COPY

IN THE SUPERIOR COURT OF LUMPKIN COUNTY

STATE OF GEORGIA

GEORGIA, LUMPKIN COUNTY
CLERK'S OFFICE SUPERIOR COURT
Filed 2:30P M 072806
Edward E. Tucker
EDWARD E. TUCKER, CLERK

R-RANCH IN THE MOUNTAINS RANCH OWNERS' ASSOCIATION, INC.,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION FILE NUMBER: ____________
CROSSWIND 1040 PARTNERS, LLC	§	
Defendant.	§	

PETITION FOR DECLARATORY JUDGMENT

COMES NOW R-Ranch in the Mountains Ranch Owners' Association, Inc. hereinafter referred to as ("Plaintiff" or "Association"), a resident of the County of Lumpkin, State of Georgia, and files this Petition For Declaratory Judgment pursuant to O.C.G.A. § 9-4-1 et seq., respectfully showing the Court as follows:

-1-

The Association is a Georgia nonprofit corporation formed to manage and operate that certain real property known as "R-Ranch", being approximately 1,028 acres located in Lumpkin County, Georgia and described as Tracts I, II, III and VI on the plat recorded in Plat Book 10, Page 130, Lumpkin County, Georgia public records (hereafter the "Ranch").

-2-

Title to the Ranch is divided into 2,400 undivided interests (each such interest hereafter sometimes referred to as a "Unit").

-3-

Defendant, Crosswind 1040 Partners, LLC , is a Delaware Limited Liability Company, but is subject to the jurisdiction of this Court under the authority of O.C.G.A. § 9-10-91 in that said Defendant is the owner of real property in Lumpkin County, Georgia, to wit: a 545-2400th (545/2400)

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undivided interest in the Ranch and such real property is the basis of the instant controversy.

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Defendant's agent for service of process is: Agents and Corporations, Inc., located at 1201 Orange Street, Suite 600, One Commerce Center, Wilmington, New Castle County, Delaware 19801 and Plaintiff has arranged for personal service of this Petition by the Sherriff's Department of New Castle County, Delaware, in accordance with O.C.G.A. § 9-10-94.

-5-

Plaintiff shows that it is in a position of uncertainty and insecurity with respect to its rights, status and other legal obligations concerning an actual controversy between it and the Defendant as more particularly set forth hereinafter.

-6-

The Ranch and its owners are governed by that certain Declaration of Covenants, Conditions and Restrictions made March 31, 1983 (hereafter the "Declaration") by R-Ranch One, Ltd., a Georgia Limited Partnership (hereafter the "Declarant") and recorded at Book K-4, Pages 766-797, Lumpkin County, Georgia, public records.

-7-

The provisions of the Declaration constitute covenants running with the land which bind and inure to the benefit of all present and future owners of the Ranch.

-8-

The Declaration was made for the purpose of developing a recreational community to be known as "R-Ranch in the Mountains".

-9-

Pursuant to the Declaration, the business and affairs of the Association are run by its board of directors (hereafter the "Board"), which directors are elected by a majority vote of all eligible owners of Units, which eligibility is defined in the Declaration.

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Pursuant to the Declaration, the Board has been delegated and assigned the powers of maintaining and administering the open spaces, recreational and other common facilities of the Ranch and the powers of enforcing the covenants and restrictions, of collecting and disbursing the assessments and charges therefor, and of enforcing the rules and regulations approved by the members of the Association.

-11-

On June 23, 2006, Defendant became the Assignee of that certain Deed to Secure Debt, dated February 14, 1983 and recorded in Deed Book K-4, Page 299, Lumpkin County, Georgia public records (the "Deed to Secure Debt").

-12-

In 1983, such Deed to Secure Debt was given by the Declarant to secure a loan (hereinafter the "Debt") owed to Oglethorpe Farms, Inc., the sellers of a portion of the Ranch ("Oglethorpe Farms"), which Debt was secured by the Units.

-13-

Following execution of the Deed to Secure Debt, as the Units were sold to the general public, a portion of the proceeds of such sales was applied to the Debt and the number of Units so sold were released from the Deed to Secure Debt.

-14-

At the time the Deed to Secure Debt was assigned to the Defendant, 545 Units remained subject to the Deed to Secure Debt.

-15-

The Defendant, Crosswind 1040 Partners, LLC, is a special purpose LLC formed by Crosswind Capital, LLC ("Crosswind Capital") and according to its website, (www.crosswindcapital.com), Crosswind Capital is a New York based private equity investment firm

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whose stated "singular goal" is to capture superior long-term rates of return on investments (thereafter the Defendant is referred to as the "Investment Company").

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The founder and chief executive officer of Crosswind Capital is Steven D. Sandler, ("Sandler") who is located at 411 Theodore Fremd Avenue, Suite 206-South, Rye, New York 10580.

-17-

Sandler is also the chief executive officer of the Investment Company.

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When asked by Plaintiff's counsel, Sandler declined to reveal the identity of the members of the Investment Company.

-19-

On July 5, 2006, the Investment Company foreclosed the Deed to Secure Debt and purchased the subject 545 Units at the foreclosure sale held on the Lumpkin County Courthouse steps (hereafter such 545 Units are referred to as the "Investment Units").

-20-

Sandler has stated to Plaintiff's counsel that the "highest and best use" is not being made of the 1,028 acres which make up the Ranch.

-21-

The Association is required by Section 2.1 of the Declaration to preserve the 1,028 acres which make up the Ranch as a recreational community with open spaces and recreational facilities, and specifically not for commercial use.

-22-

Upon information and belief, the purpose of the Investment Company is to sell the 1,028 acres for commercial purposes and thereby capture a superior return on its investment in accordance with the stated goal of the founder of the Investment Company as set forth at Paragraph 15 above.

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As a direct result of the purchase of the Investment Units by the Investment Company, the Board is now in a position of great uncertainty regarding its rights and obligations with respect to both the 545 Investment Units and the remaining 1,855 Units.

-24-

The Investment Company's interests are not the same as the interests of the other owners of the Ranch (hereafter such other owners are referred to as the "Recreational Community Group") and therefore the Board is now in a position where it must choose between conflicting actions, each with serious consequences and each exposing the Board to potential liability.

-25-

The Board is uncertain as to how to proceed because on May 13, 1988, the Declarant filed a Chapter 7 Bankruptcy Petition, which Bankruptcy was closed on July 16, 1991, and since at least July 16, 1991, the Declarant ceased to exist.

-26-

Further, since January 1, 1985, the Declarant failed to pay any assessments on the 545 Units it owned, which assessments were required by the Declaration to be paid by the Declarant.

-27-

The Declaration does not contemplate and does not address the rights of subsequent owners of Units where the Declarant stopped paying assessments in 1985 and when as of at least 1991, the Declarant ceased to exist.

CONTROVERSY REGARDING VOTING RIGHTS

-28-

The Board is uncertain about the voting rights of the Investment Units and therefore seeks this Court's ruling so that the votes of the owners will be properly counted when mandatory votes are taken as required by the Declaration.

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It is the position of the Board in accordance with Section 6.5 of the Declaration, which provides that the non-payment of assessments results in the loss of voting rights, that the 545 Units now owned by the Investment Company do not have voting rights unless and until all back assessments are paid in full.

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Without a ruling from this Court, regarding the voting rights of the Units, the Board cannot properly administer the business and affairs of the Association.

<u>CONTROVERSY REGARDING CONTROL OF BOARD</u>

-31-

Pursuant to Section 1.5 of the Declaration, the Investment Company, as the party that acquired ownership of Declarant's Units in the Ranch, has the right to elect to be treated as the Declarant, under the Declaration.

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Pursuant to Section 4.3 of the Declaration, the Declarant has the right to appoint or remove any Director or Directors of the Association or any officer or officers of the Association until the first of the following to occur: (a) the date 80% of the Unit Interests have been conveyed by Declarant to owners other than Declarant or Oglethorpe Farms (whose successor in interest is the Investment Company); or (b) the surrender of authority by the Declarant, such surrender to be made an express amendment to the Declaration executed and recorded by Declarant.

-33-

Further, pursuant to Section 4.3 of the Declaration, when either 4.3(a) or 4.3(b) occurs, the right of the Declarant to appoint the Board expires and thereafter the Board can only be appointed by a majority vote of all of the Unit owners at a duly conducted election.

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The Board is uncertain about whether the right of the Declarant to appoint the Board has expired as contemplated by Section 4.3 of the Declaration because, notwithstanding the fact that an express amendment to the Declaration surrendering the right has not been executed and recorded by the Declarant, there is a legal issue as to whether such right has expired as a matter of law because for the past 18 years, since 1988 when the Declarant became bankrupt and was dissolved:

(i) it has been impossible, as a matter of law, for the Declarant to exercise any rights;

(ii) it has been impossible, as a matter of law, for the Declarant to execute the amendment contemplated by Section 4.3(b); and

(iii) the Declarant has had nothing to do with the appointment of the Board and has had no involvement whatsoever with the Ranch, nor was it possible, as a matter of law, to do so.

-35-

The answer to the question of whether or not in 1988 the Declarant's right to appoint the Board expired determines whether or not the Investment Company now has the right to elect to be treated as the Declarant pursuant to Section 1.5 of the Declaration and to then take control of the Board pursuant to Section 4.3 of the Declaration.

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Without a ruling from this Court, as to whether or not the Declarant's right to appoint the Board has expired, the Board and the Recreational Community Group is uncertain about the leadership of the Association and have a legitimate need to know whether or not their duly elected Board of Directors can legally be replaced by the Investment Company.

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It is the position of the Board that when the Declarant ceased its existence, it necessarily surrendered the right to appoint the Board of the Owners' Association and at that point in time, the

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right of the Declarant or any successor Declarant to appoint the Board of Directors expired as set forth in Paragraph 33 above.

CONTROVERSY REGARDING ACCESS TO INFORMATION

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On July 7, 2006, Sandler sent to the attention of counsel for the Association, a request for voluminous and detailed information about the Ranch and its owners, a copy of which request is attached hereto as Exhibit "A" (hereafter referred to as the "Investment Company Information Request").

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Pursuant to Rule 18.1 of the R-Ranch Rules and Regulations, persons, including Unit owners who are not board members, are not entitled to the vast majority of information listed in the Investment Company Information Request.

-40-

Without a ruling from this Court, the Board is uncertain about how much information it is permitted to provide to the Investment Company.

RIGHT TO DECLARATORY JUDGMENT

-41-

Plaintiff shows that because of the justiciable controversy existing between Plaintiff and Defendant, as described in this Petition, Plaintiff is entitled to a declaration of its rights and obligations as provided by O.C.G.A. § 9-4-2 (a) and (b).

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Plaintiff further shows that the issues of fact raised by this Petition should be submitted to a jury for a determination of such issues of fact.

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Plaintiff further shows that it is entitled to a hearing before the Court at a time no sooner than

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20 days after the service of the Petition and Summons in this case.

WHEREFORE, Plaintiff prays and demands as follows:

a. That process issue in terms of law requiring Defendant to answer this Petition as provided by law;

b. That the Court hear said matter and that a jury be drawn to determine the issues of fact;

c. That all matters herein be inquired into and that a judgment be entered declaring the rights of Plaintiff and specifically finding that :

(i) the 545 Units owned by Defendant do not have voting rights;

(ii) the right of the Declarant or any successor declarant to control Plaintiff's Board of Directors has expired;

(iii) the only method of appointing the Board of Directors is by a majority vote of all of the Unit owners, at a duly conducted election;

(iv) the Defendant is subject to Rule 18.1 of the R-Ranch Rules and Regulations regarding access to information; and

d. That Plaintiff have such other and further relief as the Court may deem equitable and just.

Respectfully submitted, this 28th day of July, 2006.

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