

COPY

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

DANNIE A. HUTCHERSON and)
RICHARD T. ANKLIN)
)
Plaintiffs,)
)
vs.) Docket No. 11513
)
TELLICO VILLAGE PROPERTY)
OWNERS ASSOCIATION, INC.)
)
Defendant.)
)

MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes the Defendant, Tellico Village Property Owners Association, Inc. ("TVPOA"), by and through counsel, and submits this Motion for Partial Summary Judgment Pursuant to Tenn. R. Civ. P. 56.

In support of its Motion, TVPOA submits that Plaintiff, Richard T. Anklin's ("Anklin") claim against TVPOA arises solely from the initial decision of TVPOA's General Manager to answer in part and deny in part his requests for business records. In June of 2009, Anklin submitted four separate written requests to TVPOA to obtain certain business records. TVPOA's General Manager denied in part Anklin's record requests in accordance with TVPOA's Document Access Rules. TVPOA's Document Access Rules provide that any adverse decision by the General Manager "shall first be appealed" to the TVPOA Board of Directors in writing within thirty (30) days of the initial decision. It is undisputed that Anklin failed to appeal the General Manager's decision regarding the record requests to the TVPOA Board of Directors in accordance with the express requirements of TVPOA's Document Access Rules. Rather, in blatant disregard for TVPOA's administrative procedures, Anklin filed the present lawsuit

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against TVPOA on July 21, 2009, seeking disclosure of any remaining records included in his previous requests. Anklin clearly failed to exhaust his administrative remedies provided in TVPOA's Document Access Rules prior to filing suit against TVPOA. Therefore, Anklin's claim against TVPOA should be dismissed as a matter of law pursuant to Tenn. R. Civ. P. 56.

In support of this Motion for Partial Summary Judgment, TVPOA files contemporaneously herewith and incorporates herein, a Memorandum of Law in Support of its Motion for Partial Summary Judgment, a Statement of Undisputed Material Facts, and the Affidavit of Winston Blazer which is attached hereto as Exhibit A.

KENNERLY, MONTGOMERY & FINLEY, P.C.

Ву_

C. Coulter Gilbert, BPR #011824

Kevin Stevens, BPR #023035

Attorneys for Defendant

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Knoxville, TN 37901

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been served upon the following by delivering same or by placing same in the United States Mail, postage prepaid.

J. Scott McCluen 111 Deer Haven Court Harriman, TN 37748

This 12^{+1} day of October, 2009.

KENNERLY, MONTGOMERY & FINLEY, P.C.

Kevin C Steven

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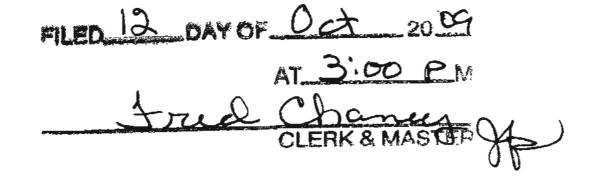
AFFIDAVIT OF WINSTON BLAZER

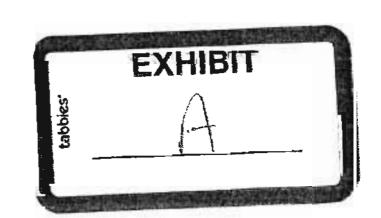
COUNTY OF LOUDON)
STATE OF TENNESSEE)

Comes now the affiant, and after being duly sworn, does state as follows:

- 1. My name is Winston Blazer, and I am over the age of 18, am of sound mind, and have personal knowledge of the facts set forth in this affidavit.
- 2. TVPOA's Document Access Rules (the "Document Access Rules") state that they were "promulgated by the TVPOA Board of Directors to implement a comprehensive records access policy for the TVPOA and to assure that the records access process is managed fairly and in an efficient and business-like manner."
 - 3. The Document Access Rules provide at Paragraph 6 as follows:

Any decision or action taken by POA staff under these rules or under the POA General Manager's procedures shall first be appealed to the General Manager, or in the case of a decision or action by the General Manager, to the POA Board of Directors. Appeals to the POA Board of Directors must be made in writing within thirty (30) days of the decision or action being appealed. The POA Board of Directors shall act promptly to determine such appeals.





- 4. Plaintiff, Richard T. Anklin ("Anklin"), failed to appeal the General Manager's decision regarding the record requests to the TVPOA Board of Directors in accordance with the express requirements of the Document Access Rules.
- 5. Rather, Anklin bypassed TVPOA's mandatory administrative procedures and filed the present lawsuit against TVPOA on July 21, 2009, seeking disclosure of any remaining records included in his previous requests.

FURTHER AFFIANT SAITH NOT.

Winston Blazer

Sworn to and subscribed before me this day of October, 2009.

NOTARY PUBLIC

My commission expires: \(\lambda \lam