

IN THE CHANCERY COURT FOR CAMPBELL COUNTY, TENNESSEE

In Re: DEERFIELD RESORT)	
HOMEOWNERS ASSOCIATION, INC.)	
)	
By: Daniel Valle, Maryann Rykalski, Tom)	
Peck, Merilee Peck, Loel Crawford, Georgia)	
Sergent, Steve Wenzel, and Fran Painter,)	No. 2020 – CV – 55
On behalf of Interested Members of)	
Deerfield Resort Homeowners Association,)	
Inc.)	

RESPONSE TO APPLICATION FOR COURT ORDERED INSPECTION

Come now the Respondents, Fields Development Company, Inc. and Madeline Fields (“Ms. Fields”), by and through counsel, and respond to the Application for Court Ordered Inspection filed by Petitioners as follows:

FACTUAL BACKGROUND

Deerfield Resort was launched in 1985 as a subdivided residential development on and near Norris Lake in Campbell County, Tennessee. Since its inception, Deerfield Resort has been well managed and controlled by the original developer, Fields Development Company, Inc. (“Fields Development”). As the developer, Fields Development placed the original Restrictions for Deerfield Resort (“Deerfield”), which were filed in Office of the Register of Deed for Campbell County, Tennessee on or about March 20, 1986. A true and accurate copy of the original Restrictions (“the Restrictions”) for Deerfield and its subsequent amendments are attached hereto as **Exhibit A** to this Response.

The original Restrictions provided Fields Development with near complete discretion as to the management and control of Deerfield: “The Developers reserve the right to do anything necessary to promote and develop a successful resort area and these restrictions may be changed,

amended or altered by the Developers.” *See Exhibit A* at 1. Over the years, pursuant to the authority granted to it by the original Restrictions and its amendments, Fields Development has amended the restrictions. In the most recent amendment, entitled “Amended Declaration of Protective Covenants and Restrictions for Deerfield Resort,” the following language was added to the restrictions:

22. DEVELOPER CONTROL PERIOD: During the Developer Control Period, which shall be defined as that period of time during which the Developer continues to own any lots or tracts in Deerfield Resort, the Developer shall control the common areas and roads in Deerfield Resort. Upon the Conveyance of the last lot or tract in Deerfield Resort, or at such earlier time as the Developer may determine from time to time, in its absolute and sole discretion, the Developer shall convey all and/or portions of the common areas and roads to the Deerfield Resort Property Owners. No property owner shall have a vote on issues of roads and/or common areas until such time as the Developer relinquishes all and/or partial responsibilities for such roads and common areas to Deerfield Property Owners

23. THE DEVELOPER reserves the right to do anything necessary to promote and develop a successful resort are and these restrictions may be changed, amended or altered by the Developer.

See Exhibit A at 6. The latest amendment to the restrictions was filed on August 1, 2018 with the Register of Deeds for Campbell County. *See id* at 7. Unquestionably, the amended restrictions for Deerfield provide Fields Development with essentially complete control of Deerfield. Nowhere in either the original Restrictions or any of its subsequent amendments is Deerfield Resort Homeowners Association, Inc. referenced.

In April 1986, after Deerfield was launched and the original Restrictions were placed on Deerfield, Paul R. Fields, the President of Fields Development, incorporated Deerfield Resort Homeowners Association, Inc. (“HOA”) as a not-for-profit corporation, which would act as a vehicle for Deerfield property owners to eventually control Deerfield when the development was complete. The development has never been completed. Accordingly, there has never been a need

or a use for the HOA, which has taken no substantive action since its inception in 1986. Importantly, the HOA has never been organized or adopted any Bylaws. Moreover, there have never been any official meetings, including annual meetings. The HOA has no employees, no bank accounts, no adopted resolutions, no votes, and no dues. A yearly report is filed by Ms. Fields, President and Registered Agent of the HOA, to the Tennessee Secretary of State to keep the HOA administratively viable in the event that control of Deerfield is eventually conveyed to the HOA. However, other than the annual report to the Secretary of State, no records are maintained by the HOA because it is non-functioning and powerless. Rather, the control of Deerfield lies entirely with Fields Development, a for-profit corporation. Deerfield itself is still under development to this day, with hundreds of acres of prospective property yet to be developed.

ARGUMENT

Petitioners' application for court ordered inspection should be denied for several reasons. Initially, some of the records being sought are maintained by Fields Development Company, Inc. – a for profit corporation to which the statute being asserted by Petitioners does not apply. Secondly, the HOA, though incorporated, has never been established or organized, as plainly stated and acknowledged by Petitioners themselves in a related cause of action. Finally, even if the statute does apply to certain of the records, there exists good reason to assert that some of the requested records are not being sought in good faith. Accordingly, the Petitioners' request should be denied in its entirety, including the request for attorney fees.

I. Control of Deerfield Resort lies with Fields Development Company, Inc.

Petitioners attempted use of and reliance on Tennessee Code Annotated, sections 48-66-101 *et. seq.* is misplaced. Some of the information or records being sought by the Petitioners from the HOA, particularly the list of all “dues paying” members of the Association along with

their addresses, electronic and telephonic contact information, are actually maintained by Fields Development – a for profit corporation to which the statute does not apply. In the first place, Fields Development asserts that Petitioners Daniel Valle and MaryAnne Rykulski have never paid any maintenance or security fees assessed by Deerfield Resort – the d/b/a of Fields Development. Thus, their insistence that they are “members” with the right to the collection of records related to “dues” smacks of bad faith.

Rather, Fields Development asserts that homeowners in Deerfield only pay maintenance and security fees assessed and collected by Deerfield Resort. The fees paid for these services do not move through the HOA, which does not even have a bank account. In fact, Deerfield homeowners pay no dues to the HOA. Again, Fields Development is in complete control of Deerfield, per the original Restrictions and all subsequent amendments. Fields Development is a for-profit corporation and is not subject to the requirements of Tennessee Code Annotated sections 48-66-101 *et. seq.*, which apply exclusively to Nonprofit Corporations.

II. The HOA is functionally a nullity.

Further, as indicated above, the Petitioners’ Application should be denied on the basis that the HOA is essentially a nullity. Although Madeline Fields is the President and Registered Agent of the HOA, her only function is to file an annual report with the Secretary of State to keep the HOA administratively viable for possible future use of Deerfield property owners. The HOA asserts that until it becomes functionally organized that it has no “members” and that it has no obligation to create or maintain the records as sought by Petitioners. As mentioned above, since its inception, the HOA has taken no substantive action, adopted no Bylaws, had no annual meetings, had no elections, had no meetings of members, had no meetings of the board of directors, and formed no committees. Moreover, the HOA has not had and current has no employees, no bank accounts, no adopted resolutions, no votes, and no dues. Accordingly, there

are no accounting records of the HOA. There is no list of “dues paying members” as sought by Petitioners, because the HOA collects no dues. Similarly, there is no restated charter, resolutions, minutes, or other written communications by the HOA.

Both the complete control of Deerfield by Fields Development and the lack of organization of the HOA is confirmed by the Petitioners themselves, all of whom (except for Tom Peck and Merilee Peck) are also Plaintiffs in a related lawsuit in this Court against Fields Development, the HOA and others. *See Valle et. al. v. Deerfield Resort, Inc. et. al.* 7CHI–2019–CV–237. In the Complaint, Petitioners specifically allege “the ‘HOA’ has never been established pursuant to its Articles of Incorporation, and has been essentially run by Fields Development [Company], Inc. and the ‘Fields’ family.” *See Complaint*, ¶ I.3 (emphasis added). This is one of the few accurate allegations in the Complaint and it demonstrates that the current application made by the Petitioners is knowingly made in bad faith. Control of Deerfield by Fields Development is not a secret and is completely permissible under the original Restrictions and its subsequent amendments. The property is still under the development of Fields Development and thus the HOA is completely inactive.

III. The records are not being sought in good faith.

As noted above, there are several reasons that Respondents assert that the records sought in connection with Mr. Pryor’s Letter dated February 26, 2020 (“Notice Letter”) are being sought in bad faith. However, initially, Ms. Fields responds directly that there are no records owned or maintained by the HOA in response to items 1 through 9 of the Notice Letter. As indicated above, Ms. Fields is in possession of the 2020 Annual Report to the Secretary of State. However, Respondents are reluctant to produce it because: 1) as indicated, several petitioners who wrongly claim to be “members” of the HOA have never even paid the annual fees assessed by Deerfield

Resort, which smacks of bad faith; 2) Petitioners have flatly stated in the related cause of action that the HOA “has never been established,” which means that they know that they are not members because how could they be members of an Association that has never been established; and 3) the fact that Petitioners have frivolously sued numerous entities and individuals in the related cause of action and their unwillingness to allow a requested extension of time to Respondents’ current counsel appears to show that these records are being sought to leverage the other cause of action.

Accordingly, Respondents wanted this Court to have the opportunity to weigh these issues in fairness and equity. If this Court determines that there is a reasonable basis for the production of the HOA’s Annual Report to the Secretary of State, Ms. Fields will produce it immediately. However, Respondents assert that they have acted in good faith seeking out the Court’s guidance on these issues. Counsel for Petitioners has indicated that the statute mandates that this Court “shall award reasonable attorneys” fee if it requires any production of records. However, he neglected to mention that Section 48-66-104(c) also states: “unless the corporation proves that it refused inspection in good faith because it had reasonable basis for doubt about the right of the member to inspect the records demanded.” Respondents assert that such good faith is clearly reflected by the facts and arguments referenced above.

Finally, Respondents have additional information for the Court to consider on this issue, but wish to not make it a part of the public record on privacy grounds and believe that the Court should consider the information *in camera*.

CONCLUSION

For the reasons stated above, Respondents request the entry of an order denying the Petitioners’ Application for Court Ordered inspection on the grounds that there exists a legitimate question of fact and law as to whether the Petitioners are actually “members” of the

Deerfield Resort Homeowners Association, Inc. Alternatively, Respondents request the entry of a protective order for the confidential production of the HOA's 2020 Annual Report to the Secretary of State, which is not to be publicly disseminated and that Petitioners are not entitled to their attorney fees on the basis that the Respondent Madeline Fields's initial refusal to produce records was made in good faith.

Respectfully submitted this 31st day of March 2020.

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

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties at interest in this cause as follows:

By placing postage prepaid envelope in United States Mail Service, addressed to:

Vic Pryor, Esq.
Pryor Parrott, P.C.
140 Kentucky Street, Suite 1
P.O. Box 103
Jacksboro, TN 37757-0103

By placing document in third-party express delivery carrier, i.e., Federal Express, for overnight delivery to the following counsel of record:

By sending document via electronic mail to:

vprior@pryorparrott.com
chancellor.elizabeth.asbury@tncourts.gov

By causing the foregoing to be hand delivered to counsel of record at the following address:

This 31st day of March 2020.

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