

STATE OF NORTH CAROLINA
SWAIN COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 178

THOMAS M. ANDERSON, PERRY
POL SINELLI, RICHARD F.
HUNTER, ANDREW JUBY,
THOMAS T. SCHREIBER, and
FRED R. YATES, in the right of the
Mystic Lands Property Owners
Association, Inc., a North Carolina
Non-Profit Corporation,

Plaintiffs,

v.

MICHAEL BERESNI; LOUIS JOHN
BROWN; KEVIN BURKE; RAMON
(RAY) DE LA CABADA; SCOTT
LYDEN; JIM MOORE; ROBERT
WUNDERLE; GREG GILROY;
RANDY MILLS; AMI SHINITZKY;
and the MYSTIC LANDS
PROPERTY OWNERS
ASSOCIATION, INC., a nominal
party,

Defendants.

ORDER

THIS MATTER comes before the Court on its own motion.

1. In the brief (ECF No. 27) submitted by Defendants Michael Beresni, John Brown, Kevin Burke, Ray De La Cabada, Scott Lyden, Jim Moore, and Robert Wunderle (“Defendants”) in support of their Motion to Dismiss (ECF No. 26), Defendants attempt to incorporate by reference arguments previously made by them in their brief in opposition to Plaintiffs’ Motion for Preliminary Injunction. (ECF No. 27, p. 4.)
2. North Carolina Business Court Rule 7.8 states, in pertinent part, as follows:

A party may not incorporate by reference arguments made in another brief or file multiple motions to circumvent these limits.

BCR 7.8.

3. The Court therefore ORDERS that Defendants' brief be STRICKEN. Defendants are directed to file an amended brief in support of their Motion to Dismiss within **ten (10) days** of this Order.¹

4. In addition, the Court DIRECTS all parties submitting briefs both in support of and in opposition to Defendants' Motion to Dismiss to include therein a discussion of whether a nominal defendant in a derivative action is legally permitted to assert a crossclaim (as Mystic Lands Property Owners Association, Inc. has attempted to do in the present case).

SO ORDERED, this the 25th day of October, 2022.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases

¹ The deadline for Plaintiffs to file a responsive brief shall not begin to accrue until the date on which the amended brief is filed by Defendants.