

**IN THE CHANCERY COURT FOR CAMPBELL COUNTY, TENNESSEE**

**Daniel J. Valle, *et al.***

**PLAINTIFFS,**

**v.**

**Paula Rae Lejeune, *et al.***

**DEFENDANTS.**

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**No. 7CHI-2019-CV-237**

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**MEMORANDUM OF PLAINTIFFS  
REGARDING MEDIATION SETTLEMENT AGREEMENT**

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Come the Plaintiffs, through counsel, and in response to the directive from this Honorable Court to provide a memorandum addressing whether a mediation settlement agreement of June 29, 2023 should be kept under seal by this Court, would state as follows:

1. The parties reached a mediation settlement agreement on June 29/30, 2023 as a result of a mediation conducted in Knoxville, Tennessee.
2. The sixty-eight (68) Plaintiffs brought this action as a derivative lawsuit under TCA §48-56-401, et seq.
3. This Honorable Court has previously ruled that this matter is an appropriate derivative action, and that the Plaintiffs, and all other property owners of Deerfield Resort, are members of Deerfield Resort Homeowners Association.
4. The Court has further ordered, in an Order granting partial summary Judgment, that Deerfield Homeowners Association, Inc. shall serve as a functioning homeowners association for the property owners at Deerfield Resort.

5. The mediation of June 29/30, 2023 was attended, on behalf the Plaintiffs, by six (6) of the seven (7) members of the legal steering committee for the Plaintiffs. The seventh (7<sup>th</sup>) member of the steering committee attended via telephone conference.
6. The mediation settlement agreement was reduced to writing, executed by all persons in attendance at the mediation, including Raymond Scott Fields, Mark LeJeune and Paula LeJeune, who attended both as individuals and as representatives of the corporate Defendants in this case.
7. At the time the mediation settlement agreement was entered into, the Defendants requested that the settlement agreement be maintained as confidential between the parties and revealed only as would be required by law or as necessary for court approval, among other things.
8. The Plaintiffs have maintained the confidentiality of the settlement agreement post mediation.
9. The mediation settlement agreement was tendered to this Court and was filed on October 4, 2023. Prior to filing the mediation settlement agreement, counsel for Plaintiffs conferred with counsel for the Defendant and counsel agreement that the mediation settlement agreement should be filed with the Court, seeking a date of approval for the agreement. However, counsel for Defendant requested that the mediation settlement agreement be filed with an indication that it was confidential and “under seal.” The mediation agreement was so filed by the Plaintiffs.
10. The Plaintiffs would respectfully show that the mediation settlement agreement impacts any and all members of Deerfield Resort and/or Deerfield Resort Homeowners Association, Inc. The Plaintiffs would further show the Court that due

to such impact, Tennessee law would appear to require that the content of the mediation settlement agreement be made known to all persons affected.

11. The Plaintiffs submit this Memorandum of Law in support the proposition that any and all members of Deerfield Resort and/or Deerfield Resort Homeowners Association, Inc. should be entitled to receive and review the settlement agreement before the same is acted on by this Honorable Court.

### MEMORANDUM OF LAW

"A derivative action is an extraordinary, equitable remedy available to shareholders when a corporate cause of action is, for some reason, not pursued by the corporation itself."

*Krajenta v. Westphal*, No. W2021-00832-COA-R3-CV, 2022 Tenn. App. LEXIS 380, at \*9 (Tenn. Ct. App. Sep. 27, 2022) (quoting *Memphis Health Ctr., Inc. v. Grant*, No. W2004-02898-COA-R3-CV, 2006 Tenn. App. LEXIS 498, 2006 WL 2088407, at \*8 (Tenn. Ct. App. July 28, 2006) (quoting *Lewis v. Boyd*, 838 S.W.2d 215, 221 (Tenn. Ct. App. 1992))). Pursuant to statute, a derivative action:

may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's members or a class of members, the court shall direct that notice be given the members affected. If notice is so directed to be given, the court may determine which party or parties to the suit shall bear the expense of giving such notice, in such proportion as the court finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the suit and recoverable in the same manner as other taxable costs.

T.C.A. § 48-56-401(d).

A trial court's decision to seal its record is reviewed for an abuse of discretion. *In re Estate of Thompson*, 636 S.W.3d 1, 10 (Tenn. Ct. App. 2021) (citing *Kocher v. Bearden*, No.

W2017-02519-COA-R3-CV, 2018 Tenn. App. LEXIS 707, 2018 WL 6423030, at \*10 (Tenn. Ct. App. Dec. 5, 2018) (citing *Ballard v. Herzke*, 924 S.W.2d 652 at 659 (Tenn. 1996)).

Discussing the sealing of Court records, the Court of Appeals recently stated as follows:

"The Tennessee Constitution expressly provides that 'all courts shall be open.'" *Kocher*, 546 S.W.3d at 85 (quoting Tenn. Const. Art. I, § 17) (footnote omitted). The Constitutional mandate for open courts extends to a court's judicial records. *Id.* Accordingly, we "'recognize a general right to inspect and copy public records and documents, including judicial records and documents.'" *Id.* (quoting *In re NHC—Nashville Fire Litig.*, 293 S.W.3d 547, 560 (Tenn. Ct. App. 2008)). We have previously explained the "origins and reasons for the public right to access judicial records:"

The public's right to access provides public scrutiny over the court system which serves to (1) promote community respect for the rule of law, (2) provide a check on the activities of judges and litigants, and (3) foster more accurate fact finding. The right of access to judicial proceedings and records was originally justified by common law traditions predating the enactment of the federal Constitution. The common law right of access establishes that court files and documents should be open, unless the court finds that the records are being used for improper purposes. Moreover, the First Amendment to the Constitution presumes that there is a right of access to proceedings and documents which have historically been open to the public and which disclosure would serve a significant role in the functioning of the process.

*Estate of Thompson*, 636 S.W.3d at 11-12. Discussing the public's right to inspect judicial records, the Court of Appeals noted as follows:

the public's right to inspect judicial records has been recognized in Tennessee "for more than a century[.]" and we remain cognizant of the "presumption of openness" for such records. *Id.* (quoting *Tennessean v. Metro Gov't of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016)); *see also Baugh v. United Parcel Serv., Inc.*, No. M2012-00197-COA-R3-CV, 2012 Tenn. App. LEXIS 900, 2012 WL 6697384, at \*6 (Tenn. Ct. App. Dec. 21, 2012) ("Tennessee courts have long recognized that judicial proceedings are presumptively open . . . [t]he openness of judicial proceedings extends to judicial records."); *Huskey*, 982 S.W.2d at 362 (citing *Ballard*, 924 S.W.2d at 661) ("[T]he Tennessee Supreme Court has recognized a qualified right of the public, founded in common law and the First Amendment to the United States Constitution, to attend judicial proceedings and to examine the documents generated in those proceedings.").

*Estate of Thompson*, 636 S.W.3d at 12. Although the “the common law right of access to judicial records is not absolute[,]” . . . . trial courts must balance the privacy of litigants against the public’s right to access the courts and their records . . . [and] ‘any restriction on public access to judicial proceedings and documents ‘must be narrowly tailored to accommodate the competing interest without duly impeding the flow of information.’” *Estate of Thompson*, 636 S.W.3d at 12. “[B]ecause of the long-standing presumption of public access to court records, a seal on such records must be ‘essential to preserve higher values and narrowly tailored to serve [a compelling] interest.’” *Estate of Thompson*, 636 S.W.3d at 12 (citation omitted).

At the Defendants’ request, pending the submission of the Mediation Settlement Agreement to this Court for Approval, the Plaintiffs have kept the contents of the agreement silent. In accordance with T.C.A. § 48-56-401(d), if this Court finds that the Mediation Settlement Agreement “will substantially affect the interest of the corporation’s members . . . the court shall direct that notice be given [to] the members affected.” T.C.A. § 48-56-401(d). The Plaintiffs would maintain that the terms of the Mediation Settlement Agreement should remain open to the public so that non-party members of the HOA who wish to learn the terms of the proposed settlement will be able to do so.

The settlement documents that the Defendants seek to have this Court seal, go straight to the heart of the disposition of this derivative action. *See Estate of Thompson*, 636 S.W.3d at 39-40 (citing *Kocher II*, 2018 Tenn. App. LEXIS 707, 2018 WL 6423030, at \*12 (“[T]he material the parties seek to seal in whole appears in a settlement agreement that the Court must by law review and approve. It is hard to imagine a

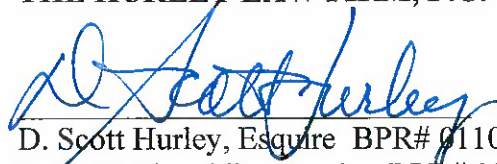
document more core to the disposition of this matter. If upon review, the Court rejects the settlement agreement, the matter continues; if it approves the agreement, the matter will be disposed. . . . A showing of compelling reasons to seal the entire document is thus required."").

In accordance with the above authority, the reasons for sealing the records in this case must be compelling and the presumption of openness may be overcome only by proof of an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Estate of Thompson*, 636 S.W.3d at 20. The Plaintiffs would maintain that the Mediation Settlement Agreement should be open to the public.

Respectfully submitted this 30<sup>th</sup> day of October, 2023.

**THE HURLEY LAW FIRM, P.C.**

By:

  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing pleading was sent via U.S. Mail, facsimile, or electronically to the following interested parties, on this 30th day of October, 2023.

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