

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

DANNIE A. HUTCHERSON and  
RICHARD T. ANKLIN,  
PLAINTIFFS

VS.

NO. 11513

TELLICO VILLAGE PROPERTY  
OWNERS ASSOCIATION, INC.

DEFENDANT

COMPLAINT

Come the Plaintiffs, Dannie A. Hutcherson and Richard T. Anklin, pursuant to Tenn. Code Anno. § 48-66-104, in support of their cause of action and say as follows, to-wit:

1. The Plaintiffs, Dannie A. Hutcherson and Richard T. Anklin, are now and at all times pertinent to this lawsuit were citizens and resident domiciliaries of Loudon County, Tennessee.

Dannie A. Hutcherson is member number 9000576 of the Tellico Village Property Owners Association, Inc. whose property in Loudon County is located at 202 Oohleeno Lane, Loudon, Tennessee.

Richard T. Anklin is member number 9200081 of the Tellico Village Property Owners Association, Inc. whose property in Loudon County is located at 120 Coyatee Circle, Loudon, Tennessee.

2. The Tellico Village Property Owners Association, Inc. is now and at all times

FILED 21 DAY OF July 20, 09<sup>1</sup>  
AT 10:20 A.M.  
Fred Chaney  
CLERK & MASTER

pertinent to this lawsuit was a domestic, non-profit corporation organized and existing under the laws of The State of Tennessee having its principle address in Loudon County, Tennessee at 112 Chota Center, Loudon, TN 37774.

The registered agent for service of process for the Tellico Village Property Owners Association, Inc. is Winston Blazer whose address is also 112 Chota Center, Loudon, TN 37774.

3. The Tellico Village Property Owners Association, Inc. is a "Corporation" within the meaning of Tenn. Code Anno. § 48-51-201 (7) and, as such, is bound by the provisions of Tenn. Code Anno. § 48-66-101 et. seq.

4. Tenn. Code Anno. § 48-66-101 provides as follows:

***Corporate records.*** —

*(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors as authorized by § 48-58-206(d).*

*(b) A corporation shall maintain appropriate accounting records.*

*(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.*

*(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.*

*(e) A corporation shall keep a copy of the following records at its principal office:*

- (1) Its charter or restated charter and all amendments to it currently in effect;*
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;*
- (3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;*
- (4) The minutes of all meetings of members and records of all actions*

- approved by the members for the past three (3) years;
- (5) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 48-66-201;
- (6) A list of the names and business or home addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the secretary of state under § 48-66-203.

5. Tenn. Code Anno. § 48-66-102 provides as follows:

***Inspection of records by members. —***

(a) Subject to § 48-66-103(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in § 48-66-101(e) if the member gives the corporation a written demand at least five (5) business days before the date on which the member wishes to inspect and copy. \*

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

- (1) Excerpts from any records required to be maintained under § 48-66-101(a), to the extent not subject to inspection under subsection (a);
- (2) Accounting records of the corporation; and
- (3) Subject to § 48-66-105, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

- (1) The member's demand is made in good faith and for a proper purpose;
- (2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and
- (3) The records are directly connected with the purpose for which the demand is made.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

(e) This section does not affect:

- (1) The right of a member to inspect records under § 48-57-201 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or
- (2) The power of a court, independently of chapters 51-68 of this title, to compel the production of corporate records for examination.

6. Tenn. Code Anno. § 48-66-103 provides as follows:

***Scope of inspection rights. —***

*(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.*

*(b) The right to copy records under § 48-66-102 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.*

*(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.*

*(d) The corporation may comply with a member's demand to inspect the record of members under § 48-66-102(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.*

7. Pursuant to Tenn. Code Anno. §§ 48-66-101, 48-66-102 and 48-66-103, the Plaintiffs undertook the following actions, to wit:

a. On April 17, 2009, the Plaintiff, Dannie A. Hutcherson, made a written request to inspect records in order to aid in determining whether the business of The Tellico Village Property Owners Association, Inc. was being properly conducted and whether there had been any breach of the fiduciary duties of any director or officer of The Tellico Village Property Owners Association, Inc.

On that date, in order to aid this inquiry, the Plaintiff, Dannie A. Hutcherson, requested to inspect the following:

- (1) 2008 IRS Form – 1099s (Original documents reviewed with copies provided)
- (2) 2008 vendor invoices (Originals provided for review, copies requested as identified upon review)
- (3) The back-up computer generated 2008 Accounts Payable Register which list each and every invoice by vendor...

The request was hand-delivered to Winston Blazer on April 17, 2009 at the office of The Tellico Village Property Owners Association, Inc. Mr. Hutcherson's written request is attached hereto as Exhibit One and incorporated by reference as fully as set out verbatim.

b. On June 2, 2009 and June 10, 2009, the Plaintiff, Richard T. Anklin, made written requests to inspect records in order to aid in understanding where The Tellico Village Property Owners Association, Inc. stood with respect to obtaining monthly assessments from National Recreational Properties, Inc., Prima Properties and Capital Source for the months January thru June 2009.

In particular, Mr. Anklin sought information to aid in understanding whether National Recreational Properties, Inc./ Capital Source and/or Prima Properties were included in the reporting at the Finance Committee meetings and how they were counted.

On those dates, in order to aid this inquiry, the Plaintiff, Richard T. Anklin, requested to inspect a numerical listing, as of June 1, 2009, of all properties owned by NRPI, Prima Properties and Capital Source, how many months NRPI, Prima Properties and Capital Source were behind in payment and copies of any payments received from NRPI, Prima Properties and Capital Source beginning January thru June 2009.

The requests were delivered on June 2, 2009 and June 10, 2009 to the office of The Tellico Village Property Owners Association, Inc. Mr. Anklin's written requests are attached hereto as Exhibit Two and incorporated by reference as fully as set out verbatim.

c. On June 2, 2009 and June 10, 2009, the Plaintiff, Richard T. Anklin, made written requests to inspect records in order to aid in understanding what took place regarding the

Board of Directors discussions on the decisions leading to the April 16, 2008 approval of three Board Policies covering the employee personal use of The Tellico Village Property Owners Association, Inc.'s resources and vehicles and Board Policies regarding the disposal of surplus property.

On those dates, in order to aid this inquiry, the Plaintiff, Richard T. Anklin, requested to inspect copies of all Executive Session Minutes of the Board's meetings for the first quarter of 2007 and for the months of January thru April 2008.

The requests were delivered on June 2, 2009 and June 10, 2009 to the office of The Tellico Village Property Owners Association, Inc. Mr. Anklin's written requests are attached hereto as Exhibit Three and incorporated by reference as fully as set out verbatim.

d. On June 2, 2009 and June 10, 2009, the Plaintiff, Richard T. Anklin, made written requests to inspect records in order to aid in understanding what took place regarding the Management's and the Board of Directors discussions regarding the authorization to lease five greens mowers and two trim mowers.

On those dates, in order to aid this inquiry, the Plaintiff, Richard T. Anklin, requested to inspect copies of The Tellico Village Property Owners Association, Inc.'s Capital Request Fact Sheets/Bid Packages on the five greens mowers and two trim mowers leased for One hundred twenty-four thousand four hundred and forty-eight dollars (\$124,448.) and their respective Finance Committee approvals.

The requests were delivered on June 2, 2009 and June 10, 2009 to the office of

The Tellico Village Property Owners Association, Inc. Mr. Anklin's written requests are attached hereto as Exhibit Four and incorporated by reference as fully as set out verbatim.

e. On June 2, 2009 and June 10, 2009, the Plaintiff, Richard T. Anklin, made written requests to inspect records in order to aid in understanding the difference between the 2008 and 2009 funding requests before the Board of Director's Meeting for the reclamite of the Kahite Roads.

On those dates, in order to aid this inquiry, the Plaintiff, Richard T. Anklin, requested to inspect copies of The Tellico Village Property Owners Association, Inc.'s Bid Packages for the reclamite of the Kahite Roads verses the planned expenditure last year – claimed as savings in the last quarter of 2008 or the amount claimed.

The requests were delivered on June 2, 2009 and June 10, 2009 to the office of The Tellico Village Property Owners Association, Inc. Mr. Anklin's written requests are attached hereto as Exhibit Five and incorporated by reference as fully as set out verbatim.

8. Tenn. Code Anno. § 48-66-102 (c) provides, in pertinent part, that a member of the Tellico Village Property Owners Association, Inc. may inspect and copy records if the demand is made in good faith and for a proper purpose and the records are directly connected with the purpose for which the demand is made.

Further, Tenn. Code Anno. § 48-66-102 (d) provides the right of inspection granted may not be abolished or limited by a corporation's charter or bylaws. By logical extension, the Plaintiffs aver that Tenn. Code Anno. § 48-66-102 (d) prohibits the abolition or limitation of the right of inspection by a corporation's rules and procedures.



Notwithstanding this provision and contrary to the general law, in May 2009, The Tellico Village Property Owners Association, Inc. attempted to abolish or limit this right of inspection by the enactment of "Document Access Rules".

In pertinent part, the "Document Access Rules" delegated to the general manager of The Tellico Village Property Owners Association, Inc. authority to determine whether an inspection request was in "good faith and for a valid purpose"

Section four of the "Document Access Rules" provides that a "decision by the General Manager to deny a member's request to access POA records for lack of a valid purpose must be based on the General Manager's good faith determination that the purpose of the request is:

- (i) *inimical or hostile to the POA*
- (ii) *to gratify idle curiosity*
- (iii) *to harass or annoy the POA or its management*
- (iv) *to advance merely speculative purposes, or*
- (v) *illegal*

The Plaintiffs aver that above-cited Section four of the "Document Access Rules" is unlawful, void and of no effect.

9. On June 4, 2009, far in excess of the time allowed by law, Winston Blazer, General Manager, on behalf of The Tellico Village Property Owners Association, Inc. denied the April 17, 2009, request of the Plaintiff, Dannie A. Hutcherson to inspect records as alleged in paragraph 7 a hereof.

In addition to citing the aforementioned "Document Access Rules" as his basis for



denial, he cites "numerous facts and circumstances that have occurred and developed since late 2008", but did not commit those to writing.

The letter rejecting Mr. Hutcherson's request is attached hereto as Exhibit Six and is incorporated by reference as fully as set out verbatim.

10. On July 8, 2009, far in excess of the time allowed by law, Winston Blazer, General Manager, on behalf of The Tellico Village Property Owners Association, Inc. answered, in part, and denied, in part, the June 2, 2009, request of the Plaintiff, Richard T. Anklin, to inspect records as alleged in paragraph 7 a hereof.

The letter of answer and denial cites and relies upon the "Document Access Rules" and guidelines in making the denial. Further the letter states, "all applicable fees will apply".

The letter answering, in part, and rejecting, in part, Mr. Anklin's request is attached hereto as Exhibit Seven and is incorporated by reference as fully as set out verbatim.

11. Tenn. Code Anno. § 48-66-104 provides as follows:

***Court-ordered inspection. —***

*(a) If a corporation does not allow a member who complies with § 48-66-102(a) to inspect and copy any records required by that subsection to be available for inspection, a court of record having equity jurisdiction in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.*

*(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with § 48-66-102(b) and (c) may apply to a court of record having equity jurisdiction in the county where*

*the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.*

*(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.*

*(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.*

12. The Plaintiffs aver that the request for inspections alleged in paragraph seven hereof were made in good faith for a proper purpose and the requested records were directly connected with the purpose for which the demand was made and the requests were in full compliance with Tenn. Code Anno. §§ 48-66-101, 48-66-102 and 48-66-103.

13. Accordingly, the Plaintiffs aver that this is a proper case for the Court to order inspection pursuant to Tenn. Code Anno. § 48-66-103.

WHEREFORE, PREMISES CONSIDERED, THE PLAINTIFF PRAYS AS FOLLOWS, to-wit:

1. That proper process issue and be served upon the Defendant, the Tellico Village Property Owners Association, Inc., by serving its registered agent for service of process, Winston Blazer whose address is also 112 Chota Center, Loudon, TN 37774 and that it be required to answer within the time provided for by law.

2. That the Court summarily order inspection and copying of the records demanded

at the Defendant's expense or grant an order permitting inspection and copying of the records demanded.

3. For an expedited hearing pursuant to Tenn. Code Anno. § 48-66-104 (b).
4. That the Court order the Defendant to pay the member's costs incurred to obtain the order
5. For such general and other relief to which the Plaintiff's are entitled.
6. That the cost of this cause be taxed to the Defendant.

This 20th day of July, 2009.



J/ Scott McCluen  
Attorney for Plaintiffs  
BPR 007100  
111 Deer Haven Court  
Harriman, TN37748  
Tel. 1-865-388-0017  
Facsimile 1- 865-381-1251

STATE OF TENNESSEE  
COUNTY OF ROANE

Dannie A. Hutcherson, after first being duly sworn according to law, makes oath that the facts stated in the Complaint are true to the best of his knowledge and belief.

This 20th day of July, 2009.



Dannie A. Hutcherson

SWORN TO AND SUBSCRIBED before me this 20th day of July, 2009

*[Signature]*  
Notary Public



My Commission Expires: \_\_\_\_\_



STATE OF TENNESSEE  
COUNTY OF ROANE

Richard T. Anklin, after first being duly sworn according to law, makes oath that the facts stated in the Complaint are true to the best of his knowledge and belief.

This 20th day of July, 2009.

*[Signature]*

Richard T. Anklin

SWORN TO AND SUBSCRIBED before me this 20th day of July, 2009

*[Signature]*  
Notary Public



My Commission Expires: \_\_\_\_\_

