

IN THE CHANCERY COURT OF MARION COUNTY, TENNESSE

JOHN C. THORNTON,)
)
 Plaintiff,)
)
 vs.)
)
 NICKAJACK SHORES HOLDINGS,)
 LLC, RARITY INVESTMENT)
 COMPANY, LLC and)
 MICHAEL L. ROSS,)
)
 Defendants.)

NO. 7418

JURY DEMAND

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COMPLAINT

Comes John C. Thornton (“Plaintiff” or “Thornton”), a resident of Hamilton County, Tennessee, and sues Nickajack Shores Holdings, LLC (“Nickajack”), a Tennessee limited liability company with its principal place of business in Marion County, Tennessee, Rarity Investment Company, LLC (“Rarity”), a Tennessee limited liability company with its principal place of business in Maryville, Tennessee and Michael L. Ross (“Ross”) as a resident of Blount County, Tennessee, and for his cause of action would show as follows:

1. Nickajack is owned by Rarity.
2. Ross is the owner and managing agent of Rarity and managing agent of Nickajack.
3. Both Rarity and Nickajack have, at relevant times, conducted business in Marion County, Tennessee. Nickajack purchased acreage in Marion County, Tennessee (“Nickajack Property”) that is the subject of this suit. Jurisdiction and venue in Marion County is proper.
4. Rarity and Nickajack may be served by service on their registered agent, David W. Long, 1111 Northshore Drive, NW, Suite 700, Knoxville, TN 37919-4074.

5. Ross may be served at 1010 William Blount Drive, Maryville, TN 37801 or 2624 Carpenters Grade Road, Maryville, TN 37803.
6. Proper venue and jurisdiction is in Marion County, Tennessee.
7. Thornton sold all of his ownership interest in Nickajack to Rarity and Ross. After the acquisition, the Nickajack Property in Marion County was developed as the Rarity Club.
8. Nickajack, Rarity and Ross sold lots at Rarity Club for a gross revenue in excess of \$26,500,000 and collected substantial funds for golf memberships and dues, but has not completed amenities and infrastructure.
9. As part of the consideration owed to Plaintiff for sale of his interest in Nickajack, Rarity and Nickajack were to pay installment payments as property was sold with minimum guaranteed annual payments to be made to Plaintiff until a certain total minimum payment was satisfied. This obligation of Rarity and Nickajack was represented by a certain Note (attached hereto as Exhibit A), secured by a Deed of Trust on the property second only to Rarity's lender, GreenBank ("GreenBank"). All of the Note is now owned by Thornton.
10. Thornton is now the sole beneficiary of the Deed of Trust and sole payee on the Note.
11. Nickajack and Rarity met most of its obligations under the Note until February 2009, at which time Rarity and Nickajack failed to make a payment due Plaintiff. The Note was accelerated.
12. Defendants' lender foreclosed on the property. Defendants failed to utilize sales income to assure satisfaction of the lender or satisfy the minimum payments owed to Plaintiff.
13. Rarity and Nickajack, in addition to the obligation owed to Plaintiff, also have certain obligations to Tennessee Valley Authority under certain agreements and deed conditions,

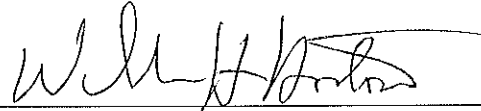
including construction of certain amenities. These amenities were also promised to purchasers of subdivided Rarity Club property.

14. Nickajack and Rarity, through the actions of its owner and managing agent Ross, not only defaulted in obligations to Plaintiff, but failed to prosecute in a timely fashion the infrastructure and amenities and discontinued construction of the infrastructure and amenities, which endangered the project and created potential reversionary rights in part of the project with Tennessee Valley Authority.
15. Nickajack and Rarity borrowed, through the control exercised by Ross and by his actions, the maximum amount on GreenBank's deed of trust. The total amount borrowed and the proceeds of such lot sales exceed expenditures on the Rarity Club property. The combined cash from such lot sales and loan proceeds was not been utilized for this project, specifically the completion of roads, utilities, golf course, club house, marina, gate, fence, relocation of the TVA campground, and other amenities and payment of minimum payments due Thornton. Ross has exercised dominion and control over Nickajack and Rarity and has engineered the diversion of all such funds and sale proceeds for other purposes. Such action on the part of Ross, exercising dominion and control over Nickajack and Rarity, constitutes breach of fiduciary duty, misappropriation, mismanagement, fraud, misrepresentation, conspiracy and negligence on the part of Ross. Ross is also made a party to this suit on an alter ego theory.
16. Plaintiff sues Nickajack and Rarity jointly and severally upon the Note for the amount of Nine Million Seven Hundred Sixty One Thousand Dollars (\$9,761,000.00) plus prejudgment interest at the rate of ten percent (10%) per annum from February 12, 2009, and is entitled to a judgment for such amount. Ross is also liable for such amount.

17. Plaintiff also sues Ross individually for mismanagement, misappropriation, breach of fiduciary duty, misrepresentation, fraud, negligence, conspiracy and as alter ego of Nickajack and Rarity and seeks a judgment against Ross, jointly and severally, with the other Defendants, for amounts due on the Note and punitive damages.

WHEREFORE, Plaintiff prays 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 Plaintiff have and recover prejudgment interest, attorney fees, and compensatory and punitive damages as prayed for in the Complaint against the Defendants.
- (d) That Plaintiff have such other and further relief as the evidence may suggest.
- (e) Plaintiff demands a jury.



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Attorney for Plaintiff
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COLLATERAL INSTALLMENT NOTE

June 27, 2006
Chattanooga, Tennessee

FOR VALUE RECEIVED, the undersigned, jointly and severally, if more than one, promise to pay to the order of John C. Thornton and Brandon Born (collectively "Payees"), by payment to Thunder Development, Agent for Payees, P.O. Box 4373, Chattanooga, Tennessee 37405 an amount not less than \$13,000,000 in installments as outlined below.

The undersigned agrees to pay all installments as outlined in that certain Joint Venture Agreement dated June 27, 2006, a copy of which is attached hereto as Exhibit A, which installments may exceed \$13,000,000.

Interest shall accrue on all delinquent payments which are not paid when due and which remain unpaid after applicable notice and cure periods, at a per annum interest rate of ten percent (10%) on the unpaid balance.

The makers and any endorsers or guarantors hereof waive protest, demand, presentment, and notice of dishonor, and agree that this note may be extended, in whole or in part, without limit as to the number of such extensions, or the period or periods thereof, and without notice to or further assent from them or any other party liable hereon, all of whom will remain bound upon this note notwithstanding any such extensions; and further agree that all or any collateral given as security herefor may be released (with or without substitution); and that additional makers, endorsers, guarantors, or sureties may become parties hereto, without notice, and without affecting the liability of any maker, endorser, or guarantor.

In the event of any default in the prompt and punctual payment, when due, of this note or any installment hereof, whether of principal, interest, or principal and interest, or if the undersigned, or any other party liable hereon, should become insolvent (as defined in the Uniform Commercial Code in effect at that time in the State of Tennessee), or if a petition in bankruptcy be filed by or against the undersigned, or any other party liable hereon, or if any assignment for the benefit of creditors be made by the undersigned or any other party liable hereon, or if a judgment be entered against the undersigned, or any other party liable hereon, or upon the issuance of any writ, levy, or process, valid or invalid, which purports to restrict the undersigned, or any other party liable hereon, or upon the death or dissolution of any party liable hereon, or upon the nonpayment of taxes on property, or premiums on any casualty, or other insurance deposited as collateral hereunder, or upon any other default in the terms and provisions hereof and which default(s) continues after notice and opportunity to cure the default within thirty (30) days after notice, then and in any of such events, the full balance of the minimum guaranteed payment of Thirteen Million Dollars (\$13,000,000), which is the minimum to be paid pursuant to the Joint Venture Agreement, less credit for prior payments, shall, without notice or demand for payment (the same being expressly waived), be and become immediately due and payable for all purposes, at the option of Payee.

If this note is placed in the hands of an attorney for collection, by suit or otherwise, or to protect any security given for its payment, or to enforce its collection, the

undersigned will pay all costs of collection and litigation, together with a reasonable attorney's fee, all of which shall be secured by any collateral pledged as security herefor.

As collateral security for the payment of this and any other liability or obligation of the undersigned to Payees, whether now existing or hereafter created or arising, due or to become due, direct or indirect, absolute or contingent, and whether several, joint, or joint and several, the undersigned hereby pledges to Payees and grant to Payees a Second Deed of Trust and related security interest in, the following described property, the proceeds thereof and all substitutions, additions or replacements for all or any part thereof, all hereafter called "Collateral":

A certain 578 acre tract of land in Marion County, Tennessee, purchased from Tennessee Valley Authority as described in that certain Second Deed of Trust of even date from Nickajack Shores Holdings, LLC for the benefit of Payees.

The Collateral shall continue to be the property of the owner, with all rights thereto appertaining except for the pledge and security interest as provided in this instrument and the Second Deed of Trust.

Upon default in the payment hereof at the time or on the terms herein provided which continues beyond applicable notice and cure provisions set forth above, or upon the non-performance of any of the agreements and conditions herein contained which continues beyond applicable notice and cure provisions set forth above, Payees are authorized, upon having given thirty (30) days' notice in writing (which is hereby agreed to be a reasonable time) to sell the whole or any part of the collateral then held by it which is not real estate at any public or private sale for cash or on credit, without advertisement except to the extent required by law; and to apply the net proceeds of such sale, after deduction of expenses for collection, sale, and delivery, to the payment of this note, and to the payment of any other liability or liabilities owed by any party liable hereon to Payees, returning the surplus, if any, to the undersigned, or any of them. Upon any sale hereunder, Payees may (unless prohibited by law) purchase the whole or any part of the aforesaid non real estate collateral, discharged from any right of redemption, which is expressly waived and released. The disposition of real estate collateral shall be in accordance with the terms and provisions of the Second Deed of Trust. In addition to all other rights provided in this note, Payees shall have all the rights of a secured party under the Uniform Commercial Code as enacted in the state of Tennessee.

Upon the discharge of this obligation, Payees shall deliver this note, together with the Collateral to any of the undersigned, or to any party making payment hereof, and Payee shall thereafter be forever relieved and discharged from any liability or responsibility in connection therewith. In the event of the transfer of this note, Payee or any subsequent holder shall thereupon become vested with all the powers and rights herein given to Payees. The terms of the Joint Venture Agreement of the same date shall control if there is any ambiguity or inconsistency between this note and the Joint Venture Agreement.

Rarity Investment Company, LLC

By: Michael L. Ross
Michael L. Ross, Its Chief Manager

OBLIGATOR

Nickajack Shores Holdings, LLC

By: Michael L. Ross
Michael L. Ross, Its Chief Manager

CO-OBLIGATOR