

IN THE CHANCERY COURT FOR BLOUNT COUNTY, TENNESSEE
AT MARYVILLE

ROBERT T. STOOKSBURY, JR.,

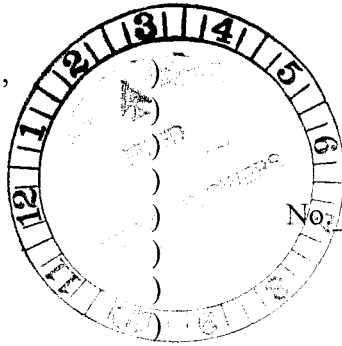
Plaintiff,

v.

LTR PROPERTIES, INC.,

Defendant.

IN RE: DISSOLUTION OF TELLICO
LANDING, LLC



No. 09-050

COMPLAINT FOR JUDICIAL DISSOLUTION OF TELLICO LANDING, LLC AND
FOR EQUITABLE RELIEF AND DAMAGES

I. PARTIES

1. Robert T. Stooksbury, Jr. ("Plaintiff") is a citizen and resident of Blount County, Tennessee.

2. Defendant LTR Properties, Inc. ("LTR") is a Tennessee corporation solely owned by Michael L. Ross ("Ross"). Ross is LTR's registered agent for service of process, and may be served at the principal executive office of LTR at 2624 Carpenters Grade Road, Maryville, Tennessee 37803. LTR is made a defendant in this action pursuant to T.C.A. § 48-245-903(b), because relief is sought against LTR as a member of Tellico Landing, LLC.

3. Plaintiff, LTR, and Ward Whelchel, a citizen and resident of Knox County, Tennessee ("Whelchel"), are the sole members of Tellico Landing, LLC, a Tennessee limited liability company ("Tellico"). Plaintiff, LTR, and Whelchel are sometimes referred to in this

Complaint as the “Members.” Pursuant to T.C.A. § 48-245-903(b), it is not necessary for Whelchel to be a party to this proceeding, as no relief is sought against him herein at this time.

4. Tellico should also be served with process. Ross is Tellico’s registered agent for service of process, and can be served at 2624 Carpenters Grade Road, Maryville, Tennessee 37803, or at Tellico’s principal executive office, which is located at 1010 William Blount Drive, Maryville, Tennessee 37801.

5. Plaintiff and Whelchel formed Tellico pursuant to the “Tennessee Limited Liability Company Act” (the “Act”) by filing with the Tennessee Secretary of State on April 1, 1998, Articles of Organization.

6. Pursuant to the “Second Amended and Restated Operating Agreement of Tellico Landing, LLC (the “Operating Agreement”), a copy of which is attached hereto as Exhibit A, dated May 29, 2002, and which is still in effect as Tellico’s operating agreement, Plaintiff, LTR, and Whelchel are the sole Members of Tellico.

II. JURISDICTION, VENUE, AND NATURE OF ACTION

7. This Court has jurisdiction over the matters at issue pursuant to the Act, specifically T.C.A. §§ 48-245-901 *et seq.*

8. Venue in this Court is proper pursuant to T.C.A. § 48-245-903(a) because Tellico’s principal executive office is located in Blount County, Tennessee, at 1010 William Blount Drive, Maryville, Tennessee 37801.

9. Plaintiff seeks judicial intervention and equitable relief in respect to Tellico pursuant to T.C.A. § 48-245-901.

10. Plaintiff seeks judicial dissolution, winding up, and termination of Tellico pursuant to T.C.A. § 48-245-901 and T.C.A. § 48-245-902.

11. Plaintiff seeks relief against LTR in respect to the dissolution of Tellico, as permitted by T.C.A. § 48-245-903(b).

12. Plaintiff seeks the appointment of one or more receivers to wind up and liquidate the business of Tellico and/or the appointment of one or more custodians to manage the business and affairs of Tellico pending such liquidation, pursuant to T.C.A. § 48-245-904(a).

13. Plaintiff seeks the appointment of a receiver or custodian *pendente lite* with all powers and duties as this Court should direct, to preserve the assets of Tellico and/or to carry on the business of Tellico until a full hearing can be had, pursuant to T.C.A. § 48-245-903(c).

14. Plaintiff seeks the termination of the business of Tellico, the winding up of such business, and the liquidation and sale of Tellico's assets, and upon dissolution and winding up, distribution of the net proceeds of liquidation pursuant to T.C.A. § 48-245-1101 and/or other applicable sections of the Act.

15. Plaintiff seeks equitable relief, damages, and an award of its reasonable costs, including but not limited to attorney fees and accounting and investigative fees, against LTR, pursuant to T.C.A. § 48-245-903(d).

16. Additionally, and alternatively, in conjunction with the dissolution of Tellico, Plaintiff seeks equitable relief and damages against LTR for breach of its duties as a member and manager to Tellico and its other Members, including the duty of good faith, the duty of ordinary care, the duty to avoid conflict of interest, and the duty to act in the best interests of Tellico and its Members, pursuant to T.C.A. § 48-240-102, T.C.A. § 48-240-103, and T.C.A. § 48-241-111.

III. FACTS

17. Plaintiff and Whelchel formed Tellico in 1998 to acquire, develop, and sell certain real property located on Tellico Lake in Loudon County, Tennessee, consisting of approximately 540 acres (the “Real Property”). By October 29, 2001, Plaintiff and Whelchel also owned Tellico Players Club, LLC (“Players Club”), which had certain rights in the Real Property.

18. On October 29, 2001, Plaintiff, Whelchel, Tellico, and Players Club entered into a “Memorandum of Understanding” (the “MOU”) with Ross. A copy of the MOU is attached hereto as Exhibit B. Plaintiff does not have copies of any of the exhibits referenced in the MOU, and to the extent that they were in existence and attached to the MOU at the date of its execution, Plaintiff alleges that LTR has or should have copies in its possession.

19. By the terms of the MOU, Ross was to become a member of Tellico, holding a 50% membership interest, with Plaintiff and Whelchel each to retain a 25% membership interest.

20. Paragraph 1 of the MOU provided for the Real Property to “be developed in a single development owned by Tellico,” called the “Project,” which was to consist of residential and commercial property, including what Paragraph 2 of the MOU referred to as a “golf course/golf club, lodge component.”

21. Paragraph 6 of the MOU provided that Ross or his designee would develop the golf course/golf club/lodge component of the Project at Ross’ sole expense.

22. Paragraph 6 of the MOU provided that Tellico would “deed the golf course/golf club component to Ross or his designee” at such time as it was “completed.”

23. Paragraph 6 of the MOU provided that Tellico would sell to Ross approximately 15 acres at Tellico’s average cost of “approximately \$14,000 per acre,” to be used by Ross to

construct a lodge and related amenities, with Ross to bear all costs associated with such construction.

24. Paragraph 6 of the MOU provided that Ross would receive “all profits and losses” from the golf course/golf club/lodge component.

25. Paragraph 9 of the MOU provided that the operating agreement of Tellico would be amended to include the terms of the MOU, including provisions granting Ross certain management rights, and a “12% development fee” as stated in Paragraph 5 of the MOU.

26. Pursuant to Paragraph 7 of the MOU, Ross’ right to manage Tellico would be subject to a requirement of “a vote of at least 75% of the members” for decisions that would “materially affect the structure, ownership, financing, etc. of the Project...”

27. By “Certificate of Merger” dated May 22, 2002, on record with the Tennessee Secretary of State, Players Club was merged into Tellico, which thereby acquired all rights in the Real Property previously held by Players Club.

28. On May 29, 2002, Plaintiff, Whelchel, and LTR (as Ross’ designee) executed the Operating Agreement referred to in Paragraph 6 above, as “Members,” and Ross executed such Operating Agreement as “Chief Manager” of Tellico.

29. Pursuant to Section 4.1 of the Operating Agreement, LTR owns and holds a 50% Membership Interest in Tellico; Plaintiff owns and holds a 25% Membership Interest in Tellico; and Whelchel owns and holds a 25% Membership Interest in Tellico.

30. Pursuant to Section 4.1 of the Operating Agreement, each of the Members was to share in voting rights, profits, and losses, in accord with his “Relative Membership Interest.”

31. The name chosen for the development of the Real Property by Tellico was Rarity Pointe Subdivision (referred to herein as “Rarity Pointe”).

32. As stated in Section 2 of the Operating Agreement, the Members intended for Tellico to develop Rarity Pointe as a “residential, commercial and resort development, including waterfront amenities, guest lodge and a golf course.”

33. Pursuant to Section 8.1(a) of the Operating Agreement, Tellico is a “member managed LLC,” and LTR was appointed as the “Managing Member.”

34. Pursuant to Section 8.3 of the Operating Agreement, LTR was granted the right to “appoint the Chief Manager” for “so long as LTR is the Managing Member...” LTR appointed Ross (LTR’s sole owner), and Ross has continued to serve as Chief Manager of Tellico since.

35. Pursuant to Section 9.2 of the Operating Agreement, Ross may be removed as Chief Manager “only for cause,” and only then by a vote of the Members. LTR, as Managing Member, may be removed only by a vote of the Members. As a practical matter, neither LTR nor Ross may ever be removed by a vote of the Members, because LTR holds a 50% Membership Interest in Tellico.

36. Pursuant to Section 8.5(a) of the Operating Agreement, LTR as Managing Member is to receive from Tellico a “development fee in an amount equal to 12% of the net sales price (gross sales price net of real estate commissions) received from the sale of all residential and commercial lots, or other real property, in [Rarity Pointe],” to be paid at the “closing for any lot sale.”

37. Pursuant to Section 8.5(b) of the Operating Agreement, LTR is to pay all “management expenses” incurred in “connection with the performance of its management and administrative responsibilities under” the Operating Agreement, with the exception of certain “marketing” and “third party” expenses incurred by LTR or Ross, as Chief Manager, “in connection with the performance of their duties” under the Operating Agreement.

38. Pursuant to Section 8.5(c) of the Operating Agreement, Tellico is to pay all costs incurred by LTR or Ross “in connection with marketing of the Project [Rarity Pointe] on behalf of ” Tellico. Tellico is to share marketing costs and expenses of Rarity Pointe with another development owned or controlled by Ross on Lake Tellico (“Rarity Bay”), with Tellico’s share of such costs and expenses not to exceed “4% of gross sales from the sale of lots at Rarity Pointe...”

39. Pursuant to Section 8.5(c) of the Operating Agreement, Tellico is to pay all costs and expenses of any “third party contracts for goods and services...acquired by on behalf of the LLC.”

40. Pursuant to Section 8.5(d) of the Operating Agreement, disputes between Tellico and LTR regarding “whether a particular cost or expense is the obligation of [Tellico] or of LTR” is to be decided by “a majority of all the Members,” with “binding arbitration pursuant to the Rules of Commercial Arbitration of the American Arbitration Association...” in the event of failure by the Members to resolve any disputed expenses of \$5,000.00 or more, meaning, as a practical matter, that no such dispute could ever be resolved in such manner, because LTR owns a 50% Membership Interest in Tellico.

41. Pursuant to Section 8.1(a) of the Operating Agreement, the Members delegated to LTR as Managing Member “the authority to conduct and manage the business and affairs of [Tellico]...”, except for certain matters “specifically reserved to all of the Members as provided...in Section 8.6...”

42. Among other restrictions on the authority of LTR as Managing Member, Section 8.6(c) of the Operating Agreement prohibits LTR, except with approval “by a vote of not less than 75% of the Membership Interests,” from any action to accomplish any “refinancing of the

existing debt of [Tellico], or any plan of financing that would require the grant of security interest in the assets of the Company, whether in the form of a mortgage or otherwise...”

43. Among other restrictions on the authority of LTR as Managing Member, Section 8.6(f) of the Operating Agreement prohibits LTR, except with approval “by a vote of not less than 75% of the Membership Interests,” from any action to accomplish “the employment, whether as an agent, independent contractor, employee or otherwise, of any individual who is a family member or relative of a Member, or that is an entity that is a related party or affiliate of a Member.”

44. Pursuant to Section 8.1(a) of the Operating Agreement, LTR as Manager Member has a duty to “keep the other Members reasonably informed of management decisions from time to time and seek their input...”

45. Pursuant to Section 8.7 of the Operating Agreement, which incorporated a certain “Contract for the Sale of Real Property” (the “Contract,” a copy of which is attached to and incorporated as a part of the Operating Agreement, Exhibit A hereto), and consistent with the terms of the MOU, Tellico agreed to transfer to LTR an undetermined portion of the Real Property, estimated to be “approximately 175 acres,” with the sole consideration from LTR to be the construction, at “LTR’s sole cost and expense” of a golf course on such property.

46. LTR was to construct the golf course pursuant to certain specifications set forth in Section 9a of the Contract, with title to pass upon the completion date, being the date “on which LTR receives a written certification from either the golf course designer, or from an independent engineer, that the course has been substantially completed in accordance with the plans and specifications described in Subsection 9(a), above.” Title to the golf course is still in Tellico,

because LTR has failed to complete the construction as required. Further, LTR has failed to provide Tellico with a survey map for the golf course property.

47. The Members acknowledged, in Section 8.7 of the Operating Agreement, that Tellico was to sell LTR 15 acres of the Real Property in accord with Section 6 of the MOU (which provided that Ross or his designee was to “construct a lodge and related amenities” on such property at his or its sole expense). Section 8.7 specifically states that the Operating Agreement was not intended “to terminate or abrogate” the provisions of the MOU regarding the terms for development of the golf course/golf club/lodge component of the Project.

48. LTR, as Managing Member of Tellico, began the development of Rarity Pointe on the Real Property shortly after the execution of the Operating Agreement on May 29, 2002. On or about August 28, 2002, LTR filed an initial report as required by the Interstate Land Sales Act with the U.S. Department of Housing and Urban Development. LTR has executed and filed a series of annual reports dated August 28 of each succeeding year through 2008 (the “HUD Reports”). All the HUD Reports are public records and LTR has copies.

49. Rarity Pointe has been partially developed, in five separate “Phases” (Phase 1, Phase 2, Phase 3, Phase 4, and Phase 5).

50. The 2008 annual HUD Report states that Phases 1, 2, and 5 of Rarity Pointe are owned by Tellico, but that Phase 3 is now owned by RPL Properties, LLC (“RPL”), a Tennessee limited liability company of which Ross is the sole owner; that Phase 4 is now owned by LC Development Company, LLC (“LC”), a Tennessee limited liability company of which Ross is the sole owner; and that LC has the right, under a contract with Tellico, to acquire and develop Phase 5 of Rarity Pointe. The HUD Report identifies Tellico as the “developer” of Phase 1 and Phase 2, RPL as the “developer” of Phase 3, and LC as the “developer” of Phases 4 and 5.

51. By the “Real Estate Purchase and Sale Agreement,” dated May 28, 2004, executed by Tellico, LTR, and RPL, Tellico agreed to sell to RPL a portion of the Real Property identified therein as “Phase 3,” and further agreed to sell to RPL certain property identified therein as the “Lodge Property.” Such Agreement was amended by an “Amendment to Real Estate Purchase and Sale Agreement” between the same parties, effective as of December 31, 2004. Copies of such agreements are attached hereto as Exhibits C and D, respectively, and are referred to herein, collectively, as the “Lodge and Phase 3 Sale Agreement.” Plaintiff’s copy of Exhibit C does not reflect execution of the document by Plaintiff or Whelchel, and Plaintiff does not recall whether he and/or Whelchel ever executed such document. To the extent that there is an executed original, Plaintiff alleges that LTR has or should have such original.

52. Prior to execution of the Lodge and Phase 3 Sale Agreement, LTR, which had the right pursuant to the MOU, as noted above, to construct at its own expense the “lodge component” on the Real Property, expanded upon the original plan for a small lodge as an amenity at Rarity Pointe, and instead made plans to develop a condominium project consisting of approximately 120 units, together with a spa and restaurant, to be known as “Rarity Pointe Lodge & Spa” (the “Lodge Project”). LTR entered into a “Project Management Agreement” with Lawler Wood, LLC, dated January 16, 2004, for the development of the Lodge Project (the “PMA”). A copy of the PMA is attached hereto as Exhibit E.

53. In recognition that such expanded scope of the Lodge would result in direct competition with sales of lots by Tellico, LTR and Ross, acting in conjunction with RPL, agreed to acquire the Lodge Property in consideration for a \$10,000,000.00 negotiable promissory note, rather than at Tellico’s average cost of approximately \$14,000 per acre as provided in the MOU (see Paragraph 23 above). It was understood, acknowledged, and agreed at all times between the

Members of Tellico that the entire cost of development of the Lodge Project was the sole responsibility of LTR and/or Ross.

54. Pursuant to the Lodge and Phase 3 Sale Agreement, RPL was to acquire the Phase 3 Property in consideration for a \$19,000,000.00 negotiable promissory note.

55. The purchase and sale of Phase 3 was consummated, and LTR executed and delivered to Tellico a "Secured Promissory Note" dated August 17, 2005, due and payable in full on August 17, 2009, a copy of which is attached hereto as Exhibit F, secured by a second mortgage deed of trust on Phase 3 recorded in the Office of Register of Deeds for Loudon County, Tennessee.

56. RPL, LTR, Ross, Welchel, and Plaintiff also executed on December 31, 2004, a "Profits and Losses Agreement," a copy of which is attached hereto as Exhibit G, the terms of which were intended to apply to the Phase 3 development only if and after RPL acquired the Phase 3 property and completed its development and to the Lodge Property only if and after RPL should acquire the Lodge Property and complete its development.

57. In accord with Exhibit C to the "Amendment to Real Estate Purchase and Sale Agreement," referenced in Paragraph 51 above, it was specifically agreed that "to the extent that condominium units are not constructed and established on the Lodge Property, the original agreements between Tellico, LTR, Ward S. Welchel and Robert T. Stooksbury, Jr. relative to the Lodge Property shall control."

58. RPL never acquired the Lodge Property, and never constructed or established condominium units on such Property, and therefore the terms of the MOU apply to the Lodge Property.

59. By the “Real Estate Purchase and Sale Agreement” dated June 19, 2006, executed by Tellico, LTR, and LC Development Company, LLC, a Tennessee limited liability company of which Ross is the sole member and Chief Manager (“LC”), Tellico agreed to sell LC a portion of the Real Property identified therein as “Phase 4.” A copy of such Real Estate Purchase and Sale Agreement (the “Phase 4 Sale Agreement”) is attached hereto as Exhibit H. Exhibit H as attached is an unsigned version of the Phase 4 Sale Agreement. Plaintiff alleges that LTR has or should have an executed version, if such document was ever executed. Plaintiff does not recall executing the document.

60. Pursuant to the Phase 4 Sale Agreement, LC was to acquire the Phase 4 property in consideration for a \$25,000,000.00 negotiable promissory note. The purchase and sale of Phase 4 was consummated, and according to the 2008 annual HUD Report, LC executed and delivered such note to Tellico. Plaintiff does not have a copy of such note, but alleges that if it was executed, LTR has or should have a copy. Tellico and LC also may have executed a “Profits and Losses Agreement,” a copy of which is attached hereto as Exhibit I. To the extent that Exhibit I was executed, Plaintiff alleges that LTR has or should have a copy as executed. According to the HUD Reports executed and filed by LTR, RPL, and LC, Tellico has the right to require LC to execute and record in the Register’s Office for Loudon County, Tennessee a second mortgage deed of trust on the Phase 4 property. Despite repeated requests from Plaintiff to LTR and Ross to obtain and record such second mortgage, they have failed and refused to do so.

61. Tellico has financed, in part, the acquisition of the Real Property and the development of Rarity Pointe through a series of loans with SunTrust Bank, with offices in Knoxville, Tennessee (“SunTrust”). LTR has copies of all documents relating to Tellico’s loans

with SunTrust. The loans, loan balances, and terms and provisions are described to some extent in the HUD Reports. Currently, there are two SunTrust loans outstanding. One of the loans was formerly a revolving line of credit loan used to provide funds for the continued development of Rarity Pointe. At the date of the 2008 annual HUD Report referred to above, it was reported that the loan was no longer a revolving line of credit loan, and had a principal balance of \$4,884,000.00. Such loan is referred to herein as the "Line of Credit Loan."

62. Such Line of Credit Loan is secured by a first mortgage deed of trust on all the Real Property in Phases 1, 2, 3, 4 and 5 of Rarity Pointe, with the exception of lots in the first four phases which have been sold and released, and (according to the 2008 annual HUD Report) with the exception of 5.591 acres conveyed by Tellico to LTR, on which marina facilities have been or will be developed. The Line of Credit Loan matured on December 1, 2008, and SunTrust has given Tellico and its Members (each of whom have individually signed guaranty agreements in regard to such loan, on a joint and several basis), notice of default.

63. The other outstanding loan from SunTrust to Tellico was obtained to finance improvements known as "The Discovery Center" constructed at the entrance of Rarity Pointe, and is a term loan which, to the best of Plaintiff's knowledge and belief, is current.

64. Until sometime in late Fall of 2005, the provisions of the Line of Credit Loan always included a requirement for the application of proceeds received from Rarity Pointe lot sales to a principal reduction on such loan.

65. On or about October 28, 2005, as a result of agreements between officers of SunTrust and Ross, acting on behalf of LTR, the Line of Credit Loan was changed to provide for "interest only" payments, and the required principal reduction provisions were deleted. Ross, as Chief Manager of Tellico, and LTR, as Managing Member of Tellico, lacked the authority to

make such change in the financing, which required an affirmative vote of 75% of the Membership Interests of Tellico pursuant to the MOU and the Operating Agreement (see Paragraphs 26 and 42 above).

66. Neither Ross, LTR, nor SunTrust notified Plaintiff of the change in financing terms. Had such change not occurred, lot sales at Rarity Pointe from and after the date of such change would have been more than sufficient to pay the Line of Credit Loan in full.

67. According to the 2008 annual HUD Report executed and filed by LTR, RPL, and LC as “developers,” the total number of developed lots in Phases 1 through 4 of Rarity Pointe at such time was 390, consisting of 247 lots already sold, and 143 unsold lots. According to such report, LTR planned to develop 59 lots in Phase 5, but had not begun such development, and to Plaintiff’s knowledge and belief, has not yet recorded the required plat for Phase 5 which would allow the sale of lots.

IV. ALLEGATIONS OF WRONGFUL ACTIONS AND BREACH OF DUTIES BY LTR

68. Plaintiff alleges that LTR, acting by and through Ross, and in concert with RPL, LC, and (upon information and belief) various other entities affiliated with LTR and Ross, including but not limited to entities known as Assurance Title Company (or Assurance Escrow), Rarity Communities, Inc., Tellico Lake Properties, and Rarity Management Company, LLC (the “Ross Entities”), has engaged in multiple violations under the Act, numerous breaches of contractual and fiduciary duties owed to Tellico and its Members, and other violations of law and wrongful actions, including those specifically set forth herein.

69. As noted in Paragraph 65 above, LTR, acting through Ross, changed the terms of financing with regard to the Line of Credit Loan without the required consent of 75% of the

Membership Interests in Tellico, in violation of the MOU and Section 8.6(c) of the Operating Agreement.

70. LTR, acting through Ross, improperly co-mingled funds of Tellico (both SunTrust Loan proceeds and proceeds from Rarity Pointe lot sales) in accounts owned and controlled by LTR, RPL, LC and/or other Ross Entities and failed to properly account for such funds.

71. LTR, acting by and through Ross, and in conjunction with RPL, LC, and/or other Ross Entities, produced or caused to be produced HUD settlement statements showing application of proceeds of sale of lots in Rarity Pointe of at least \$550,000.00 being applied to the SunTrust loans, when in fact such funds were neither applied to the loans nor deposited into any Tellico account; an appropriate accounting has yet to be made for such funds.

72. LTR was aware of, maintained file copies of, and failed to disclose to Plaintiff various HUD settlement statements prepared by Assurance Title for closings of sales of lots in Rarity Pointe which were false and misleading to purchasers. Assurance Title routinely prepared two sets of settlement statements, with differing entries under the heading "Summary of Seller's Transaction," one set which showed actual, true figures, to be given to the Seller and one with false and misleading figures, to be given to the purchasers.

73. SunTrust had acquired (by foreclosure or other means unknown to Plaintiff) Lot 102 in Rarity Pointe and contacted Ross as Chief Manager of Tellico with an offer to sell such lot. LTR and Ross, instead of accepting the offer on behalf of Tellico, arranged for Rarity Management Company, LLC (upon information and belief owned by Ross and Fred McArthur, the Rarity Communities Sales Manager) to purchase the lot for \$420,000.00, after which Rarity Management Company, LLC sold the lot to a third party for \$565,000.00. No notice was given

to Plaintiff and no approval for such transaction was sought. LTR and Ross misappropriated an asset belonging to Tellico.

74. LTR, acting by, through or in conjunction with Ross, RPL and LC, sold lots in Rarity Pointe to their employees and sales agents at substantial discounts below fair market value with the intention and knowledge that such individuals would and did re-sell such lots at a significant gain. Tellico was thereby deprived of approximately \$2,000,000.00 in sales proceeds.

75. LTR, acting in conjunction with Ross and/or RPL and/or LC, improperly charged Tellico with development costs and expenses incurred by them in connection with the failed Lodge Project, contrary to the applicable provisions of the agreements by which LTR and Ross were to be solely responsible for such costs. The total of such costs improperly allocated to Tellico is in excess of \$7,000,000.00.

76. LTR improperly charged Tellico with costs and expenses resulting from violations of regulations of the Tennessee Department of Environment and Conservation (“TDEC”). Such costs should have been allocated solely to LTR, because they were incurred in connection with actions taken by LTR in the development of the golf course property.

77. LTR violated its fiduciary duty to Tellico and its other Members by requiring purchasers of lots in Rarity Pointe to purchase “memberships” from LTR at excessive prices, thereby directly and adversely affecting the market price of the lots themselves.

78. LTR violated the terms of Section 8.5(c) of the Operating Agreement and its fiduciary duties to Tellico and its other Members by charging Tellico with marketing expenses in excess of 4% of gross sales from the sale of lots at Rarity Pointe.

79. LTR has violated its fiduciary duty to Tellico and the terms of Section 8.5(a) of the Operating Agreement by charging Tellico amounts for LTR's development fee in excess of 12% of the net sales price on the sales at Rarity Pointe.

80. LTR, acting in conjunction with Ross, RPL, and LC, has improperly allocated to Tellico amounts of "management expenses" which, pursuant to 8.5(b) of the Operating Agreement, are to be the sole responsibility of LTR.

81. LTR, acting in conjunction with Ross, RPL, and LC, has subjected Tellico to potential liabilities to purchasers of lots by directing their sales staff to make definite promises regarding the availability and completion dates for various Rarity Pointe facilities and amenities, knowing that such promises would not and could not be kept.

82. LTR, acting in conjunction with Ross, RPL, and LC, has violated its duty to Tellico and its other Members by a consistent pattern of deliberate failure to account for its use of Tellico funds and by a deliberate failure to keep the other Members reasonably informed of management decisions from time to time and seek their input, as required by Section 8.1(a) of the Operating Agreement.

83. LTR has violated its fiduciary duty to Tellico and its other Members and breached its contractual agreements to them by failing to develop the golf course within the time and within the specifications required and by improperly charging Tellico with costs incurred in connection with the development of the golf course, which costs are to be the sole responsibility of LTR.

84. LTR has violated its fiduciary duty to Tellico and its other Members by making the golf course and the marina open to the public, contrary to the agreement of the Members that

the golf course and marina were to be used exclusively by the owners of lots in Rarity Pointe who purchased memberships.

85. LTR, acting in conjunction with Ross, RPL, and LC, violated its fiduciary duty to Tellico and its other Members by giving the other Members false, incomplete, or misleading lists of lot prices.

V. JUDICIAL INTERVENTION AND JUDICIAL DISSOLUTION – GROUNDS AND RELIEF SOUGHT

86. Plaintiff seeks judicial dissolution, winding up, and termination of Tellico pursuant to T.C.A. § 48-245-902(a), on grounds that is not reasonably practical to carry on the business of Tellico in conformity with the Articles of Organization and/or the Operating Agreement, in view of the wrongful actions of LTR.

87. The disputes between the Members regarding the operations of Tellico make it not reasonably practicable to carry on Tellico's business affairs.

88. The breaches of duty referred to in this Complaint by LTR make it not reasonably practicable for Tellico to carry on its business affairs.

89. Plaintiff seeks equitable intervention by this Court and judicial dissolution of Tellico on such terms and conditions as the Court should deem fair and reasonable and further contends that this Court should order the liquidation of all the assets of Tellico, as well as order the disposition of the assets upon liquidation, in accord with the provisions of T.C.A. §§ 48-245-1101.

WHEREFORE, Premises considered, Plaintiff requests the following relief:

1. That this Complaint be served on LTR, through service on Ross as its registered agent, for notice purposes;

2. That this Court determine the amount of the required bond in connection with Plaintiff's action for judicial dissolution and termination pursuant to T.C.A. § 48-245-903(d);

3. That after appropriate notice and hearing, which Plaintiff requests the Court to send and set pursuant to T.C.A. § 48-245-904, this Court appoint a receiver to wind up and liquidate Tellico and, to the extent the Court deems advisable, a custodian to preserve the assets of Tellico and/or manage its business affairs pending liquidation or, alternatively, that after such notice and hearing, this Court appoint a receiver/custodian *pendente lite* with the powers to combine such functions;

4. That the Court award Plaintiff its reasonable costs, including accounting, investigation, and attorney fees, pursuant to T.C.A. § 48-245-903(d);

5. That the Court, following liquidation of the assets of Tellico, enter such orders as appropriate for the distribution of the assets, or proceeds thereof, pursuant to T.C.A. § 48-245-1101; and

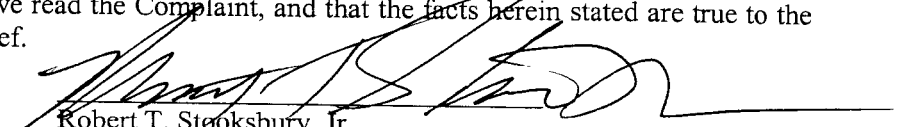
6. That the Court grant Plaintiff such other, further, and general relief as to which he may be entitled, pursuant to the Act, and otherwise.

This 26th day of March, 2009.

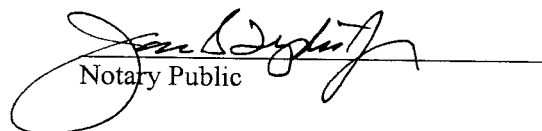

Robert T. Stooksbury, Jr., Plaintiff

OATH

I, ROBERT T. STOOKSBURY, Jr., being first duly sworn in accordance with law, make oath that I am the Plaintiff named in this Complaint, that I have read the Complaint, and that the facts herein stated are true to the best of my knowledge, information and belief.


Robert T. Stooksbury, Jr.

Sworn to and subscribed before me this 26 day of March, 2009.


Notary Public

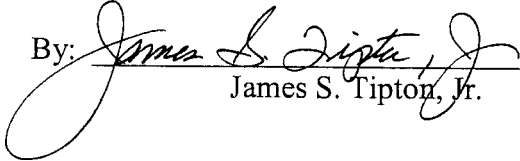
My Commission Expires: 8-11-09

COUNSEL FOR PLAINTIFF

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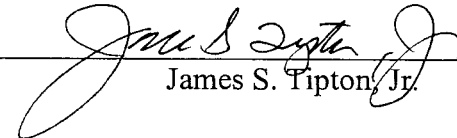
GUY W. BLACKWELL, JR. (BPR #008225)
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(423) 557-3924

By: 
James S. Tipton, Jr.

COST BOND

We do hereby acknowledge ourselves as surety for the costs in this cause in accordance with T.C.A. § 22-12-120.

GENTRY, TIPTON & McLEMORE, P.C.


James S. Tipton, Jr.