V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JACOB DAVISON,

Plaintiff,

vs. Case Number: CL2024-7040

BLAKEVIEW HOME OWNERS ASSOCIATION, *et al.*,

Defendants.

MEMORANDUM OPINION AND FINAL ORDER

Jacob Davison ("Davison"), a member of the Blakeview Home Owners Association ("HOA") in Oakton, Virginia, filed suit against the HOA seeking to set aside a contract to build a substantial retaining wall within the community. At trial he also sought unspecified money damages for what he contends is the diminution in value of his lot stemming from the cost of the retaining wall and harm to Blakeview's common areas. Similarly, he sought to be compensated for the value of what he contends is an implied easement (or negative covenant) burdening his realty.

The Court held a bench trial on March 31, 2025 and April 1-2, 2025. After considering the evidence, including the testimony of the witnesses and their credibility, and assigning such weight to the evidence as the court, sitting as the trier of fact, deemed appropriate, the Court issued an oral decision in favor of the HOA on April 4, 2025 (the "Oral Opinion"). A transcript of the Oral Opinion is attached hereto and incorporated herein by reference.

Counsel for the HOA was directed to draft a Final Order for entry on April 17, 2025, but on April 16, 2025, Davison filed a Motion to Reconsider. The Motion to Reconsider raised a number of issues, one of which brought to the fore an apparent conflict in Virginia corporate law

over the consequences that arise when a board of directors undertakes a corporate act without having first followed the procedures set forth in the relevant bylaws. Rather than issue a suspending order, the Court advised the parties that it would not enter a Final Order until Davison's arguments had been considered.

The Court is now prepared to rule. Accordingly, what follows is a restatement of the Court's Oral Opinion, modified after contemplation of the issues raised by the Motion to Reconsider that the Court deems in need of discussion. *See* Va. Rule 4:15(d).[1] This Memorandum Opinion and Final Order supersedes the Oral Opinion to the extent of any conflict.

FINDINGS OF FACT[2]

Blakeview is a townhome community consisting of 85 lots situated in the Oakton area of Fairfax County, Virginia. The community, and its HOA, came into being in or about 1971 or 1972. The HOA is a Virginia non-stock corporation. As a non-stock entity, the HOA has members but no shareholders.[3] Each Blakeview lot owner is automatically a member of the HOA (the "Members").

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[1] The Court has considered all of the issues raised by the Motion to Reconsider and has determined that further briefing and oral argument is unnecessary. While not every issue raised by Davison is discussed herein, the Motion to Reconsider is denied.

[2] The following findings of fact are derived from the exhibits of record and the testimony of a number of witnesses. Specifically, Davison testified on his own behalf. Defendants called Fairfax County Code Compliance Investigator Joan Maguire, structural engineer Christopher Carlson, Blakeview resident and HOA Board of Directors member Jolanta Juszkiewitz, Blakeview HOA President and Board member Thomas Barnes, Blakeview resident Christina Wright, Blakeview resident, HOA Board member, and HOA Treasurer Julia Samantar, and Blakeview resident and former retaining wall committee member David Hussey.

[3] Shareholding is a concept that exists in Virginia stock corporations, entities typically organized and run for the purpose of generating returns on investment for equity owners. In contrast, Virginia non-stock corporations have "members" rather than shareholders and are typically run to further charitable, educational, religious, scientific, or similar not-for-profit purposes.

Blakeview's internal affairs are governed by its Articles of Incorporation (the "Articles") and Bylaws, both of which were introduced into evidence by Davison. Article 4 of the Articles states that the HOA was formed to:

> . . . [P]rovide for the maintenance, preservation and architectural control of the residential lots in the common area within [the Blakeview community and to] promote the health, safety and welfare of the residents [of Blakeview].

Under Va. Code § 13.1-853(B), "all corporate powers [of a Virginia non-stock corporation] shall be exercised by or under the authority of, and the business and affairs of the [Virginia non-stock] corporation managed under the direction of, its board of directors." This statutory mandate is reflected in Article VII of the Articles and Article IV of the Bylaws. Further, under Va. Code §§ 13.1-837 and 13.1-846(A), and Article IV the Articles, Members elect the HOA's board of directors and can approve or disapprove certain extraordinary actions. Otherwise, they have no right to vote. In particular, it is undisputed that the Members had no right to vote on the contract at issue in this case.

Approximately nineteen of Blakeview's lots (the "Impacted Lots") border a slope that inclines downward toward a small estuary adjacent to Interstate 66. At some point a retaining wall ("Retaining Wall") was constructed within Blakeview's common area to provide support to the Impacted Lots. While the purpose of retaining walls is common knowledge, substantial evidence established that the Retaining Wall was constructed and maintained to protect the safety of Blakeview residents and their properties from the deleterious effects of erosion and subsidence, among other things. It is not, and was not, merely ornamental.

Though there is some uncertainty about when the Retaining Wall was constructed, it has never been replaced. The evidence clearly established that: (a) the Retaining Wall has been in a state of deterioration since at least the early 2000s; (b) Davison, as a Blakeview Member, has not

opposed a new retaining wall in at least the relatively recent past and has not disputed that a new or repaired retaining wall is necessary as a general matter; (c) at all relevant times the Retaining Wall has been significantly impaired and compromised; (d) the Retaining Wall in its present state presents, and has presented for some time, an imminent danger to property and persons, including but not limited to the Impacted Lots and their owners, due to water runoff, erosion, and rot; (e) that property damage has been and is occurring to at least the Impacted Lots; (f) on at least one occasion an Emergency Medical Services team was prevented from aiding a resident in distress because of an access issue caused by the aforementioned problems; (g) Fairfax County government officials had been placing pressure on the HOA to remediate issues related to the Retaining Wall.

Alarmed by these issues and the fact that other attempts to rebuild or repair the Retaining Wall had stagnated for various reasons within the past decade, the HOA's board of directors (the "Board") began looking for a contractor and in 2023 ultimately determined, after considerable due diligence and review of options, that Fine Earth Landscaping, Inc. ("Fine Earth") was the best choice. By then the Board considered that exigent circumstances were present. Thus, the Board solicited a contract from Fine Earth for consideration and authorization.

Though the Board has the exclusive right to make decisions concerning the HOA's regular business activities, the Members have a right to notice when the Board contemplates undertaking certain actions. One such instance is found at Bylaw Article 7, Section 2, Subsection L, as follows:

> Duties. It shall be the duty of the Board of Directors to . . . not authorize any item, or group of related items, whether by way of payment, agreement, or similar, in excess of $40,000 without 45 days' notice to the members of the

intention to do so and with at least 14 days' notice of the date, time, and place of the meeting at which such item or group of related items will be considered[.][4]

At trial, Davison showed that the Board was well aware of this provision and assumed that it applied to the potential Fine Earth Contract.[5] Indeed, the construction was going to cost the HOA hundreds of thousands of dollars, which constituted the bulk of its cash on hand, and there were even emails in which Board members assumed proper notice would be given and discussed how it would happen. Specifically, in an email chain from April 2023 entitled "Exigent Circumstances meeting follow-up" which discussed the "urgent" situation, HOA President Thomas Barnes wrote that one of the upcoming action items was to write "a letter to the community to inform them of what is happening, the cause, effect if nothing is done, and the solution."[6] In the end, however, no such letter was sent.

Instead, on July 27, 2023, the Board sent out notice of its meeting scheduled for August 16, 2023. On August 10, 2023, a reminder notice was sent out with the Board's agenda. The agenda indicates that the "Retaining Wall Committee" might provide a report, and under "Old Business" it states there would be a "Retaining Wall Update." Neither the notice nor the agenda

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[4] While Davison did not dispute that the Members had no right to vote on the Fine Earth Contract, in his Complaint and at trial he contended the purpose of this notice provision was for the Members to determine if they opposed the actions of the Board and thereafter lobby the Board to change its collective mind or, in the alternative, for the Members to call a special meeting to remove and replace enough of the Board to cause the HOA to change direction.

[5] Davison argued that other notice provisions in the same subparagraph were violated, but the Court determined that the cited provision is the only one that could plausibly support Davison's contentions given the facts of the case and the Court's factual findings. Regardless, the same analysis applicable to the quoted language applies to any and all notice violations alleged by Davison.

[6] The email chain in question is contained at Plaintiff's Exhibit 6. The Court notes that the final page of this exhibit is missing. The Court assumes that it was tendered that way inadvertently. Any party desiring to supplement the record with the missing page shall do so immediately with a copy to Chambers and all counsel.

mentions Fine Earth, the Fine Earth Contract, or that plans were coming together to begin work on a new retaining wall. At trial, the HOA contended that talk of a new retaining wall, including the Fine Earth Contract, had been in the air for months (or longer) and thus the Members knew it was a matter that the Board was actively considering. The HOA asserted that these oral communications, coupled with the written notices mentioned above, constituted proper notice. The Court disagreed and found that the HOA failed to provide proper notice to the Members.

On the other hand, the Court did not and does not find that the Board was acting nefariously in failing to provide proper notice, particularly given the behind-the-scenes discussions which assumed that proper notice would be given and the public discussion about the Fine Earth Contract on and before August 16, 2023. Accordingly, the Court finds that any deficiencies with respect to notice were due to oversight or an erroneous belief that the written and oral notice provided was sufficient compliance.

Nonetheless, and perhaps unsurprisingly, almost none of the Members were present for the August 16, 2023, Board meeting when the Fine Earth Contract was discussed. According to the meeting notes, the Board announced that "4 iterations the contract [with Fine Earth] have now been passed back and forth" and that "this" is the "final revision." Mr. Barnes testified credibly that the Board also announced its intention to sign the version of the Fine Earth Contract presented at the August 16, 2023 meeting, and that he did so on October 17, 2023.[7] The final cost was estimated to be approximately $340,000.

Fine Earth began construction thereafter and Davison testified he became aware of a contract related to the work, though not necessarily of the identity of Fine Earth, no later than in

[7] The date on the face of the contract is September 27, 2023. The Court finds it was signed on October 17, 2023 in accordance with Mr. Barnes' testimony.

or about February 2024. He filed this lawsuit in May 2024 and filed other, related actions seeking various forms of relief. Davison did not seek a prompt temporary or preliminary injunction, and by the time of trial construction of the Retaining Wall was 80% complete.[8]

Among other things, in this case Davison contended the Retaining Wall was excessively priced, cheaper and better alternatives existed, and in all events the cost should not be borne by the Members of the HOA who do not own Impacted Lots. Davison sought a return to the "status quo" before the Fine Earth Contract was executed. At trial, he explained that this meant voiding the Fine Earth Contract, tearing out the construction Fine Earth performed, and seeking a recoupment of monies that had been spent with Fine Earth. Davison also requested damages for diminution of the value to his lot and compensation for what he contends is an implied easement that he believes is effectively burdening his property.

ANALYSIS

There Was No Failure To Join Necessary Parties

Before turning to the merits, at trial the HOA contended that Fine Earth is a necessary party and that this matter should be dismissed because of its absence. Under Virginia law:

> Those who are 'materially interested in the subject matter of the litigation and who will be affected by the results' are 'necessary parties.' [Internal cites omitted]. A necessary party should be joined except when it is practically impossible to join all parties in interest, and the absent parties are represented by others having the same interests, or where an absent party's interests are separable from those of the parties before the court, so that the court may enter a decree without prejudice to the rights of the absent party.

Bonanno v. Quinn, 299 Va. 722, 731, 858 S.E.2d 181, 185 (2021).[9]

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[8] Davison never sought an injunction in this case. This issue is discussed further in a later section of this opinion.

[9] Similarly, parties "without whose presence the court cannot act in the case are 'indispensable parties.'" *Id.* Though *Bonanno* addresses who is a necessary party to an appeal, the cited language applies generally.

Here, the Court considered it significant that Fine Earth had been joined as a party to this case but elected to file successive demurrers that were sustained. In finding that Fine Earth was not a necessary party, the Court essentially found that Fine Earth is in the best position to determine whether it is "materially interested in the subject matter" of this case and whether it will be affected by the results. While there may be instances when a court may conclude that a party is necessary or even indispensable despite what the party itself contends, this is not such a case.[10]

The Court also considered whether other Members had to be joined, including at least the owners of Impacted Lots. Certainly other Members have a material interest and will be affected by the outcome of this case. The Court found that the parties before the Court could serve as proxies for the absent Members. Indeed, it is difficult to imagine how adding any or all of the other Members would change the nature or character of the litigation. *See Michael E. Siska Revocable Trust v. Milestone Dev., LLC*, 282 Va. 169, 174-76, 715 S.E.2d 21, 23-25 (2011) (in an equitable proceeding, if the parties before the court adequately represent the interests of those who are absent then joinder of the latter is not required).

As to the validity of the Fine Earth Contract in particular, the Court found in its Oral Opinion that the parties covered the spectrum of interests that could have been raised by other Members. That is to say, it found that Members supporting the Fine Earth Contract were

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[10] The Court also adds that no other party asserted claims that might have kept Fine Earth in the case, and that even if the contract were to be found *ultra vires* as between the parties before the Court it does not mean that Fine Earth would be unable to contend that the contract is valid as between it and the HOA in subsequent litigation. Indeed, the validity of the Fine Earth Contract as between the parties before the Court concerns corporate governance principles (which could be fully tried without Fine Earth) whereas any issue about the validity of the contract in litigation between Fine Earth and the HOA would likely turn on the doctrine of apparent authority.

adequately represented by the Board, and those opposing it were adequately represented by Davison. The Court further found that the issues were fully explored by the parties before the Court, and that the absent parties have a connection with, and/or are in privity with, the actual litigants.[11]

The Fine Earth Contract Is Not Ultra Vires *Under Controlling Precedent And Will Not Be Set Aside*

Turning to the merits, the cornerstone issue is whether the Fine Earth Contract is *ultra vires* and must be set aside.[12] Davison alleged in his Complaint, argued at trial, and continues to argue in his Motion for Reconsideration, that because the notice regarding the Fine Earth Contract was deficient under the Bylaws, the contract must necessarily be *ultra vires* or invalid "as a matter of law." For the reasons that follow, the Court disagrees.

In the first instance, the Court notes that a case is always framed by a party's pleadings. *E.g., Wroblewski v. Russell*, 63 Va. App. 468, 476, 759 S.E.2d 1, 4 (2014) (citing numerous cases for the proposition that no court may base a decree upon a right that has not been pleaded). Thus, the Court looks first to Davison's Complaint and the HOA's Answer to determine what issues were properly joined for trial.

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[11] Of course, whether a party adequately represents other persons or entities who have not been joined to a case may be viewed differently in hindsight. By way of example, in this case the Court concludes that the issue of voidability was neither framed by the pleadings nor actually litigated by the parties though it is relevant to the case. Were an appellate court to find that Davison adequately raised the issue of voidability in his Complaint, this Court would find that other Members who supported the Retaining Wall might well have raised the issue of ratification as an affirmative defense had they been joined. If so, the Court would not conclude their interests were adequately represented by the HOA although the outcome of the case would not have changed in light of the Court's overall findings of fact and conclusions of law.

[12] Davison's Complaint also alleged that efforts by the HOA to finance the Retaining Wall were unlawful and in violation of the Bylaws. The Court understands that those matters were no longer at issue by the time of trial. The primary issue for trial was the alleged voidness of the Fine Earth Contract.

In an unnumbered count of his Complaint entitled "Ultra Vires Contract," the only ground alleged by Davison to set aside the Fine Earth Contract is that it is wholly and completely void. *See* Compl. 10. He explained that the Board's failure to provide the Members with proper notice of its intention to consider and approve the Fine Earth Contract rendered its adoption "*ultra vires*" because "a corporate action in violation of its bylaws is invalid[.]" Compl. ¶ 27.[13] Davison attached as an exhibit a letter he wrote the Board in which he explains his position that the Fine Earth Contract was *void ab initio. See* Compl. Ex. 3. In its Answer, the HOA denied that the Fine Earth Contract is *ultra vires*, invalid, or *void ab initio*. Neither party raised the issue of whether or not the Fine Earth Contract was merely voidable. Thus, issue was joined on the single issue of whether the Fine Earth Contract was void.

After hearing the evidence, the Court finds that this case is controlled by *Peters v. Waverly Water-Front Improvement & Dev. Co.*, 113 Va. 318, 74 S.E. 168 (1912) and *Princess Anne Hills Civic League, Inc. v. Susan Constant Real Estate*, 243 Va. 53, 413 S.E.2d 599 (1992). Both cases stand for the proposition that a corporate act is not void if the corporation has the power to undertake the act in the first instance and the only irregularity is the method by which the act was approved.

In *Princess Anne*, members of a Virginia non-stock corporation sought to void the transfer of a parcel of real estate from the corporation to a trust. The conveyance had been carried out via delivery of a deed signed by the corporation's president but without having been previously approved by the corporation's board of directors or members. Although the transfer was discussed at the corporation's next annual meeting, no vote of the members was ever taken.

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[13] Davison uses a question mark after the word invalid in the actual Complaint ("a corporate action in violation of its bylaws is invalid?") but the context makes it clear he intended a period to follow the word "invalid."

The corporation sought to set aside the deed as void on the ground that the transfer was *ultra vires* and therefore void because none of the following mandatory steps were taken under former Va. Code § 13.1-246:

> [First,] the corporation's board of directors was required to adopt a resolution recommending such disposition and [to] direct[] that the matter be submitted to a vote at a membership meeting. Second, prior notice of the time, place, and purpose of the meeting had to be given to the members. Finally, the disposition of the property had to be authorized by a vote of more than two-thirds of the members present or represented by proxy.

Princess Anne, 243 Va. at 61, 413 S.E. at 604.

While the Virginia Supreme Court agreed that mandatory corporate governance procedures had not been followed, it refused to find the deed void on that ground. The Court stated that:

> [W]hen a contract of a corporation is *ultra vires* in the proper sense, *i.e.*, beyond the powers conferred upon it by the legislature, it is not only voidable, but wholly void and of no legal effect. *Norton Grocery Company* v. *Bank*, 151 Va. 195, 202, 144 S.E. 501, 502-03 (1928). In the present case, however, the act of the [corporation] was not beyond the powers conferred upon it by the General Assembly because the [corporation] was empowered to dispose of its property provided it complied with the statutory requirements. Consequently, because the [corporation] merely failed to do properly what it had the power to do, we conclude that the purported transfer of Parcel A to the Trust was not void, but voidable. . . .

Peters arose on facts similar to *Princess Anne*.[14] The Waverly Water-Front Improvement and Development Company had been chartered for the purpose of acquiring, improving, and developing real estate. It acquired property which it then contracted to sell to a third party. When the purchaser defaulted, the board of directors (who also controlled a majority of the corporate

[14] *Peters* involved a Virginia stock corporation. However, this distinction is immaterial for purposes of the analysis applicable to this case.

stock) voted to sell the property to another purchaser. The plaintiffs, who were minority shareholders, alleged that:

> [The] action on the part of the directors was had, and the deed conveying the property was executed, without the authority of all the stockholders of the Waverly Company, and the act of the president and directors in so attempting to sell all the company's property was beyond their power and authority, and a fraud upon the rights of the plaintiffs, and all other stockholders who had not received any notice of the intention to make the deed conveying away the company's entire property, and who had not in any way consented thereto.

Peters, 113 Va. at 319-320, 74 S.E. at 168-69. The trial court upheld the challenged action and dismissed the plaintiff's bill in equity.

On appeal, the Virginia Supreme Court framed the principal issue as follows:

> . . . [T]he question for our determination is solely one of power – that is to say, whether the corporation, as an original proposition, had authority to do what its agents, the board of directors, did; for, if the company possessed such power, its authority to ratify the irregular acts of its agents follows as a matter of course.

Peters, 113 Va. at 322, 74 S.E. at 169. While conceding that "the action of the board of directors . . . was in excess of their authority . . . the power exercised by them was plainly within the competency of the corporation itself . . . and being within the charter powers, was, therefore, not void, but voidable merely." *Id.*

In this case, neither party explored the issue of voidability in its pleadings. At trial, Davison continued to argue for the inflexible proposition that the Board's failure to follow its duly constituted bylaws automatically renders void any resulting corporate action. In support, he cited as his main authority the case of *Va. High School League v. J.J. Kelly,* discussed later in this opinion. That case does not address the distinction between void and voidable acts. For its part, the HOA countered that the Fine Earth Contract was not void because it provided the proper notice and the Board had acted out of necessity due to exigent circumstances. It did not raise the issue of voidability.

With the case in this posture, the Court decided the issue that the parties put in front of it, *i.e.*, voidness *vel non*. Under *Princess Anne* and *Peters*, voidness is to be determined on the basis of the powers the corporation is authorized to undertake pursuant to statutes or its articles of incorporation. *Princess Anne*, 243 Va. at 61, 413 S.E.2d at 604; *Peters*, 113 Va. at 322, 74 S.E. at 169. If the challenged act is within the corporation's power to perform, it is not void even if it was carried out as a result of some irregularity in the prescribed corporate governance process. Following that rubric, the Court found (and finds) that the powers of the HOA include maintaining, preserving, and controlling the residential lots in the common area within the Blakeview community and promoting the health, safety, and welfare of Blakeview's residents. Authorizing construction for the purposes of installing, repairing, or maintaining a retaining wall in the common area is well within the HOA's charter. Further, it was the Board's sole prerogative to enter a contract with Fine Earth to undertake such work. It follows that the Board's act was not void.[15]

On the basis of the foregoing, the Fine Earth Contract will not be set aside because it was not void. Furthermore, alternative bases exist that compel the same result. These are discussed below.

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[15] At worst, the act of the Board was voidable but voidability is not the question the parties joined issue upon or litigated. Had Davison alleged in the alternative that the Fine Earth Contract was voidable, the affirmative defense of ratification would have been available to the HOA. *E.g.*, *Princess Anne*, 243 Va. at 61, 413 S.E.2d at 604 ("unlike a void act, a voidable act may be the subject of ratification"). Ratification is generally understood as confirmation and acceptance of a previous act, thereby making the act valid from the moment it was done. *See A.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 636, 831 S.E.2d 460, 478-79 (2019); *Univ. of Va. v. Snyder*, 100 Va. 567, 578-79, 42 S.E. 337, 341 (1902). The Court is not in a position to know whether Davison's decision to limit the issue to voidness was by design or not. The Court notes that even after the Court mentioned *Princess Anne* in its Oral Opinion, Davison filed a Motion for Reconsideration that does not discuss *Princess Anne* or voidability but simply doubles down on the argument that the Fine Earth Contract was void as a matter of law.

Davison Failed To Show That The Fine Earth Contract Would Not Have Been Approved Had Applicable Corporate Governance Procedures Been Followed

In *Peters*, the Virginia Supreme Court cited multiple authorities for the proposition that equity will not interfere in corporate governance where those with the authority to do so "may at once ratify [an] unauthorized [corporate] act, thus rendering of no effect the action which the court is requested to take." *Peters,* 113 Va. 318 at 324, 74 S.E. at 170. Elaborating, *Peters* cited Lord Justice Melish for the proposition that:

> [I]f the thing complained of is a thing which, in substance, the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes.

Id.[16] *Peters* also cited Vice-Chancellor Wigram, in another English case, for the same proposition:

> When an act is done by some particular agency of a corporation (as in this instance by the board of directors), which is beyond the powers of that particular agency, but is nevertheless within the powers of the corporation itself, a court of equity will not interfere at the instance of minority stockholders, for the reason that the majority of the stockholders, acting within the powers of the corporation, may at once ratify the unauthorized act, thus rendering of no effect the action which the court is requested to take.

Id. The only caveat noted by *Peters* was that the persons with the power to ratify must have acted

[16] The Court reads Lord Justice Melish's use of the term "majority" to mean those with the power to act dispositively. In this case, that is the Board.

in the exercise of their good faith business judgment. *Id.*[17]

Peters supports the proposition that a party seeking the aid of a court of equity to set aside an allegedly void corporate act on the basis of a failure to follow internal corporate governance procedures must plead and prove that the violation was consequential; *i.e.*, that the outcome of a challenged vote by the relevant decisionmakers, exercising good faith business judgment, would have been different had proper corporate procedures been followed. By this standard, and given the evidence of record, the Fine Earth Contract cannot be impeached.

First, there is no suggestion in the record that the outcome would have been different had proper notice of the Fine Earth Contract been provided to the Members. Specifically, only the Board had the power to approve the Fine Earth Contract and thus only the Board had the power to approve or ratify it. From the pleading stage through trial it was alleged and proved, largely by Davison himself, that the Board never had an intention of changing its mind about the Fine Earth Contract despite Davison's advocacy. *See, e.g.*, Compl. ¶ 34 ("Blakeview['s Board] was given the opportunity to explain the [alleged] bylaw violation [but] its response . . . show[ed] its intent

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[17] Taken together, *Princess Anne* and *Peters* show that ratification of a voidable corporate act may be established by proof of two elements:

1. That despite some irregularity in corporate governance, including a lack of notice to some stakeholders or the failure to observe other corporate governance requirements, the act was ratified by persons with the power to do so; and

2. The persons ratifying the act (who may be the same as the original decisionmakers) did so exercising their good faith business judgment.

In this case, and assuming proof of the good faith exercise of business judgment, it is clear the Board had the power to ratify the Fine Earth Contract because it was the only corporate actor with decision-making authority.

to blatantly continue the violation"). Indeed, Davison testified that the Board's "primary response" to his efforts was to threaten him with "tortious interference with contract."

Second, Davison failed to show that the Board acted from anything other than the exercise of its good faith business judgment when it determined that the Fine Earth Contract was appropriate given the exigencies of the situation. The evidence showed that erosion resulting from the decay of the former retaining wall caused damage to properties within the Blakeview development. Further, there was substantial evidence that such damage placed residents' health and safety at a demonstrative present-day risk. While Davison argued that the deleterious conditions had persisted for some time and that this fact undermined any claim of urgency by the Board, this does not change the gravity of the situation. Indeed, any further inaction would have been negligent or worse. Accordingly, the Board determined that the Retaining Wall had to be built.

For these reasons, Davison's attempt to void the Fine Earth Contract fails.[18]

A Court Of Equity Will Not Exercise Discretion To Void The Fine Earth Contract Given The Facts At Hand

The Court also finds that as a court of equity it must, unsurprisingly, consider the equities of the case as it contemplates whether to grant relief in a discretionary situation.[19] Doing so here compels the Court to reject Davison's invitation to impeach the Fine Earth Contract under Va.

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[18] Moreover, were this Court to now void the Fine Earth Contract, there is nothing to stop the HOA, through the Board, from ratifying it anyway or simply approving a new contract that has the effect of a full ratification. This is precisely the waste of time and futility that the Virginia Supreme Court condemned in *Peters*.

[19] In his Motion for Reconsideration, Davison assails the Court's invocation of the equities as misplaced. He argues that the "equities" analysis is to be reserved for preliminary injunctions. In fact, equitable analysis is at the heart of every case heard in equity, or what used to be known as a court of Chancery.

Code § 13.1-828, or otherwise, because the Court finds that doing so would lead to an unjust and improvident result.

Specifically, Davison's count to set aside the Fine Earth Contract ("Ultra Vires – Contract") specifically invokes Va. Code § 13.1-828(C),[20] which states as follows:

> In a proceeding by a member or a director under subdivision B1 to enjoin an unauthorized corporate act, the court *may* enjoin or set aside the act and *may* award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act. [Emphasis added]

The italicized language is noteworthy because of the double use of the word "may." It makes clear that the General Assembly did not wish to limit the traditional broad discretion vested in a court of equity in a case such as this. If the General Assembly wished for all *ultra vires* corporate acts to be automatically void, it would have said the Court *shall* enjoin or set aside all *ultra vires* acts. *See, e.g.*, Sinclair, *Sinclair on Virginia Remedies* § 1-1 (LexisNexis Matthew Bender, 2025) ("Virginia decisions continue in the modern era to recite the longstanding principle that equitable relief essentially is discretionary. Thus, even in a case where the plaintiff has shown that there will be irreparable injury, or that a reasonably definite contract could be specifically enforced by the court, the circuit court judge has discretion to deny equitable relief").

Here, on the unique facts of this case, the Court finds that the safety of persons and property within Blakeview was a pivotal consideration for the Board, it acted in good faith, the Members had no right to vote on the Fine Earth Contract, the Board had the right to ratify the Fine Earth Contract and may yet ratify that contract or approve another one if this Court grants Davison relief, Fairfax County officials were pressuring the HOA to remediate the retaining wall situation, Davison never sought a timely injunction despite admitting that he found out about the

[20] *See* Compl. 10.

Fine Earth Contract in or about February 2024 and filed his lawsuit in May 2024, and by the time Davison argues that he finally sought a preliminary injunction in another case the construction was approximately 80% complete and the HOA had spent a large amount of its money.[21]

Under these circumstances, setting aside the Fine Earth Contract and starting over would serve no beneficial purpose. Indeed, it is not a stretch to imagine the worst of all worlds: dangerous conditions might become worse than ever and starting over could be fiscally infeasible. In short, the relief sought by Davison would result in an unjust judgment that a court of equity will not support.

The Authorities Cited By Davison Do Not Apply On The Facts Of This Case

Finally, none of the authorities Davison cites suggest in any way that the Court's analysis is misplaced. For example, in support of his position that an act in violation of a corporation's bylaws automatically renders the act void, Davison cites *Va. High School League, Inc. v. J.J. Kelly*, 254 Va. 528, 493 S.E2d 362 (1997) ("*VHSL*"). However, *VHSL* did not concern the

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[21] Davison complains in his Motion for Reconsideration that the Court would not let him introduce evidence of his efforts to seek an injunction in another case, though even then he admits he did not seek one until well into the autumn of 2024. Virginia follows the longstanding rule that:

> [Trial] court[s] will not travel outside the record of the case before it in order to take notice of the proceedings in another case, even between the same parties and in the same court, unless the proceedings are put into evidence. The reason for the rule is that the decision of a cause must depend upon the evidence introduced. If the courts should recognize judicially facts adjudicated in another case, it makes those facts, though unsupported by evidence in the case at hand, conclusive against the opposing party; while if they had been properly introduced they might have been met and overcome by him.

Barnes v. Barnes, 64 Va. App. 22, 31, 763 S.E.2d 836, 840-41 (2014). If Davison wanted to make a point in this case, he needed to do it through documents or testimony identified in accordance with the Scheduling Order instead of attempting to introduce it by mere reference to other cases during the trial.

difference between a void and a voidable corporate act. Rather, the issue was whether two committees charged with exercising non-discretionary delegated powers could step outside that delegated authority and exercise discretion to reach an arbitrary result with respect to one of its members.

Specifically, the Virginia High School League was a nonstock corporation organized to "foster among the public high schools of Virginia a broad program of supervised competitions and desirable school activities as an aid in the total education of students." *VHSL*, 254 Va. at 529, 493 S.E.2d at 362. "The principals of the over 280-member high schools and 14 other persons comprise[d] the members of the Legislative Council in which the 'general legislative powers of the League' [were] vested." *Id.* Only the Legislative Council, of which J.J. Kelly High School's principal was a member, had the power to amend the corporate bylaws. *Id.*, 254 Va. at 532, 493 S.E.2d at 364.

The Legislative Council also had the authority to empower the League Chairman to appoint a special committee to reclassify high school athletic districts. *VHSL*, 254 Va. at 529, 493 S.E.2d at 362. The special committee's power was specifically constrained by a bylaw provision that required the reclassification to be based on the number of tenth through twelfth graders at a school measured as of September 30 of the immediately preceding odd-numbered year; *i.e.*, the special committee had no discretion. *Id.* Once the special committee's work was approved by the Executive Committee, it became an act of the corporation. *Id.*

A special committee placed J.J. Kelly High School into an improper competitive grouping by using enrollment figures of *ninth through eleventh graders as of March 31 of the current year*. This action was in every way contrary to VHSL's bylaws and resulted in the

special committee exercising discretion it had not been delegated. Nonetheless, the Executive Committee adopted the special committee's recommendation, and it became the act of VHSL.

The trial court set aside J.J. Kelly's reclassification on the ground that the special committee and the Executive Committee had essentially created new bylaws. The Virginia Supreme Court affirmed, stating that upholding VHSL's reclassification would:

> [E]ffectively permit [the] committees [in question] to amend the bylaws. [However,] Bylaw § 25-4-1 vests the power of amendment solely in the Legislative Council and sets forth specific procedures for amendment, none of which was followed here. Accordingly, we conclude that the League action was a violation of its bylaws and is, therefore, invalid. For this reason, we will affirm the trial court's judgment and remand the case for any further proceedings that may be necessary, consistent with this opinion.

VHSL, 254 Va. at 532, 493 S.E.2d at 364. Thus, not only did the special committee and the Executive Committee usurp the Legislative Committee's sole power to amend the bylaws, but in doing so those committees undertook a corporate act they had no power to undertake. This was not merely an authorized act taken in an irregular manner; rather, the two committees stepped outside of their delegated authority and in doing so made a void decision.

Clearly, *VHSL* does not address the standard to be applied when the issue is one of voidness versus voidability. It, and the other cases cited by Davison, wholly miss the mark.[22]

For all the foregoing reasons, the Fine Earth Contract will not be set aside.

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[22] In *Manchester Oaks Homeowners Ass'n v. Batt*, 284 Va. 409, 732 S.E.2d 690 (2012), the trial court made a number of alternative holdings, and one of them was that a corporate act taken at a meeting held without proper notice is invalid. In that case, however, no one appealed this ruling, it became final, and the Virginia Supreme Court used it as an alternative ground for affirmance without considering its merits. It does not address the difference between void and voidable acts or ratification. *Kappa Sigma Fraternity, Inc. v. Kappa Sigma Fraternity*, 266 Va. 455, 587 S.E.2d 701 (2003) involved an attack on certain amendments to corporate articles of incorporation and, while citing *Princess Anne,* found it inapplicable on the facts before it. Finally, *Knights of Columbus v. Burroughs' Beneficiary*, 107 Va. 671, 60 S.E. 40 (1908) involves the non-payment of insurance premiums by an individual, does not address corporate governance or void and voidable acts, and does not discuss ratification.

Davison Is Not Entitled To Any Of The Relief He Seeks

Turning to the monetary relief sought by Davison, the Court's finding that the Fine Earth Contract will not be set aside means that judgment should be rendered for the HOA. This is so because all of Davison's requests for relief depend upon a finding that the Board acted in an *ultra vires* manner and/or that the Fine Earth Contract should be set aside as void.

Even if that were not the case, Davison's Complaint fails to state a claim for which monetary relief may be granted and thus no claim for monetary relief was properly before the Court at trial. Davison's allegations concerning monetary relief appear in paragraph 54 of the Complaint, as follows:

> [The HOA's] misconduct will cause incalculable and irreparable injury to Davison. Damages cannot compensate for the harm that will be done to the common areas [of Blakeview] . . . and the harm to Davison's personal and financial interest as owner and member of Blakeview, as a lot owner, and as a holder of an easement of enjoyment to the common area. It effectively renders the super-majority of lots, including Davison's, into subservient lots subjected to some form of negative covenant to pay for a retaining wall and the back yards of 12 lots. It effectively creates some form of covenant on Blakeview, for which owners and members are liable, to have a wall where there is no such covenant and such imaginary covenant conflicts with an existing easement of record (Blakeview shall do nothing to interfere with natural drainage in the creek area).

The Court finds that these allegations fail to assert any claim for which monetary relief is available. *Parker v. Carilion Clinic*, 296 Va. 319, 333, 819 S.E.2d 809, 818 (2018) ("There has always been in law a symmetry between pleadings and proof. On essential matters, the latter can go no further than the former.") Further, even if they did the Complaint also fails to request a liquidated amount of damages and Davison's proof cannot rise higher than that. Finally, even if none of the foregoing were true, the Court found that Davison's evidence of damages was speculative, conjectural, lacking in reasonable certainty, and incredible. As damages must be

shown with reasonable certainty, damages would be unavailable to Davison even if his claims had been properly alleged and supported by proper proof.[23]

CONCLUSION

As a result of the foregoing, it is hereby ORDERED that the Fine Earth Landscape, Inc. contract at issue in this case will not be set aside, and the Complaint in this matter shall be, and hereby is, DISMISSED WITH PREJUDICE. Likewise, Davison's Motion to Reconsider is hereby DENIED.[24]

Signatures are dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia. The parties may file any exceptions to this Final Order within seven business days of the date hereof.

THIS ORDER IS FINAL, and the Clerk will please circulate a copy to all counsel and *pro se* parties of record.

Fairfax, Virginia
August 18, 2025

[redacted]

Timothy J. McEvoy, Judge
Circuit Court for Fairfax County

[23] Davison purports to seek attorney's fees under the Virginia Property Owners' Association Act, and specifically Va. Code § 55.1-1828(A). However, he fails to identify any specific basis for such a claim and both his entitlement to fees and his proof in support thereof are insufficient.

[24] The Court has examined the remaining claims and allegations set forth in Davison's Motion to Reconsider. In light of the foregoing, the evidence at trial, and the arguments of the parties, any claims not addressed above or in the Oral Ruling are denied.

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------X

JACOB DAVIDSON, :

Plaintiff, :

- versus - : CL: 2024-0007040

BLAKEVIEW HOMEOWNERS :

ASSOCIATION, et al., :

Defendants. :

----------X

Fairfax, Virginia

Friday, April 4, 2025

The above-entitled matter came on to be heard before the HONORABLE TIMOTHY J. McEVOY, Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 9:06 o'clock a.m.

APPEARANCES:

On behalf of the Plaintiff:

(Pro se)

On behalf of the Defendants:

DANIEL L. ROBEY, ESQUIRE

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P R O C E E D I N G S

(The court reporter was duly sworn by the Court.)

THE COURT: Good morning. Thank you for bearing with me and coming back Friday. All right. And I commend both of you for making me work really hard. All right. Susie -- we have the case of Jacob Davidson, Plaintiff, versus Blakeview Homeowners Association and Fine Earth Landscape, Inc., CL 2024-7040. Good morning. Does Counsel want to identify themselves?

MR. ROBEY: Dan Robey for the defense.

THE PLAINTIFF: Good morning, Your Honor, Jacob Davidson as Plaintiff.

THE COURT: All right. We're here for the Court's ruling on what was a vigorously contested three-day trial. And a number of issues have been raised, a number of them, I don't know about novel but -- but interesting and subtly complex.

The first issue that the parties have raised or that probably should be raised first, is necessary parties. There's been a contention that Fine Earth Landscape, Inc. is a necessary party. The Court is going

to find that it is -- it is not. And the reason is because Fine Earth Landscape, Inc. -- the primary reason I should say, is because they were a -- a party to this case and they basically voted with their feet (ph.) and decided that they weren't.

And I -- I don't know that there's a -- a party that's in a better place to judge whether it's necessary than the party itself. And Fine Earth had every opportunity to seek to amend pleadings or to take certain positions in the case and chose not to. So for that reason, the Court finds that Fine Earth Landscape, Inc. is not a necessary party.

The Court also finds that the other owners are not necessary parties under the particular circumstances of this case. It appears that -- the case was vigorously litigated and -- and well tried by -- by -- by the parties before me.

And the Blakeview Homeowners Association, set -- from what I gathered, was an essential rep -- basically a virtual representative of the -- of the homeowners, especially those 19 lots that abut or are proposed to abut certain improvements that were going to

be made with respect to the retaining wall.

So with respect to the merits of the case and the other issues, the Court sits today as a Chancellor, although we don't -- no longer use that term. This is an equitable proceeding and that was not -- that's not disputed by anybody.

The Court's equitable powers to grant or deny relief are broad. The Court's heard the evidence, weighed the testimony of the witnesses, their credibility, biases, if any, and the other evidence of record.

I have assigned such weight to all matters admitted to -- into evidence as I deem appropriate. I've also considered and weighed the equities in the case. The case concerns a non-profit homeowners association for the Blakeview neighborhood in the Oakton area of Fairfax County, Virginia.

The Blakeview A [sic] -- the Blakeview HOA's Board of Directors entered into a contract dated October 17, 2023, with a landscaping company called, "Fine Earth Landscape, Inc.," which I referenced earlier, to replace a retaining wall.

Plaintiff, Jacob Davidson, is the owner of a lot within Blakeview and by virtue of that, is a member of the HOA. Plaintiff contends that the contract at issue is ultra vires and must be set aside among other relief that he seeks.

Contract is a corporation -- that, "The contract of a corporation is ultra vires when it is outside the object of its creation as defined in the law of its organization, and therefore, beyond the powers conferred upon it by the legislature." That's a quote from Norton Grocery Company versus Peoples National Bank, 151 Va. 195, 1928.

Such a contract is, "Not voidable only, but wholly void and of no legal effect." Accordingly, "A corporation is bound only when its officers or agents by whom it can act -- alone act, if it acts at all, keep within the limits of the chartered authority of the Corporation," that's Norfolk City versus Chamberlain, 70 Va. 534, it's a case from 1877.

These authorities suggest that the question of ultra vires is to be judged based on the scope of a Corporation's authorized activities, not whether internal

procedures were followed with respect to corporate action. In Princess Anne Hills Civic League, Inc. versus Susan Constant Real Estate, 243 Va. 53, a case from 1992, a case that, to my knowledge, has not been cited by any parties to this case.

The Supreme Court found the transfer of real property by a civic association to be voidable, not void, because the non-stock Corporation at issue had failed to get necessary Board member -- Board and Member approval.

The Court distinguished between acts that are beyond the power of a Corporation which are void and acts that are within the Corporation's power but to which statutory requirements have not been followed or other requirements have not been followed, making it mere -- making the act merely voidable, potentially open to later ratification but, accordingly, not ultra vires.

Here the purposes of the non-stock corporation at issue are found at Article 4, Blakeview's Articles of Incorporation and are contained at Plaintiff's Exhibit 11. They state in relevant part that Blakeview is formed to, quote, "Provide for the maintenance, preservation and architectural control of the residential lots in the

common area within," unquote, to the Blakeview community.

And to, quote, "Promote the health, safety and welfare of the residents," unquote, of Blakeview. Further under the Articles of Incorporation bylaws and Declaration of Covenants for Blakeview, the affairs of the Homeowners Association or HOA are to be run by and entrusted to the Board of Directors.

Plaintiff has testified that he became aware of a contract, not necessarily of the identity of Fine Earth, no later than in or about February 2024. This lawsuit was filed in May of 2024. Blakeview and its HOA came into being in approximately 1971 to '72.

It appears that the retaining wall was constructed in or about that time frame, no later, and has never been replaced. The retaining wall impacts approximately 19 of the 85 lots within Blakeview.

The purpose of retaining walls is common knowledge, but even if not, substantial evidence established that the retaining wall or walls in this case were constructed and maintained to protect the safety of Blakeview residents and their properties from the

deleterious effects of erosion and subsistence, among other things.

The Court finds that these walls were not merely ornamental. The Court has no problem finding that the construction and maintenance of the retaining wall in this case is well within the ambit of what the Blakeview Homeowners Association is empowered to do.

Thus, the action by the Board with respect to the retaining wall cannot be ultra vires and the Court finds that the Board's actions were not ultra vires. That does not necessarily end the matter, however, because if procedural requirements were not followed, the contract may be voidable.

The Court finds that the retaining wall has been in a state of deterioration since at least the early 2000s. The Plaintiff does not dispute that a replacement retaining wall is necessary. In fact, he was a major community advocate for a new wall for many years.

There is substantial evidence that the retaining wall is significantly impaired and compromised, and that homes abutting the common area -- area where the wall is located have been adversely impacted by water

runoff and erosion.

Plaintiff, however, contends that the wall, which is under construction and is about 80 percent complete, is excessively priced enough that the cost should not be borne by the Members of the HOA who are not impacted by the wall, among other things.

At trial, the Plaintiff contended that the notice provisions in bylaw Article 7, Section 2, Subsection L, required notice to the Members before the Board could authorize the contract at issue. According to Plaintiff, a contract authorized without notice is void. And as noted, that argument has been rejected for reasons stated, the issue is voidability.

In this regard, the Court has not been directed to any authority to suggest that the Members of the HOA had a right to vote on replacing the retaining wall. Thus, had notice been properly given, the Board was free to proceed with the contract with Fine Earth, even in the face of opposition by some or all of the Members.

The question, therefore, is what was the purpose of the notice provisions of Article 7, Section 2, Subsection L. For reasons stated previously in this

matter, the Court finds that the only notice provision of this section potentially applicable to this dispute is the third clause, which is found on page six of Plaintiff's Exhibit 1.

That provision states -- actually, what -- what Section 2 says is that, "Duties. It should be the duty of the Board of Directors to," and then jumping down to Subsection L, continues, "Not authorize any item or group of related items, whether by way of payment, agreement or similar, in excess of $40,000 without 45 days' notice to the Members of the intention to do so. And at least 14 days' notice of the date, time and place of the meeting at which such item or group of related items will be considered."

At trial, the Plaintiff contended that the purpose of this notice provision was for the Members to determine if they opposed the actions of the Board, which they find objectionable or to which they might find objectionable. And to lobby the Board to reach a conclusion contrary to what the Board might be proposing to do.

Or in the alternative, to call a special

meeting to remove and replace enough of the Board to reverse an action that the Members do not like. But it's noted the Board has been entrusted by the Corporation's governing documents to make the ultimate decisions. And the Members have no right or authority to usurp that power directly.

It does seem to be the case that the HOA intended for the notice to be given in the case to which the language at issue applies. And I find that the language that I just read does apply to this case. I further find that the notice which was given was deficient.

The HOA says that a series of communications starting no later than July 29, 2023, put the Members on notice that the Board would be considering the Fine Earth contract at its August 16, 2023, meeting. And that at that meeting, the HOA's President announced verbally that the HOA intended to sign the Fine Earth contract in 45 days.

The Court does not find that this oral expression of an intention to enter into a contract at the August 16, 2023, meeting, even coupled with the prior

written notices that only announced that a board meeting would be held, is sufficient notice on the facts of this case.

However, I nonetheless find that the contract is not voidable. And even if it was, the relief sought in this case could not be granted by a Court sit -- sitting in equity. The contract is not voidable because the Members never had the power to overrule the Board, even with sufficient notice.

And because there is no evidence before the Court that any Members have called for a special meeting to remove and replace any Board members or that any of the efforts by the Plaintiff, or those who might be like minded, to persuade the Board to take a different approach would be or wouldn't have been successful.

Indeed, the Court heard testimony that the situ -- well, especially from the HOA's Board President, that the situation involving the retaining wall involved exigent circumstances. A view the Court with -- a view the Court agrees with for reasons stated previously at trial.

This evidence included photographs and the

testimony of Mr. Barnes, the Board's President, and witnesses like Mr. Hussy (ph.). And the Plaintiff acknowledged that the business judgment rule would -- would permit the Board to make the exigency determination in the first instance.

And the Court finds that no evidence sufficient to overturn that judgment has been advanced. And thus the Board's decision about exigency will not be disturbed. Even if the Court were to revisit it, it would not -- it would not overrule it.

There's no evidence that the Board has waivered from its position to build the retaining wall despite this litigation. Further, there is no evidence that there has been any groundswell among the Members to replace the Board members.

The Court further finds that the Plaintiff did not seek emergency relief when this case was filed in May 2024 or any time after and now the wall is 80 percent complete. The lack of -- lack (ph.) on multiple fronts supports the finding that the purposes of the bylaw provision at issue have not been frustrated such that the contract should be voided or set aside.

In addition to what the Court has already said, under the bylaws, a vote of at least 25 percent of the Members is required to remove a Board member. And there is to say, at least no evidence that such an outcome was even plausible, much less certain.

Finally, and alternatively, the fact that the contract is now 80 percent complete makes an award of equitable relief unjust, unwise and unfounded. Indeed, equity is also nothing, if not practical. Here, there is no evidence that undoing the contract would more likely than not result in a less expensive alternative for the HOA or result in an aggregate savings to the HOA in light of the apparent necessity for installing some kind of wall.

Indeed, setting aside the contract would more likely than not lead to unnecessary -- excuse me, lead to an unnecessary degree of chaos, distraction and expense that substantially outweighs the present distraction and expense complained of by the Plaintiff in this case.

Alternatively, even if the Court were to view this case through the rubic -- rubric of an alleged breach of fiduciary duty due to the failure to give

adequate notice, it would be of no avail.

Assuming for purposes of argument that the Court find -- that what the Court finds to have been inadequate notice involved a breach of duty by the Board, which I'm not finding at this time, that breach would have to be viewed in light of Virginia Code 13.1-870, which is entitled, "General Standards of Conduct for Directors."

And that provision at Subsection A provides that, "A Director shall discharge his duties as a Director, including his duties as a Member of a committee in accordance with his good faith business judgment of the best interests of the Corporation."

It then goes on in Subsection B to talk about the types of information the Director can rely upon in discharging his or her duty. The Court finds that the Board acted in what it found to be the best interest of the Corporation in light of the circumstances.

Particularly given the testimony about danger to health, life and property. And that due diligence was exercised in selecting a contractor. In the absence of conduct that would violate the Board's duties and in the

absence of the power and the Members to compel the Board to change its mind, particularly given the lack of evidence, there has ever been a suff -- sufficient number of Members who, by some means, might have caused a different outcome, the contract at issue will not be set aside.

This leaves the Plaintiff's request for money damages. The Court finds that there's no basis in the complaint for an award of money damages because the Plaintiff fails to state a proper claim for them and has never alleged a liquidated amount in his pleadings.

Alternatively, the evidence of damages was basically Plaintiff's own opinion. When an owner of property while not -- excuse me, while an owner of property can provide an opinion about what his property is worth, here it is admitted that the Plaintiff did not provide testimony about what he thought his property was worth before and after the wall construction and the related expenses.

The Court also finds that the evidence to have been highly specula -- speculative, lacking in other support, lacking in reasonable certainty, lacking in

detail and as a whole, therefore, must be taken as incredible.

I want Mr. Robey to prepare an order, present it to the Plaintiff and submit it to the Court and set it down for a date; correct?

THE CLERK: Mm-hmm.

THE COURT: And -- and I'm going to allow you, Mr. Davidson -- if Mr. Davidson -- well, you'll have to -- you'll have plenty of time to note your exceptions.

THE PLAINTIFF: Using -- did you (unintelligible) standard form. I mean, I -- I can endorse it now so we don't have to come back.

THE COURT: Well, do you have an order that's prepared --

MR. ROBEY: I have a --

THE COURT: -- base -- based on the Court's ruling?

MR. ROBEY: No and --

THE COURT: Do you have an order?

MR. ROBEY: -- no and, yes. I -- I actually started a sketch order --

(Fire alarm blaring.)

MR. ROBEY: Like I said, the hits just keep on coming.

THE COURT: All right. Folks, --

MR. ROBEY: I think that settles --

THE COURT: -- Court's in recess --

MR. ROBEY: -- the sketch order.

THE COURT: -- due to a fire alarm.

MR. ROBEY: Is there any way I can get a copy of the ruling you read from, Judge? That would help me --

THE COURT: A copy of what?

MR. ROBEY: -- put together -- it -- it looks like you actually read from a --

THE COURT: Yeah, it's an oral, you have to get it from the court reporter.

MR. ROBEY: Yes, Sir, I will.

THE COURT: Let's -- let's evacuate the building and if we have to come back --

THE COURT SECURITY OFFICER: Hold on before we go. They're talking about testing the fire alarm so before we --

THE COURT: (Inaudible due to fire alarm.)

MR. ROBEY: I'm not sure about the 18th, I believe the following Friday for sure I am.

THE COURT: I can't the following Friday.

MR. ROBEY: It's -- I'll make it work on the 18th.

THE PLAINTIFF: Your Honor, would -- Mr. Robey and I just signed (inaudible due to fire alarm.)

THE CLERK: You have to speak up, Sir.

THE COURT: (Inaudible due to fire alarm.)

THE PLAINTIFF: (Inaudible due to fire alarm.)

THE CLERK: Sir, you'll have to speak up we can barely hear you. We've got fans going on (inaudible due to fire alarm.)

THE PLAINTIFF: I would propose that Mr. Robey and I simply find a standard order and I will endorse it with my objections and anything (inaudible due to fire alarm.)

THE CLERK: We still have to set a date (inaudible due to fire alarm.)

MR. ROBEY: If we schedule it -- Mr. Davidson simply -- when he signs the order, I can present it.

THE COURT: So what we have to do, we have to

set it down for a date. If you guys work it out beforehand, --

MR. ROBEY: Right.

THE COURT: -- you won't need to appear.

MR. ROBEY: And I'll need enough time to make sure our court reporter can -- okay. I get a -- I get a thumbs up on that so --

THE COURT: All right.

MR. ROBEY: -- so we're going to set it for the 18th.

THE COURT: We're going to set it for the 18th.

MR. ROBEY: Yes, Sir.

THE CLERK: Okay.

THE COURT: And I will say that both sides worked very hard and glad to see you both, good luck. And, you know, maybe Mr. Davison, if you choose to appeal it just -- we'll all be together again, we'll see. Good luck.

MR. ROBEY: Yes, Sir. Thank you. Stay safe.

THE COURT: Bye-bye.

* * * * *

(Whereupon, at 9:24 o'clock a.m., the hearing

in the above entitled matter was concluded.)

CERTIFICATE OF REPORTER

I, DARYL F. GARRETT, a verbatim court reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

[redacted]

DARYL F. GARRETT