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Subject: Brezinski, et. al. v Seven Lakes West Landowners Association, Inc. Moore County 21 CVS 745

Good Afternoon Counsel,

Plaintiffs' Motion for Summary Judgment and Defendant's Amended Motion for Summary Judgment are **ALLOWED** in part and **DENIED** in part.

As to Plaintiff's First Claim for Relief (Declaratory Judgment):

1. **ALLOWED** as to paragraph 91. a. "Association Members have the right to elect its Board of Directors at the annual Members meeting except in the case of death, resignation, or removal as set forth in Article IV, Section 5 of the By-Laws, and that any appointment to the contrary is void and of no effect;"
2. **ALLOWED IN PART** as to paragraph 91. b. The Board has a duty to take reasonable steps to enforce the Association's obligation to seek candidates for each open director seat, and the failure to do so is a *breach* of the By-Laws; **DENIED** as to whether or not such constitutes a *material breach* of the By-Laws;
3. **ALLOWED** as to paragraph 91. c. "The Board failed to perform its duty to oversee the Recruiting Committee's efforts to seek candidates to nominate to run for election to the newly expanded Board;"
4. **ALLOWED** as to paragraph 91. d. The appointment of Roberta Maness (not Mannes) to the Board was in violation of Article IV, Section V of the By-Laws, and therefore, is void and of no effect;
5. **ALLOWED IN PART** as to paragraph 91. e. That Developers and/or derivative sub-developers that are non-dues paying lot owners and non-dues paying lot owners, are Members of the Association **WITHOUT** voting rights in director elections;

6. **ALLOWED IN PART** as to paragraph 91. f. Developers and/or derivative sub-developers that cast ballots in the 2021 Board of Director elections are in breach of the Covenants and Article III, Section 6, and Article IV, Section 5 of the By-Laws; and **DENIED** as to a declaration that “...the election of Josh Davis, Lois Ann Eisel, and Time Niewald to director seats is void and of no effect”.

As to Plaintiffs’ Second Claim for Relief (Permanent Injunction):

The Plaintiffs’ Motion for Summary Judgment is **DENIED**, and the Defendant’s Amended Motion for Summary Judgment as to the Plaintiffs’ Second Claim for Relief is **ALLOWED**.

As to the Plaintiffs’ Prayer for Relief in the first paragraph 4 (which presumably should be numbered paragraph 3) of the Complaint for costs and attorney fees as permitted by law and as to the Defendant’s prayer for reasonable costs and fees incurred in defending the Action included in the Defendant’s Amended Motion for Summary Judgment, the Court defers ruling on such until either or both parties seek to calendar those matters for hearing and presentation of evidence.

Counsel are to confer and attempt to present to the Court by word attachment in an email, capable of being edited, an Order reflecting this Court’s ruling. However, if counsel are unable to agree on a single order, then each party maybe submit to the Court a separate proposed order.

James M. Webb

Senior Resident Superior Court Judge Presiding

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