

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
Business Court Division

2018 OCT 31 AM 8:44

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

VANDALIA CAPITAL II, LLC, et al.,

Civil Action No.: 13-C-570

Plaintiffs,

v.

Presiding Judge: James H. Young, Jr.

Resolution Judge: Russel M. Clawges, Jr.

**DAVID P. PRAY, Individually, and
as Trustee for the DAVID P. PRAY
REVOCABLE TRUST; DAVID P.
PRAY REVOCABLE TRUST; and
JOHN/JANE DOE,**

Defendants,

v.

THE WOODS DEVELOPMENT COMPANY, LLC

Third-Party Defendant.

ORDER

On the 19th day of September 2018, this matter came before the Court upon the Plaintiffs' Motion to Reinstate Case and Motion to Enforce Settlement Agreement. Plaintiffs, Vandalia Capital II, LLC (Vandalia Capital), appeared at the hearing through counsel, Mark R. Staun, Esq. Defendants, David P. Pray, individually, and as trustee for the David P. Pray Revocable Trust and the David P. Pray Revocable Trust (Pray Defendants) appeared at the hearing through counsel, Stephen D. Annand, Esq. United Bank, Inc. appeared at the hearing through counsel Floyd Boone, Esq. and Julia A. Chincheck, Esq.

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Thereupon, the Court proceeded to hear the arguments of the parties and at the conclusion of the same the Court held the motion in abeyance. Therefore, the Court upon reviewing the parties' pleadings, briefs, and legal authority finds as follows:

Vandalia Capital is a limited liability company organized under the laws of the State of West Virginia on October 26, 2006. Vandalia Capital consists of twelve partners including Defendant Pray. These partners entered into an operating agreement on October 27, 2006. Whereupon, Vandalia Capital undertook a housing development project in Weddington, North Carolina.

During the course of these events, a lawsuit commenced in March 2013. The Plaintiffs in the original lawsuit are the same as here; Vandalia Capital and eleven of its members adverse the Pray Defendants. In October 2016, a settlement agreement was reached. The Settlement Term Sheet required that, "[b]eginning in 2017, Pray will make payments or otherwise contribute to Vandalia not less than his pro rata share of capital calls Vandalia properly resolves are necessary to conduct its business."

In May of 2018, Plaintiffs filed the Verified Motion to Reinstate Case and For Enforcement of Settlement Agreement. In Plaintiffs' Motions, Plaintiffs detail the facts giving rise to this current controversy. Specifically, Plaintiffs allege that in September of 2017, United Bank called letters of credit and pledged collateral totaling \$14,991,000 from eleven Vandalia members. Pray did not have a letter of credit with United Bank, as such, United Bank did not receive any payment or pledged collateral from Defendant Pray.

Plaintiffs contend that the \$1,362,000 payment to United Bank that eleven out of the twelve members of Vandalia Capital had to pay was essentially a capital call and, therefore, by the terms of the settlement agreement, Defendant Pray is required to pay his pro rata share.

Defendant Pray contends that Vandalia does not have the right to demand a \$1,362,000 capital call.

The Court finds that the October 2016 Settlement Agreement is clear and unambiguous. The Settlement Agreement's purpose was to place Defendant Pray on equal footing with the other eleven members of Vandalia Capital. As such, the Settlement Agreement supersedes the October 2016 Operating Agreement insofar as it grants Vandalia Capital the ability to make capital calls and specifically requires Defendant Pray to pay his pro rata share of said capital calls.

Each member of Vandalia has been required to pay \$1,364,000 toward the indebtedness to United Bank. Such action taken by United Bank has created a situation where Defendant Pray has failed to pay his pro rata share pursuant to the terms of the Settlement Agreement. Given the clear and unambiguous terms of the Settlement Agreement, the Court finds Defendant Pray is required to pay his pro rata share to adjust his account. The sole question is when is Defendant Pray obligated to adjust his account.

Plaintiffs request the Court to enter an Order requiring payment of Defendant Pray's pro rata share, but Defendant Pray asserts that the matter before the Court raises factual issues. Defendant Pray claims that the actions of the Plaintiffs does not constitute a "capital call" pursuant to the Settlement Agreement because the action of United Bank did not require further action of the Plaintiffs and, additionally, procedures required to make a capital call were not followed.

Based upon these reasons, the Court finds that a factual dispute exists as to the two issues stated above: (1) whether United Bank's actions, which required the Plaintiffs to each pay \$1,364,000, constituted a capital call that, in turn, required Defendant Pray to pay his pro rata

share pursuant to the terms of the Settlement Agreement, and (2) whether procedures required to make a capital call were followed. These factual disputes preclude the Court from awarding judgment in favor of the Plaintiffs.

Therefore, the Court finds the Motion to Enforce Judgment requires factual development and the Court will schedule a Status Conference to set this matter for trial for the enforcement of the Settlement Agreement.

All accordingly which is **ORDERED** and **DECREED**.

Enter this 30th day of October, 2018.

ORDER
ENTER:

James H. Young, Jr.
HONORABLE JAMES H. YOUNG, JR.

Date: 10/31/18
Certified copies sent to:
☒ counsel of record
☐ parties
☐ other (please indicate)
By: ☒ certified/1st class mail
☐ fax
☐ hand delivery
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Other directives accomplished:
[Signature]
Deputy Circuit Clerk

Bus Ct.
J. Kaminski
G. Boone
J. Appand
M. Staun

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 30
DAY OF October 2018 CLERK
CATHY S. GATSON
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA