the issue must have been actually litigated and decided in the prior action; (3) the issue must have been necessary and essential to a judgment on the merits in the prior litigation; and (4) *the party to be estopped was a party to the prior litigation or in privity with such a party.*

Arnold v. Oglesby, No. 3:20-cv-1069, 2021 U.S. Dist. LEXIS 110899, at *13 (M.D. Tenn. Apr. 15, 2021)

The party asserting collateral estoppel has the burden of proof and must establish five elements: (1) that the issue to be precluded is identical to an issue decided in an earlier proceeding; (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding; (3) that the judgment in the earlier proceeding has become final; (4) *that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding*; and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Neas Welding & Steel Fabricating, Inc. v. Neas, No. E2017-02512-COA-R3-CV, 2018 Tenn. App. LEXIS 491, at *6 (Ct. App. Aug. 21, 2018)

Again, Defendants are not submitting that other non-party residents are indeed in privity with other residents by virtue of the Declaration of Covenants, but Defendants can envision Plaintiff making such an argument. In the face of the potential for such an argument, Defendants would ask this Court to err on the side of requiring inclusion. Indeed, whether or not this privity concern is founded, Plaintiff's interpretation of the Declaration of Covenants absolutely does affect the property rights of all residents in Lone Mountain Shores and "[p]ersons whose real property interests may *potentially* be affected by a trial court's ruling have consistently been recognized as indispensable and necessary parties." Simpkins v. Ward, No. M2018-01327-COA-R3-CV, 2019 Tenn. App. LEXIS 462, at *5 (Ct. App. Sep. 17, 2019)(emphasis added)

3. All Residents Must Be Added So That They May Voice Their Interpretation of The Declaration of Covenants and Protect Their Property Interests

In its present iteration, this lawsuit is untenable for its failure to add parties contemplated under TRCP Rule 19. If all residents of Lone Mountain Shores are not added, inconsistent obligations could arise for the Plaintiff and those similarly situated to the already named Defendants. Though this gets to the heart of the legal argument being posited in this case, Defendants would be remiss to point out that Section 2.14 of the Declaration of Covenants is very much open to interpretation and it is the central focus of this lawsuit. Indeed, this lawsuit is not about enforcement of an undisputed contract; this lawsuit is about the interpretation of an almost decade old document that has never been interpreted the way that it is here.

To wit, that section, the definition for “single family residential purposes,” does indeed limit the use of residences to a “residential purpose.” However, despite listing several specific examples of commercial enterprises that do not fit the definition of a residential purpose, nowhere in this definition does it explicitly exclude short-term rentals whereby the renters are using the homes being rented for common residential purposes. Indeed, if a person wanted to rent a hotel room outside of a residential neighborhood, they could. But renting out a home away from home is not the same as staying at a hotel or bed and breakfast that necessarily have other guest services. Indeed, some people prefer to stay at a home away from home and not a hotel. Defendants do not offer the above as argument on the merits of the case. Rather, Defendants offer the above as a showing that the terms are open to interpretation and the other residents of the community should be joined so they may offer their own interpretations.

Perhaps more persuasive than the above arguments of counsel, see the attached October 21, 2022 Order from the Tennessee Supreme Court which granted review in Pandharipande v. FSD Corp., No. M2020-01174-SC-R11-CV, 2022 Tenn. LEXIS 405 (Oct. 21, 2022)(attached hereto as

Exhibit 2). In Pandharipande, the Court of Appeals was tasked with interpreting a “residential purpose” covenant restriction in the context of short-term rentals. Although the Pandharipande court found that the particular language of the covenant at issue in that case and the facts of the situation therein militated against allowing short-term rentals, it made that determination based on a prior holding from Shields Mountain Property Owners Association, Inc. v. Teffeteller, 2006 Tenn. App. LEXIS 106, 2006 WL 408050 (Tenn. Ct. App. 2006). Shields Mountain also involved a “residential purpose” covenant restriction in the context of short-term rentals with the court interpreting the language at issue to be against short term rentals.

However, what makes the attached Order so interesting is the Court’s seemingly sua sponte direction to brief the issue of “[w]hether this Court should limit or reject the analysis and holding of *Shields Mountain Property Owners Association, Inc. v. Teffeteller*, 2006 Tenn. App. LEXIS 106, 2006 WL 408050 (Tenn. Ct. App. 2006), regarding residential purpose or use restrictions or limitations in restrictive covenants.” Defendant would submit that although this is not a final order nor an absolute indication that the Supreme Court intends to overturn Shields Mountain (and therefore Pandharipande), it would seem that the wind is blowing in that direction. And Defendants would wager that the decision in Shields Mountain will be the central citation to any argument made by Plaintiff.

The present case is very much up for interpretation and the law relevant to the same is in flux. Put simply, the other members of the Lone Mountain Shores community should be permitted to have notice of the same and should be allowed to voice their own unique concerns for their own unique properties.

III.

Conclusion

Defendants would submit that this matter cannot proceed as it is currently pled. "When an indispensable and necessary party has not been joined, neither the trial court nor the appellate court may proceed further with the matter." Simpkins, Id. Defendants therefore request that this Court either dismiss the amended petition or at the very least order all necessary parties to be joined hereto.

RESPECTFULLY SUBMITTED this the 4 day of December, 2022.

KIZER & BLACK, ATTORNEYS, PLLC




MELANIE E. DAVIS, TNBPR # 017947
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865)-980-1625
Attorney for Defendants

JOEL P. REEVES, NV # 13231
217 E. Broadway Ave.
Maryville, Tennessee 37804
Telephone: (865) 980-1609
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This  day of December 2022.


Joel P. Reeves



IN THE CHANCERY COURT FOR CLAIBORNE COUNTY, TENNESSEE

**LONE MOUNTAIN SHORES OWNER'S
ASSOCIATION, INC., a Tennessee non-profit
corporation,**

Plaintiff

v.

**THE ELIZABETH LYNN WEBB REVOCABLE
TRUST, a/k/a BESTFREAKINGGOLF-LAKETRIP.com,
a/k/a "BEST FREAKING GOLF-LAKE TRIP,"
4262 Walton Creek Road
Cincinnati, OH 45243;**

**DAVID ARTHUR HAVLOVIC, individually, and
d/b/a BESTFREAKINGGOLF-LAKETRIP.com, a/k/a
"BEST FREAKING GOLF-LAKE TRIP,"
629 Wildcat Hollow Road
New Tazewell, TN 37825; and**

**BFGLT, LLC, a Tennessee limited liability company,
d/b/a BESTFREAKINGGOLF-LAKETRIP.com, a/k/a
"BEST FREAKING GOLF-LAKE TRIP,"
C/O David Arthur Havlovic, Registered Agent,
629 Wildcat Hollow Road
New Tazewell, TN 37825,**

Defendants.

SWORN COMPLAINT FOR INJUNCTIVE RELIEF

The Plaintiff, Lone Mountain Shores Owner's Association, Inc., brings this cause of action seeking a permanent injunction against the Defendants' use of property in violation of the applicable restrictive covenants, for an injunction to remove or conform a structure constructed in violation of the restrictive covenants, and for other relief. As grounds for the relief sought herein, the Plaintiff alleges as follows:

1. The Plaintiff, Lone Mountain Shores Owner's Association, Inc., P.O. Box 719 New Tazewell, TN 37824, is a Tennessee non-profit corporation, charged with the duties and

No.: 18369

FILED
THIS 10 DAY OF NOV. 20 14
AT 10:20 AM PM
Frances Cardwell, C & M



obligations, including enforcement, of the restrictive covenants governing the residential subdivision located in Claiborne County, Tennessee, known as Lone Mountain Shores.

2. Defendant Elizabeth Lynn Webb Revocable Trust (referred to herein as the "Trust"), according to the public record of the Claiborne County Register of Deeds, is the record owner of Lot 823 in Lone Mountain Shores Subdivision, and, via the Tennessee Secretary of State, may be served with process at 4262 Walton Creed Road, Cincinnati, OH 45243.

3. Defendant David Arthur Havlovic ("Havlovic"), upon information and belief, is the innkeeper or manager of a commercial enterprise known as "BestFreakingGolf-LakeTrip.com" a/k/a "Best Freaking Golf-Lake Trip"; and he may be served with process at 629 Wildcat Hollow Road, New Tazewell, TN 37825.

4. Defendant BFGLT, LLC ("BFGLT"), according to the records of the Tennessee Secretary of State, is an administratively-dissolved Tennessee limited liability company, and may be served through its registered agent David Arthur Havlovic, 629 Wildcat Hollow Road, New Tazewell, TN 37825.

5. Upon information and belief, BFGLT is an alter-ego of Havlovic and/or the Trust; and these Defendants are doing business as "BestFreakingGolf-LakeTrip.com" a/k/a "Best Freaking Golf-Lake Trip."

6. This action is for the enforcement of the restrictive covenants generally applicable to real estate located within the Lone Mountain Shores Subdivision in Claiborne County, Tennessee, and specifically to halt the use of said Lone Mountain Shores Lot 823 in Claiborne County, Tennessee, by Defendants or others in violation of the applicable restrictive covenants,

and to force the removal or remediation of a structure constructed thereon by or for Defendants in violation of the applicable restrictive covenants.

7. Plaintiff is the successor to the Declarant of the DECLARATION OF COVENANTS, CONDITIONS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR LONE MOUNTAIN SHORES, as amended, and as such, brings this action to enforce said restrictive covenants.

8. In connection with the development of the Lone Mountain Shores subdivision in Claiborne County, Tennessee, the developer caused certain restrictive covenants to be recorded in Misc. Book 54, Page 274, in the Register's Office for Claiborne County, Tennessee. Said restrictive covenants were amended from time to time by various amendments for clarity and to include all of the various phases of development, all of which amendments were duly recorded in the Register's Office for Claiborne County, Tennessee. Attached hereto as **Exhibit One** is a copy of the amended Restrictive Covenants that are recorded in Book 1059, pages 728-764, and which are applicable to Lot 823 in Lone Mountain Shores Subdivision. These Restrictive Covenants include a copy of the original covenants recorded in Misc. Book 54, Page 274.

9. Among other things, the said Restrictive Covenants applicable to Lot 823 provide in pertinent part as follows:

Section 6.03. Residential Use Only. The lots shall be used for single family residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling's floor area or employees not more than two (2) persons.

[Exhibit One: Deed Book 1059, at Page 749].

10. The Restrictive Covenants prohibit nuisances, which are defined in Section 6.19 as to include annoyances in the neighborhood:

Section 6.19 Nuisances. No Noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood

[Book 1059, at Page 740 (originally recorded in Misc. Book 54, p. 281)].

11. Section 10.10 of the Restrictive Covenants further provides:

Section 10.01 Violations Deemed a Nuisance. Every violation of these covenants or any other of the Lone Mountain Shores 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 these Covenants shall be available.

[Book 1059, at Page 744 (originally recorded in Misc. Book 54, p. 285)].

12. The Restrictive Covenants further require under Article 7 that any plans for construction or remodeling be approved by an Architectural Review Committee, ("ARC"). Specifically, the Restrictive Covenants provide:

Section 7.02.2 No improvements on the Property shall be erected, placed or altered on any Lot, Building Site nor shall any construction be commenced until plans for such improvements shall have been approved by the ARC; provided, however, that improvements and alterations which are completely within a building may be undertaken without such approval."

[Exhibit One: Deed Book 1059, at Page 742 (originally recorded Misc. Book 54, p. 283)].

13. Pursuant to Sections 10.02-10.04 of the Restrictive Covenants, all owners and occupants of the Lots are required to comply with the Restrictive Covenants, and the Plaintiff may pursue injunctive and other relief to enforce the same with the offending Lot owners being responsible for all costs of such actions. Section 10.04 grants to Plaintiff the right to "on behalf of the owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace at the expense of the offending Owner, any structure, thing

or condition that may exist therein contrary to the interest and meaning of the Lone Mountain Shores Documents.

14. As shown by the Public Record in the Claiborne County Register's Office, the developer subdivided larger tracts of land and recorded various plats depicting, describing, and restricting individual lots; Lot 823 is shown, described, and restricted by the plat on file in the Claiborne County Register's Office in Plat Cabinet 3, Slide 299.

15. Section 11.01 of the Restrictive covenants provides that the covenants "shall inure to the benefit of and shall be enforceable by the Association." That "Association" is the Plaintiff.

16. As shown by the Public Record in the Claiborne County Register's Office, the Defendant Trust acquired Lot 823 in Lone Mountain Shores Subdivision by deed dated August 19, 2008 and recorded in Deed Book 1270, Page 629 in the Register's Office for Claiborne County, Tennessee. At the time the Defendant Trust acquired this Lot 823, the applicable Restrictive Covenants were duly recorded, applicable the Lot and owner of the Lot and as a result, the Trust is duly bound by the terms and conditions of said Restrictive Covenants.

17. Defendant Trust's warranty deed recorded in Deed Book 1270, Page 629, expressly provides that:

Said property is sold subject to the Declaration of Covenants, Conditions, Restrictions and Easements duly recorded on said Plat and in Record Book 1059, Page 728, in the Register's Office of Claiborne County, Tennessee.

A copy of said recorded warranty deed is attached as **Exhibit Two** hereto.

18. At some point after Defendant Trust acquired Lot 823. Defendants began operating Lot 823 as a commercial resort.

19. In furtherance of their commercial enterprise, Defendants cause or permit to be maintained a commercial internet website, www.BestFreakingGolf-LakeTrip.com, promoting its commercial resort operation of Lot 823 as:

The unparalleled lake-golf experience / vacation offering we provide is like no other, basically a total lake vacation turn key, including all the all the super cool lake toys! Whether a family reunion trip, special anniversary, birthday or other, our offering has something for everyone including all ages! We are extremely dedicated and very committed to providing the ultimate lake vacation experience to all of our guests!

* * *

OUR GOLDEN RULE: To treat our guests just as we would like to be treated ourselves! We enjoy spoiling our guests by handling nearly all of the non fun tedious work responsibilities & details that are involved when participating in a lake trip vacation. In turn this of course allows you and your friends/family to spend their precious well deserved vacation time doing just that, VACATIONING!

* * *

Since our team handles 100% of all cooking & clean up duties, why not also have our team take care of your group's entire grocery shop before your party arrives here in Tennessee? We do not charge extra for this service nor do we mark any grocery items up, all receipts are provided and given to your group's designated leader shortly after arriving.

* * *

In the case of an injury or any situation requiring medical attention a staff member will need to be notified immediately! Due to the remote location of the lakefront home (depending on the extent or type of medical situation) it may be more efficient for a staff member to initially treat and or get the person in need to the hospital / Emergency Room than it would be to wait on an ambulance. We keep a fully charged defibrillator on hand which our guests are taught how to operate and use this life saving device properly during their orientation. An emergency vehicle (complete with lights, siren, first aid kits, and supplies) is also kept on site, fueled and ready! Our staff has extensive training regarding emergency situations!

* * *

Our friendly and unique meal plan eliminates all food responsibilities from our guests. so much so that they won't even have to haul a single cooler! Our meal plan also assures your party will not be over buying, under buying or forgetting something regarding the food/grocery items.

[Source: www.BestFreakingGolf-LakeTrip.com (October 8, 2014)]

20. Defendants' same website posts a testimonial describing the resort services offered on Lot 823 by Defendants:

When our 5 families set out on our lake trip with BFGLT, the idea/plan being that our group didn't need to pre shop for our meals in our home state or Tennessee, then not having to haul them to our destination combined with not having to cook or clean a single dish for our entire stay, really just seemed just too good to be true! This was one of those things we had to see/experience for ourselves to actually believe!

Now that our trip with BFGLT is complete, I can say first hand that their lake packages are everything advertised, truly incredible, they delivered big time! Not only did the staff make us feel welcome but they also provided top notch service when it came to all of our needs which obviously included the meals! From the pre-shopping to the preparation to the clean up... and here's the kicker, the food was plentiful, delicious & AMAZING, nothing wasted either!

[Source: www.BestFreakingGolf-LakeTrip.com (October 8, 2014)]

21. Another testimonial posted by or for Defendants on their website touts Defendant's resort use of Lot 823:

Speaking of the website, it mentions that a 4 day stay at your lake home is like 7 day stay on a typical vacation, you guys do all of the work and your guests have all of the fun... Boy isn't that the truth...we were able to truly relax and did not have to worry about the food from shopping, packing it, preparing it and cleaning up afterwards. Between breakfast, lunch and dinner, this adds up to a huge chunk of valuable relaxation time. Also, not having to worry about the whole boat rental ordeal from getting the boats and then returning them also was a blessing. You and your staff did not want any guest to "work" and this was evident when we arrived and your staff even lugged in all the suitcases and liquor (lots and lots of it) and loaded all the beer in the coolers even. This was totally unexpected, but very welcomed.

* * *

Your company is doing it so right, seriously. you guys and your offering is so over the top awesome in every way! Our experience in the past regarding lake trips & lake rentals; we (meaning our family & group) were nearly spending what your company charges but we had to do all the work, all the pre food shopping, the cooler hauling, the cooking, cleaning, laundry, not to mention the ridiculous lake toy rental fees, requirements & arrangements, etc... I can't mention this enough. your company / offering removes all the chores / work involved in a lake vacation.

[Source: www.BestFreakingGolf-LakeTrip.com (October 8, 2014)]

22. Yet another testimonial posted by or for Defendants on their website described Defendant's resort use of Lot 823:

The firework show was impressive to say the least! IT is WELL worth the money and quite a treat for young and old. There aren't many times you can say you had your own private fireworks display while floating on a boat after sunset. As I mentioned before, the meals were fantastic. Both you and Jimmy made arrangements to accommodate our schedule (lunch could be made for on the boat or when we returned-dinner could be ready when we got home or after a nap with the kids). What really added to the already fantastic meals were the added touches...the perfect desserts and special treats shipped from Cincy. My kids still remind me that the lake house had the BEST ice cream ever! All of the activities at the lake house are geared toward a family just relaxing and enjoying the time they are there. The tubes are inflated and ready for tubing behind the gassed up and ready to go boat. The fishing "stuff" (that's a technical word for those of us that have no idea how to fish) is ready for the kids and adults to catch a few fish. The bonfires were made for us each night...basically anything and everything that you can think that is a "chore" on a lake vacation is taken away. We honestly showed up and stared to have fun right away!

[Source: www.BestFreakingGolf-LakeTrip.com (October 8, 2014)]

23. Defendants' commercial resort is neither a mere "rental of any dwelling for private residential purposes," nor is it simply an "an individual lot owner . . . conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use." Thus, Defendants' resort operation is not permissible under Section 6.03 or any other provision of the Restrictive Covenants.

24. The Defendants' provision of hotel-like "All-inclusive services" offered by Defendants, especially in conjunction with the provision of overnight lodging on a per-person rate basis, is a prohibited "commercial" use—not a "single family residential" use; and Defendants' use.

25. The Defendants' operation of Lot 823 as a full-service resort does not fall within the permissible "home occupation" use, which must be "subordinate to the primary residential use," as provided by Section 6.03 of the applicable Restrictions.

26. Plaintiff has received numerous complaints from neighbors and other members of the Plaintiff association regarding the Defendants' commercial enterprise on Lot 823, including reports of annoying, obnoxious, and dangerous activities by Defendants' employees, agents, staff, and/or customers, including the playing of loud outdoor music late at night, unnecessary vehicle horn-honking, harassment by boaters from Lot 823, persons going armed with automatic weapons and threatening and intimidating neighbors, open bonfires during dry periods, and reckless use of fireworks.

27. In addition, the Defendant Trust applied for and received approval from the Plaintiff's Architectural Review Committee (ARC) of certain construction plans for a garage appurtenant to the house on Lot 823; but, the Defendant Trust instead of constructing as approved, Defendant Trust caused to be constructed, in addition to a garage, an unapproved employee housing apartment.

28. Notwithstanding repeated efforts to secure the Defendant Trust's compliance with the garage plans that were approved by the ARC, and Plaintiff's notice to the Defendant Trust of the unapproved garage apartment structure in violation of the Restrictive Covenants, the Defendant Trust has failed and refused to conform the structure to the approved plans.

29. In addition, despite notice by Plaintiff to the Defendant Trust, the Defendants have continued to use the garage apartment structure as employee housing in furtherance of Defendants' commercial resort use of Lot 823.

30. Defendants' prohibited activities have continued notwithstanding frequent and repeated attempts by the Plaintiff to secure Defendants' compliance with the Restrictive Covenants. But, after repeated notice by the Plaintiff to the Defendant Trust, the Defendant Trust has failed or refused to cease the commercial resort use of Lot 823.


31. Inasmuch as this action relates to the rights of the parties and the encumbrance of the Restrictive Covenants regarding Lot 823, this Court should impose a lien lis pendens on said Lot 823 to prevent a conveyance of the property without notice of this pending action.

WHEREFORE, the Plaintiff prays as follows:

- a. That process be issued and served upon the Defendants requiring them to file an answer to this Complaint;
- b. That the Court find that the Defendants' actions on and uses of Lot 823 constitute violations of the Restrictive Covenants;
- b. That the Court find that the actions of the Defendants in connection with the operation of the business in direct violation of the Restrictive Covenants are continuing in nature and injuring the neighborhood by changing the character of the neighborhood;
- c. That the Court find that the Plaintiff and other lot owners in the Lone Mountain Shores subdivision will suffer immediate and irreparable injury from the Defendants' continuous violations of the Restrictive Covenants unless the Defendants are enjoined from operating the commercial resort business in the residential subdivision, and that without such injunctive relief, the Plaintiff will not have adequate remedies at law;
- d. That the Court find that the Plaintiff is entitled to a permanent injunction against the Defendants prohibiting the operation of a commercial resort business from or on the residential lot no. 823, and permanently enjoining Defendants and their successors and assigns from further violations of the Restrictive Covenants.
- e. That the Court find that the Defendants' construction of a garage apartment on Lot 823 was outside the scope of the approval of the ARC and was contrary to the Restrictive Covenants;

- f. That the Court enjoin Defendants from keeping the employee-housing garage apartment on Lot 823, and issue an injunction requiring Defendant Trust to remove said structure or conform it to the approved plans for same;
- g. That the Court, in accordance with Section 10.04 of the Restrictive Covenants, enter an order granting Plaintiff authority to enter Lot 823 and forcibly remove the offending garage apartment structure therefrom, and grant to Plaintiff a lien against Lot 823 for the cost of such removal;
- h. That the Court grant Plaintiff a permanent injunction against Defendants, closing the commercial business operated on Lot 823 in Lone Mountain Shores Subdivision, and permanently enjoining Defendants and their successors and assigns from using said Lot 823 or any other lots in Lone Mountain Shores Subdivision in violation of the applicable Restrictive Covenants.
- i. That the Court permanently enjoin the Defendants and their successors and assigns from operating the present or any commercial resort business from Lot 823 or other lots in Lone Mountain Shores Subdivision;
- j. That the Court impose a lien lis pendens on said Lot 823 of Lone Mountain Shores Subdivision to provide record notice of this pending action to any potential grantees while the Court determines whether or not the Defendants' use of said Lot 823 and the Defendants' maintenance of the existing staff housing apartment violates the applicable Restrictive Covenants. A proposed lien lis pendens for the Court's entry is attached as **Exhibit Three**; and
- k. That the Court award the Plaintiff its court costs, discretionary costs, and such other, further, relief to which is or may be entitled.

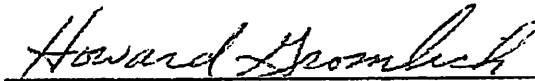
Respectfully Submitted,


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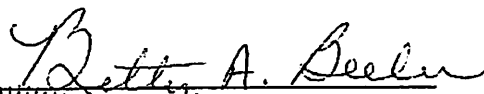
AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF CAMPBELL

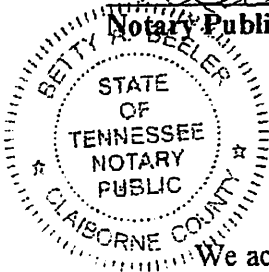
I, Howard Gromlich (name of officer), having been duly sworn according to law, make oath that: I am the President (title) of the Plaintiff, I am a custodian of Plaintiff's records maintained in the ordinary course of its business, I have read the foregoing SWORN COMPLAINT FOR INJUNCTIVE RELIEF, and, except as specifically stated therein, the facts set forth therein, upon my personal knowledge, or upon the books and said records of the Plaintiff, are true.



Sworn and subscribed before me,
this the 5th day of November, 2014.


Notary Public

My Commission Expires: 5-23-2015



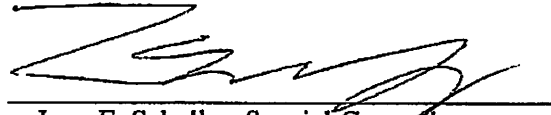
COST BOND

We acknowledge ourselves as surety for all costs, taxes and damages in this cause and in accordance with TCA§ 20-12-120.

This 7th day of November, 2014.

LEWIS, THOMASON, KING, KRIEG & WALDROP P.C.

By:


Lars E. Schuller, Special Counsel

5687567



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PRATIK PANDHARIPANDE, M.D. v. FSD CORPORATION

**Chancery Court for DeKalb County
No. 2019-CV-60**

No. M2020-01174-SC-R11-CV

ORDER

Plaintiff Pratik Pandharipande, M.D. filed a motion to strike as untimely the answer filed by Defendant FSD Corporation. FSD Corporation, in turn, filed a motion for extension of the time within which to have filed its answer. The Court denies the motion to strike of Pratik Pandharipande, grants the motion for extension of FSD Corporation, and deems the answer timely filed.

Upon consideration of the application for permission to appeal of Pratik Pandharipande, the answer of FSD Corporation, and the record before us, the application is granted. In addition to the issues stated in the application, the Court directs the parties to address in their respective briefs the following issues:

1. Whether there are genuine issues of material fact with respect to the application of the 1984 Declaration of Covenants, Conditions, and Restrictions to the property purchased by Plaintiff Pratik Pandharipande in July 2015, in light of this Court's opinion in *Phillips v. Hatfield*, 624 S.W.3d 464 (Tenn. 2021), including but not limited to the date on which the 1984 Declaration first was recorded, the ownership on that date of the property which Pratik Pandharipande purchased in July 2015, and whether any of the conveyances in Pratik Pandharipande's chain of title exhibited an intent on the part of the grantor to impose the 1984 Declaration as a servitude.

2. Whether this Court should limit or reject the analysis and holding of *Shields Mountain Property Owners Association, Inc. v. Teffeteller*, 2006 WL 408050 (Tenn. Ct. App. 2006), regarding residential purpose or use restrictions or limitations in restrictive covenants.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

PER CURIAM