

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.)	
)	

**TELLICO VILLAGE PROPERTY OWNERS ASSOCIATION, INC.’S
RESPONSE TO AND MOTION TO STRIKE PLAINTIFFS’ PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Comes now Tellico Village Property Owners Association, Inc. (“TVPOA”), by and through counsel, and submits this Response to Plaintiffs’ Proposed Findings of Fact and Conclusions of Law (the “Proposed Findings”).

Without any stated procedural or legal basis, Plaintiffs sua sponte filed the Proposed Findings with the Court. It appears from the face of the Proposed Findings that Plaintiffs are attempting to manipulate the Proposed Findings in a last ditch effort to somehow invalidate the TVPOA Document Access Rules (the “Rules”). However, Plaintiffs’ filing of the Proposed Findings is procedurally improper as the Court has never ruled on the merits of any factual or legal issues whatsoever in this case. Moreover, the substantive legal issues raised in the Proposed Findings are not properly before the Court as Plaintiffs have never asserted any claims or sought any relief against TVPOA regarding the validity of the Rules in any pleading. Accordingly, due to the myriad of procedural and legal flaws addressed herein, TVPOA respectfully requests that the Court

disregard the Proposed Findings and permanently strike them from the Court record in this case.

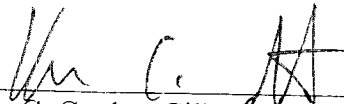
To begin with, Plaintiffs improperly filed the Proposed Findings without any procedural basis in blatant disregard of the Tennessee Rules of Civil Procedure. Tenn. R. Civ. P. 52.01 only authorizes the Court to prepare findings of fact and conclusions of law upon the completion of “actions tried upon the facts without a jury.” There exists no other procedural mechanism which authorizes the Court to render findings of fact and conclusions of law. In the case at bar, the Court has never tried any issues upon the facts or rendered any decisions on the merits. Moreover, the Court has never even heard any factual proof in support of the legal claims asserted by Plaintiffs in this case. To date, the only instances where counsel for the parties have ever addressed the Court occurred during procedural motions pertaining solely to discovery issues. Because the Court has never ruled on the merits of any factual or legal issues in this case it is not authorized to even consider the Proposed Findings pursuant to Tenn. R. Civ. P. 52.01.

Similarly, the Court cannot address the substantive legal claims raised in the Proposed Findings as Plaintiffs have never asserted any claims or sought any relief against TVPOA regarding the validity of the Rules in any pleading. Tenn. R. Civ. P. 8.01 requires that a pleading shall set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” The law in Tennessee is abundantly clear that a court cannot grant any relief or even consider the merits of a claim that was not raised in a pleading. Keisling v. Keisling, 92 S.W.3d 374 (Tenn. 2002). Here the Plaintiffs failed to assert any claims or seek any relief against TVPOA regarding the validity of the Rules in any pleading. Moreover, the Plaintiffs have never requested any declaratory judgment

from the Court or established that there exists any genuine legal dispute related to the Rules. Therefore, because the Rules are not properly before the Court, the Court has no legal basis to even consider the Proposed Findings.

In summary, based upon the myriad of procedural and legal flaws associated with the Proposed Findings, TVPOA submits that the Proposed Findings are wholly without merit and should be disregarded. The Plaintiffs have now had ample opportunity to review and copy all the available TVPOA records that they sought in accordance with the controlled administrative procedure implemented by the Court and agreed to by the parties, rendering this case moot. Even after their limited review of TVPOA records under the Court's procedural safeguards, the Plaintiffs still failed to demonstrate any credible evidence whatsoever of any alleged wrongdoing or malfeasance on the part of TVPOA. As such, this Court entered an Order prohibiting the Plaintiffs from reviewing any additional TVPOA documents in this case. There are no remaining issues to be resolved in this case, and the Court should not permit the Plaintiffs to prolong this matter by the baseless and frivolous introduction of the Proposed Findings. Accordingly, TVPOA respectfully requests that the Court disregard the Proposed Findings, permanently strike them from the Court record, and enter a final Order of Dismissal in the form attached hereto as Exhibit A.

KENNERLY, MONTGOMERY & FINLEY, P.C.

By 
C. Coulter Gilbert, BPR #011824
Kevin C. Stevens, BPR #023035
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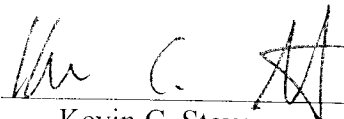
CERTIFICATE OF SERVICE

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 5th day of January, 2011.

KENNERLY, MONTGOMERY & FINLEY, P.C.

By: 
Kevin C. Stevens

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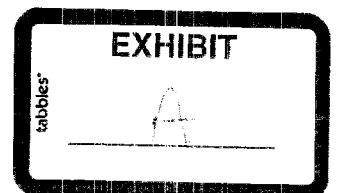
ORDER OF DISMISSAL

Based upon the Court's previous Order Regarding Inspection of Documents, the argument of counsel, and the record as a whole, the Court finds that Plaintiffs' claims against Defendant are moot and that Plaintiffs' claims against Defendants should be dismissed with prejudice.

It is therefore **ORDERED, ADJUDGED and DECREED** that Plaintiffs' claims against Defendant are dismissed with prejudice to re-filing same. Court costs shall be taxed to Defendant, c/o its attorney, Kevin C. Stevens, at Bank of America Center, Fourth Floor, 550 W. Main Street, Knoxville, TN 37901, for the collection of which execution will issue if necessary. The parties shall bear their own discretionary costs and attorneys' fees.

ENTERED this the _____ day of January, 2011.

CHANCELLOR



APPROVED FOR ENTRY:

KENNERLY, MONTGOMERY & FINLEY, P.C.

By _____
C. Coulter Gilbert, BPR #011824
Kevin Stevens, BPR #023035
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Bank of America Center, Fourth Floor
550 W. Main Street
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