

**OLDHAM CIRCUIT COURT
ACTION NO: 21-CI-00188
DIVISION I**

PEABODY FOX, et. al.

PLAINTIFF

VS

ORDER

L'ESPRIT HOMEOWNERS' ASSOCIATION, et. al. DEFENDANT

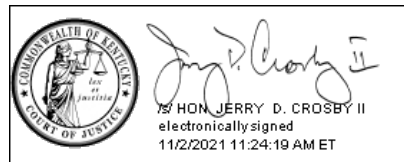
This matter comes before the Court on the motion of the Defendants with a request for the Court to alter, amend, or vacate its Order entered October 4, 2021. The Defendants seek an Order of this Court declaring David Poff a validly appointed director to the L'Espirit Property Owners' Association Board of Directors as well as an Order making the October 4, 2021 Order Final and Appealable. The Court, having considered the arguments of the respective parties and their briefs, enters the following Orders:

1. The Court declines to alter, amend, or vacate its October 4, 2021 Order to declare David Poff a validly appointed member of the L'Espirit Homeowners' Association Board of Directors. In the October 4, 2021 Order, this Court determined that "all subsequent action taken by the Board of Directors since March 30, 2021 that do not fulfill the requirements of Article VI(5) shall be void." David Poff was initially appointed on March 30, 2021 to fill the seat of Mr. Vessels following the vote to remove him from the Board. This Court has declared the vote to remove Mr. Vessels void. Any action to seat Mr. Poff in Mr. Vessel's seat on the Board was also void. Thereafter, any action taken by Mr. Poff as a member of the Board is also void, including votes, seconds, motions, etc. Mr. Poff's participation in any decision, motion, or second to move his appointment from the seat held by Mr. Vessels to the seat vacated by Mr. Adams was void. While there is no evidence having been presented to the Court on this issue, Plaintiff's brief alludes to Mr. Poff's second on a motion to move his appointment from the seat formerly held by Mr. Vessels to the seat vacated by Mr. Adams. As stated above, any activity by Mr. Poff as a member of the Board is vacated and void. If Mr. Poff did second the motion to move his appointment from one seat to

another, then the appointment of Mr. Poff by vote held August 19, 2021 is void regardless of whether a majority of the remaining members of the Board were present and the vote would pass 2-1 without Mr. Poff's vote.

2. Pursuant to the 54.02, it is within the sound discretion to determine whether to declare Interlocutory Orders final and appealable. As there are other remaining issues which relate to Mr. Vessels' removal from the Board, this Court exercises its discretion to deny the request to make its October 4, 2021 Order final and appealable.

DATE: November 1, 2021.



JERRY D. CROSBY II
CIRCUIT COURT JUDGE, DIVISION I