

VIRGINIA :

IN THE CIRCUIT COURT OF FREDERICK COUNTY

WILLIAM C. MASTERS,)
)
Plaintiff,)

v.)

LAKE HOLIDAY COUNTRY CLUB, INC.,)
a Virginia nonstock corporation)

Civil Action No. 07-305

Serve: Ian R. D. Williams, Esq.)
Registered Agent)
21 South Loudoun Street)
Winchester Virginia 22601)

LAKE HOLIDAY, LLC, a Virginia limited)
liability company)

Serve: Richard J. North)
Registered Agent)
8401 Greensboro Drive, Suite 300)
McLean, Virginia 22102)

PETITION FOR JUDICIAL
REVIEW OF ELECTION AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

LAKE HOLIDAY LAND, INC., a Virginia)
corporation)

Serve: Richard J. North)
Registered Agent)
8401 Greensboro Drive, Suite 300)
McLean, Virginia 22102)

KENNETH R. MURPHY, in his capacity as)
Director of Lake Holiday Country Club, Inc.)

Serve: Kenneth R. Murphy)
113 Greenwood Court)
Cross Junction, Virginia 22625)

NOEL O'BRIEN, in her capacity as Director of)
Lake Holiday Country Club, Inc.)

Serve: Noel O'Brien)
144 Lake Holiday Road)
Cross Junction, Virginia 22625)

DAVID W. BUERMAYER, in his capacity as Director of Lake Holiday Country Club, Inc.)
)
Serve: David W. Buermeyer)
101 Point Place)
Cross Junction, Virginia 22625)
)
STEPHEN J. LOCKE, in his capacity as Director of Lake Holiday Country Club, Inc.)
)
Serve: Stephen J. Locke)
101 Waterside Lane)
Cross Junction, Virginia 22625)
)
SUZANNE K. MARCUS, in her capacity as Director of Lake Holiday Country Club, Inc.)
)
Serve: Suzanne K. Marcus)
707 Lakeview Drive)
Cross Junction, Virginia 22625)
)
Defendants.)

PETITION FOR JUDICIAL REVIEW OF ELECTION AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW, your Plaintiff, William C. Masters (“Masters”), by and through the undersigned counsel, and files this, his Petition for Judicial Review of Election and Complaint for Declaratory and Injunctive Relief against Lake Holiday Country Club, Inc., Lake Holiday Land, Inc., Lake Holiday, LLC, Kenneth R. Murphy, Noel O’Brien, David W. Buermeyer, Stephen J. Locke, and Suzanne K. Marcus and respectfully states unto this Honorable Court as follows:

INTRODUCTION

1. This suit is a petition for judicial review of an election for the board of directors of Lake Holiday Estates pursuant to Virginia Code § 13.1-861 and a complaint for declaratory and injunctive relief pursuant to Virginia Code §8.01-184.

PARTIES

2. William C. Masters is an individual, who owns a lot in Section 4B of and resides at Lake Holiday Estates, a gated residential community in Frederick County.

3. Lake Holiday Country Club, Inc. (the "Association") is a nonstock corporation, operating under the laws of the Commonwealth of Virginia with its principal office located in Frederick County at 231 Redland Road in Cross Junction, Virginia. The Association is a property owners' association formed to provide for the ownership, maintenance, improvement, preservation, security, operation, management, control and regulation of roads, road easements, walkways, and other various common and recreational facilities, among other property control and management functions. The Association is empowered with the authority and obligation to fix, levy, collect, and enforce payment of all charges or assessments made or imposed pursuant to the Associations' governing documents.

4. By virtue of his ownership of the lot at Lake Holiday Estates, Masters is a member of the Association.

5. Kenneth R. Murphy, Noel O'Brien, David W. Buermeyer, Stephen J. Locke, and Suzanne K. Marcus (the "Directors") are five individuals elected to the Board of Directors for the Association at the Association's annual meeting on October 28, 2006. Each individual director is a resident of Lake Holiday Estates at his or her respective address identified above.

6. Lake Holiday, LLC is a Virginia limited liability company. Lake Holiday Land, Inc. is a Virginia corporation. Lake Holiday, LLC and Lake Holiday Land, Inc. are hereinafter collectively referred to as the "Development Companies." The Development Companies own certain lots, known as "Trust Lots," at Lake Holiday Estates for development purposes.

ORGANIZATIONAL BACKGROUND

7. Lake Holiday Estates was originally owned and developed by Lake Holiday Estates, Inc., a Virginia corporation, and Lake Holiday Associates, a Virginia limited partnership (the "Initial Declarant").

8. Between 1970 and 1975, the Initial Declarant established certain restrictions on development on the lots at Lake Holiday Estates through a Plan of Subdivision and certain Deeds of Declaration. The Initial Declarant established the Association in 1973 for the purposes of owning and maintaining the common elements of Lake Holiday Estates and to act as the property owners' association to protect the common interests of the members of the Association.

9. In the early stages of planning and development, Independence Land and Capital, Inc. ("Independence") provided financing to the Initial Declarant for the development of Lake Holiday Estates.

10. After an event of default, Independence foreclosed on the deeds of trust that created a lien on land within Lake Holiday Estates and that secured repayment of the development financing. Independence was the successful bidder at the foreclosure sales and thereby became the fee owner of certain lots (including lots on unimproved roads and without utilities) and common elements of Lake Holiday Estates owned by the Initial Declarant.

11. Thereafter, the Association filed suit against Independence, seeking inter alia, an order requiring Independence to complete the development of Lake Holiday Estates. The Association and Independence settled the lawsuit on or around June 1, 1984.

12. The Association and Independence memorialized the terms of their settlement agreement in writing as a Release and Settlement Agreement, which (i) provided for the Association's acquisition of certain lots, the clubhouse, nine holes of an eighteen-hole golf

course, an administrative building, roads, the entry area, the lakes and beaches, and a water tower, which assets were owned by Independence by virtue of the foreclosure on the Independence deeds of trust, and (ii) required Independence to execute a Declaration of Covenants (“Declaration”) affecting certain properties at Lake Holiday Estates of which Independence would retain ownership (the “Trust Lots”). The Declaration was incorporated by reference into the Release and Settlement Agreement. The Release and Settlement Agreement, together with the Declaration which was incorporated therein, is attached hereto as Exhibit A and hereinafter referred to as the “Settlement Agreement.”

13. The Declaration was recorded among the land records of Frederick County.

14. Insofar as the Trust Lots were concerned, the Settlement Agreement prohibited Independence and other “Developers” from becoming members of the Association and from having any voting rights in the Association and, further, exempted them from paying association dues and assessments. Paragraph five of the Declaration defined “Developer” as Independence, any successor corporations, and any entity that purchases two or more Trust Lots for development in any single or series of related transactions.

15. Only when the Trust Lots were sold to individuals and not to other Developers could the owners of the lots become members of the Association with the rights and privileges of membership as set forth in the Association’s governing documents.

16. From the execution of the Settlement Agreement in 1984 until approximately August 1, 2006, no Developer at any time paid any dues or assessments or sought any voting rights for any of the Trust Lots.

17. With the exception of Independence, its successor companies, and other Developers, each property owner in Lake Holiday is required to become a member of the

Association within thirty days of purchasing property at Lake Holiday Estates and then becomes entitled to vote on Association matters.

18. Between November 21, 2002 and February 21, 2003, Lake Holiday, LLC and Lake Holiday Land, Inc. (hereinafter "Development Companies") purchased a total of 685 Trust Lots from Independence for the purpose of development, thereby becoming a Developer under the terms of the Settlement Agreement.

19. Because the Development Companies fall under the category of Developer as set forth in the Settlement Agreement, they are prohibited from becoming members of the Association with respect to the Trust Lots and from obtaining voting rights in Association matters for the Trust Lots. They are also exempt from paying association dues and assessments for said Trust Lots.

20. From the date of purchase of those Trust Lots until approximately August 1, 2006, the Development Companies acknowledged that they were prohibited from becoming voting members of the Association for those Trust Lots and exempt from paying dues and made no attempt to vote or pay dues at any time between November 21, 2002 and August 1, 2006.

21. Further, the Development Companies acknowledged and confirmed that the terms of the Settlement Agreement were in "full force and effect and are binding on" them and the Association in two separate Development Agreements, each of which contained express language acknowledging that the Settlement Agreement was not being amended, modified, novated, or replaced. The first Development Agreement was executed on or around May 21, 2004, and the second Development Agreement was executed on or around June 9, 2006, which was less than a month from the date upon which the Development Companies sought voting rights from the Association for lots covered by the Settlement Agreement.

22. Notwithstanding the terms of the Settlement Agreement and the confirmation of the terms of the Settlement Agreement contained in the Development Agreements, on or around August 1, 2006, the Development Companies paid association dues for the 2006 year for 100 of the 685 Trust Lots that they owned and sought voting rights for those lots.

23. The Development Companies did not, however, pay any dues for the years between their purchase in 2002 and 2006 for the 100 Trust Lots, nor did they pay any dues for the remaining 575 Trust Lots that they then owned.

24. Then approximately two months before the date of the 2006 annual meeting and election for the board of directors, the Development Companies for the first time paid association dues for some but not all of the Trust Lots that they owned and sought voting rights from the Association for certain Trust Lots.

25. Had the Development Companies paid dues and assessments for the Trust Lots between January 1, 2003 and October 1, 2006, the Association would have received total payments in the amount of approximately \$1,304,422.00.

26. The Development Companies only paid dues for 100 of the 675 Trust Lots that they owned in order to obtain voting rights for a sufficient number of lots to influence the outcome of the 2006 annual board of directors election.

OCTOBER 2006 ANNUAL MEETING

27. The Association's bylaws provide for an annual meeting to be held on the fourth Saturday of October of each year.

28. On October 28, 2006, the Association held its annual meeting for 2006, at which time, it held an election for members of the board of directors.

29. Five positions on the board of directors were open for election.

30. Masters was a candidate for election to the board of directors.

31. Pursuant to the Association's bylaws, only members who are eligible and in good standing were entitled to cast a vote in that election. Each such member was entitled to cast five total votes, one for each of the available positions on the board of directors.

32. "Eligible and in good standing members" are defined in the bylaws as members who have paid all dues, assessments, and other charges owed to the Association. Eligible and in good standing members must also be in material compliance with all restrictions, rules, regulations, and covenants of the Association.

33. The Development Companies were not "eligible and in good standing members" of the Association with respect to the Trust Lots and were not entitled to cast a vote for the Trust Lots at the October 28, 2006 election.

34. Nevertheless, the Association wrongfully permitted the Development Companies to cast votes for the Trust Lots at the October 28, 2006 meeting as eligible and in good standing members, and the Association wrongfully and in total abrogation of the express terms of the Settlement Agreement accepted and counted the Development Companies' 500 votes for the Trust Lots.

COUNT 1
Judicial Review Pursuant to Va. Code § 13.1-861

35. The allegations contained in paragraphs 1-34 are incorporated herein by reference.

36. The Development Companies were not eligible and in good standing members as defined in the Association's bylaws and, therefore, were ineligible to vote in the October 2006 election.

37. Additionally, pursuant to the Settlement Agreement, the Development Companies were prohibited from membership in the Association and could not vote in the October 2006 election or in any election.

38. The Association lacked the authority to grant voting rights to the Development Companies.

39. Because 500 votes were cast in the October 2006 election by nonmembers of the Association, the October 2006 election is invalid.

40. But for the Association's wrongful grant of voting rights to the Development Companies for the 2006 election in complete abrogation of the terms of the Settlement Agreement, Masters would have been elected to the Board of Directors.

41. As a member of the Association and as a candidate for the board of directors in the October 2006 election, Masters is aggrieved by the outcome of the October 2006 election.

42. Masters has notified the Association and the Directors whose elections are contested that he contests the outcome of the October 2006 election.

43. Although a reasonable amount of time has passed since Masters notified the Association and the Directors that he contests the outcome of the election, the Association and the Directors have failed and refused to take any corrective action.

WHEREUPON, your Plaintiff, William C. Masters, by and through the undersigned counsel, prays that this Honorable Court grant his petition for judicial review of the election pursuant to Virginia Code § 13.1-861 and

A. Require the Association to produce any and all Association documents related to the eligibility of the Development Companies to vote in the October 2006 election and any and all Association documents related to votes cast by the Development Companies, including,

without limitation, the voting register and the ballots cast by the Development Companies, to be returned to the Court for review;

B. Order or restrain the Directors from exercising the powers of a director until the winners of the election are determined by this Court or until a new election may be held;

C. Determine the persons elected, or in the alternative, declare that the October 28, 2006 election for the board of directors is invalid and order a new election; and

D. Order the Association to pay Masters' reasonable attorneys' fees and costs incurred in bringing this action; and

E. Order such other and further relief as this Honorable Court deems just and proper.

COUNT 2

Declaratory and Injunctive Relief Pursuant to Va. Code § 8.01-184

44. The allegations contained in paragraphs 1-43 are incorporated herein by reference.

45. The Development Companies were prohibited from becoming members of the Association and from casting votes for the Trust Lots in Association matters pursuant to the Settlement Agreement.

46. The Development Companies were also not "eligible and in good standing members" with respect to the Trust Lots as defined by the Association's bylaws, and therefore, the Development Companies were not entitled to cast any votes for the Trust Lots in the 2006 election.

47. The Association lacked the authority to grant voting rights to the Development Companies for the Trust Lots pursuant to the terms of the Settlement Agreement.

48. The Association accepted the Development Companies' dues and granted voting rights to the Development Companies for the Trust Lots in an attempt to influence the outcome of the 2006 election for the board of directors.

49. But for the Association's wrongful grant of voting rights to the Development Companies for the 2006 election in complete abrogation of the terms of the Settlement Agreement, Masters would have been elected to the board of directors.

50. Because of the Association improperly counted 500 votes cast by nonmembers, there is a question as to who are the properly elected directors of the Association and as to who can exercise the rights and duties of a director.

51. Because the Association has improperly granted voting rights to a nonmember, the conduct complained of herein will be repeated in subsequent elections and cannot be cured by the 2007 election unless this Court declares the rights as between the parties.

52. Because the Development Companies were not members of the Association with respect to the Trust Lots, the 500 votes cast by the Development Companies for the Trust Lots were invalid.

53. As a member of the Association and as a candidate for the board of directors in the October 2006 election, Masters is aggrieved by the outcome of the October 2006 election.

54. There is between the parties an actual and justiciable controversy.

55. Masters has no adequate remedy at law.

WHEREFORE, your Plaintiff, William C. Masters, by and through the undersigned counsel, prays that this Honorable Court enter judgment in his favor against the Defendants pursuant to Virginia Code § 8.01-184 as follows:

A. Enjoin the Directors from exercising the powers of a director until the winners of the election are determined by this Court or until a new election may be held or;

B. Declare that the Development Companies were not members of the Association as of the October 28, 2006 election with respect to the Trust Lots and are not currently members of the Association with respect to such lots, pursuant to the express terms of the Settlement Agreement, or in the alternative, declare that the Development Companies were not “eligible and in good standing members” of the Association as of the October 28, 2006 election with respect to the Trust Lots and are not currently “eligible and in good standing members” of the Association with respect to such lots, pursuant to the bylaws; and

C. Declare that the 500 votes cast by the Development Companies for Trust Lots were invalid and determine the winners of the election absent those 500 votes, or in the alternative, declare that the October 28, 2006 election for the board of directors is invalid and order a new election; and

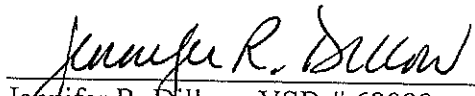
D. Enjoin the Association from permitting the Development Companies and other Developers from casting votes for Trust Lots in Association matters; and

E. Order the Association to pay Masters’ reasonable attorneys’ fees and costs incurred in bringing this action; and

F. Order such other and further relief as this Honorable Court deems just and proper.

Date: May 24, 2007

WILLIAM C. MASTERS
By Counsel


Jennifer R. Dillow, VSB # 68099
THE HERRING LAW FIRM, P.C.
1 West Market Street
Leesburg, Virginia 20176

703.699.9090 Telephone
703.699.9091 Facsimile
Counsel for Plaintiff, William C. Masters