

IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE
CHANCERY COURT OF MARION COUNTY

EMILY C. CAMERON, RICHARD)
BARRETT ROGERS, TRUSTEE.)
THOMAS HANCOCK AND LINDA K.)
HANCOCK, DAWN M. ZEEDYK)
STH & ASSOCIATES, INC., and)
CHARLES BEARDEN)

Plaintiffs,)

vs.)

NICKAJACK SHORES HOLDINGS,)
LLC, RARITY INVESTMENT)
COMPANY, LLC, RARITY)
COMMUNITIES, INC., MICHAEL L.)
ROSS, and GREENBANK d/b/a)
GREEN COUNTY BANK and f/d/b/a)
AMERICAN FIDELITY BANK,)

Defendants.)

NO. 7394

RECEIVED FILED
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JUL 19 2006

LEVON BUDGER
CLERK

COMPLAINT

Comes Emily C. Cameron, Richard Barrett Rogers, Trustee, Thomas Hancock and Linda K. Hancock, Dawn M. Zeedyk and STH & Associates, Inc. ("Plaintiffs"), residents of Marion County, Tennessee, Charles Bearden ("Plaintiff") a resident of Fulton County, Georgia, and sue Nickajack Shores Holdings, LLC ("Nickajack"), a Tennessee limited liability company with its principal places of business in Blount County and Marion County, Tennessee, Rarity Investment Company, LLC ("Rarity"), a Tennessee limited liability company with its principal place of business in Maryville, Tennessee, Rarity Communities, Inc., a Tennessee corporation with its principal place of business in Maryville, Tennessee ("Rarity Communities"), Michael L. Ross ("Ross") a resident of Blount County, Tennessee, and GreenBank ("GreenBank"), a Tennessee

state bank with its principal place of business in Greeneville, Tennessee, and for their cause of action would show as follows:

1. Nickajack is owned by Rarity. Ross is the owner and managing agent of Rarity and managing agent of Nickajack. Rarity Communities is believed to be owned by Ross and operates as a real estate broker. Rarity, Nickajack and Rarity Communities are doing business in Marion County, Tennessee. Rarity, Nickajack and Rarity Communities may be served by service on their registered agent, David W. Long, 1111 Northshore Drive, NW, Suite 700, Knoxville, TN 37919-4074. The registered agent for Rarity Communities is Michael L. Ross, 2624 Carpenters Grade Road, Maryville, Tennessee, 37803. Ross may be served at 1010 William Blount Drive, Maryville, TN 37801 or 2624 Carpenters Grade Road, Maryville, Tennessee, 37803. GreenBank is a Tennessee state bank with its principal offices in Greeneville and Maryville, Tennessee, and its registered agent for service of process is Steve Ottinger, 100 North Main Street, Greeneville, Tennessee, 37743.

2. Plaintiffs are lot purchasers at Rarity Club, having acquired their interest by substantial payments to Defendants, Nickajack and Rarity with Rarity Communities acting as broker. The property at issue is located in Marion County, Tennessee and proper venue and jurisdiction is in Marion County, Tennessee.

3. In June 2006, John C. Thornton sold all of his interest in Nickajack to Rarity and Ross. Nickajack owned certain property which it swapped with the Tennessee Valley Authority ("TVA") for a prime parcel of real estate containing 578 acres on Nickajack Lake in Marion County, Tennessee. After the acquisition, the name of the Nickajack project was changed by Ross to Rarity Club and lots were platted with in excess of fifty (50) lots having been sold.

4. Since June 2006, the ownership and development of Rarity Club has been solely within the control of Rarity, Nickajack, Rarity Communities and Ross, and they have sold lots for a gross revenue in excess of \$25,000,000 and they have borrowed, paid down and borrowed again in excess of \$15,000,000 from GreenBank, but has not spent, reserved or set aside sufficient funds for amenities and infrastructure costs promised to lot purchasers, including Plaintiffs.

5. Nickajack, Rarity and Rarity Communities, through their agents, and Ross represented, warranted and made covenants to Plaintiffs and other lot owners at Rarity Club that utilities, roads, gates, a marina, a wellness center, golf course, and other amenities would be completed on a certain schedule.

6. Nickajack and Rarity also have certain obligations to Tennessee Valley Authority under certain agreements and deed conditions, including construction of certain amenities and movement of a recreation center. These amenities were also promised to lot owners.

7. Nickajack and Rarity, through the actions of its owner and managing agent Ross, have failed to prosecute in a timely fashion the amenities and has discontinued construction of the amenities which has endangered the project and created potential reversionary rights in part of the project with Tennessee Valley Authority. Further, Defendants were delinquent in the payment of property taxes, have allowed liens to be filed, have been sued by a lot owner/developer for misrepresentation, have been sued by creditors and has failed to meet obligations to certain governmental authorities.

8. Nickajack and Rarity have borrowed, through the control exercised by Ross and by his actions, the maximum amount on GreenBank's deed of trust. Such loan was paid down substantially and then borrowed again. Nickajack and Rarity have also sold a substantial number of lots and the total amount borrowed and the proceeds of such lot sales far exceed expenditures

on the Rarity Club property. The combined cash from such lot sales and loan proceeds has not been set aside, reserved and committed for obligations on this particular project, specifically the completion of utilities, golf course, club house, marina, gate, fence and other amenities. Upon information and belief, Ross has engineered the diversion of all such funds and sale proceeds of well in excess of \$10,000,000.00 for other purposes, including other projects owned or controlled by Ross, some of which are financed by GreenBank. Such action on the part of Ross, exercising dominion and control over Nickajack and Rarity, constitutes breach of fiduciary duty, misappropriation, conversion, mismanagement, breach of contract and duty of good faith and fair dealing, misrepresentation, fraud and negligence. Ross is the alter ego of these companies and he has so controlled the funds and operations that he should be found to be personally liable for all obligations and liabilities of these companies.

9. Defendants Nickajack, Rarity, Rarity Communities and Ross have conspired to violate the Tennessee Consumer Protection Act, T.C.A. §47-18-101, et seq. and the Tennessee Residential Property Act, T.C.A. §66-4-101, et seq. and made misrepresentations to the lot owners and engaged in unfair and deceptive practices. The Bank, likewise, has violated the provisions of T.C.A. 47-18-104(27).

10. Upon information and belief, GreenBank allowed, contrary to its own guidelines and loan provisions, the diversion of such funds to other projects some of which are financed by GreenBank, failed to exercise reasonable diligence to see that the construction funds made available for Rarity Club were actually used in payment of materials, labor and other costs of construction for the project and conspired with Ross to allow diversion of funds. Such conduct and other conduct whereby GreenBank exercised control over the activities of Ross and all of his related companies created a joint venture or joint enterprise and GreenBank should be treated as

a joint venturer of Nickajack, Rarity, Rarity Communities and Ross. Together, all such Defendants carried on a joint enterprise which has damaged the Plaintiffs. GreenBank has threatened foreclosure of the project after allowing the diversion of funds from the project. The Plaintiffs are third party beneficiaries of the obligations between GreenBank and Defendants, as borrowers.

11. Each lot owner at Rarity Club has been damaged by the actions of Nickajack, Rarity, Rarity Communities, Ross and GreenBank. Plaintiffs' claims are representative of the class of lot owners at Rarity Club and bring this suit, individually, and as class representatives. There are questions of law and fact common to all class members and defenses and claims are typical of the claims of the class. Prosecution of separate actions would create a risk of inconsistent or varying adjudications and the claimants are too numerous for joinder. Plaintiffs would fairly and adequately protect the interest of the class. Prosecution of separate actions would create a risk of inconsistent or varying adjudications.

COUNT ONE

12. Plaintiffs sue Nickajack, Rarity, Rarity Communities, Ross and GreenBank, jointly and severally, for rescission for fraud and misrepresentation, and are entitled to repayment of the full purchase price and interest on the original purchase price.

COUNT TWO

13. Alternatively, Plaintiffs, in their individual capacities as lot owners, sue Nickajack, Rarity, Rarity Communities, Ross and GreenBank, jointly and severally, for the depreciation in market value and damage to their lots by reason of breach of contract and breach of duty of good faith and fair dealing, negligence, misrepresentation, misappropriation, breach of fiduciary duty,

fraud, the diversion of funds and failure to complete amenities and seeks damages to be shown at trial.

COUNT THREE

14. Plaintiffs also are entitled to damages and attorneys fees for violation of the Tennessee Consumer Protection Act and the Tennessee Residential Property Act against the Defendants Nickajack, Rarity, Rarity Communities and Ross and against Bank for violation of the Tennessee Consumer Protection Act.

COUNT FOUR

15. Plaintiffs are entitled to recover damages against Ross, individually, for mismanagement, breach of fiduciary duty, diversion of funds, fraud, conspiracy and as alter ego of Nickajack, Rarity Communities and Rarity and seeks a judgment in an amount to be shown at trial.

COUNT FIVE

16. Plaintiff seeks damages and injunctive relief as a class representative on behalf of all members of the class against all Defendants, jointly and severally, requiring an accounting of funds generated from the project, for rescission or damages and an injunction requiring completion of amenities. Defendants have generally failed or refused to act on grounds applicable to the entire class thereby making appropriate final injunctive relief or corresponding declaratory relief.

COUNT SIX

17. The Defendant, Nickajack, entered into a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing with American Fidelity Bank, a Green County Bank office ("Bank") under date of June 27, 2006, which instrument is recorded in Book 373, Pages 685, et seq., in the Register's Office of Marion County, Tennessee. The Plaintiffs aver

that the purpose of said Deed of Trust was to secure a line of credit up to the sum of \$15,500,000.00 for the construction and improvements of the premises and that the funds advanced by the Bank were for said purpose and for said purpose only. The Plaintiffs aver that in reliance thereon they purchased their respective lots. The Plaintiffs aver that they were deceived in that the funds which were advanced by the Bank were not solely used for the improvements of said premises, but a portion of which were utilized for other purposes. The Plaintiffs aver that the Bank knew or upon reasonable investigation should have known that funds were not all utilized for the purposes as set forth in said Construction Deed of Trust thus resulting in damages to the Plaintiffs.

COUNT SEVEN

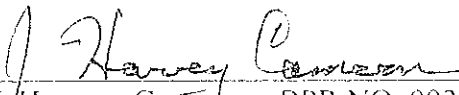
18. The Plaintiffs further aver that under the Special Warranty Deed to Nickajack from the United States of America, Tennessee Valley Authority (TVA) of record in Deed Book 373, Page 668, in the Register's Office of Marion County, Tennessee, certain obligations were imposed upon Nickajack which were to be completed within specified times. The failure to comply with these obligations could result in a reverter of certain properties conveyed all of which the Bank was or should have been aware. The failure of the Bank to ensure that Nickajack complied with the Covenants of the Grantee, Nickajack, as set forth therein has resulted in a decrease in value of the properties owned by the respective Plaintiffs. The Plaintiffs aver that the Bank under the terms and conditions of its Construction Deed of Trust should have monitored the utilization of the funds provided by the Bank to Nickajack and the failure so do was a breach of its fiduciary duties all of which resulted in damages to the Plaintiffs.

WHEREFORE, Plaintiffs pray as follows:

- (a) That this Complaint be filed and served upon the Defendants.

- (b) That Defendants be required to answer the Complaint within the time provided by law
- (c) That Plaintiffs have and recover, attorney fees, damages, injunctive relief and other relief as prayed for in the Complaint.
- (d) That the Court determine that this action be declared as a class action claim on behalf of all other lot owners at Rarity Club similarly situated and for the relief requested herein.
- (e) That Plaintiffs have such other and further relief as the evidence may suggest.

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SURETY FOR COSTS

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By: 