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May 4, 2017

Sent Via E-Mail

Howard B Mankoff, Esquire
Marshall Dennehey Warner
Coleman & Goggin
425 Eagle Rock Avenue
Roseland, N.J. 07068

Re: Purzycki v. Lake Parsippany Property Owners Association, Inc. – Docket No. C-000002-17

Dear Mr. Mankoff:

Enclosed please find an Amended Complaint. Simply, the Amended Complaint recites additional, more specific facts related to Plaintiffs' claim seeking a judgment precluding the Lake Parsippany Property Owners' Association, Inc. from implementing and collecting a mandatory assessment.

By copy of this letter, Plaintiffs seek your consent pursuant to R. 4:9-1 for the filing of same. For your consideration, enclosed please find a stipulation.

Very truly yours,

Brian M. Rader, Esquire

Brian M. Rader Esq. (ID # 012692009)
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Attorneys for Plaintiffs

Mary Purzycki, Kenneth Purzycki, Dhiren Patel, Rita Desai, Daniel Desai, Rashmin Patel, William Martin, Barbara Seaman, Sabina Vermont, Madeline Keyworth Elaine Gavalyas, Anthony Longo, Dipak Patel, Sunil Patel, Jiuisha Patel, Plaintiffs, v. Lake Parsippany Property Owners Association, Inc.; Board of Directors; Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: MORRIS COUNTY DOCKET NO: C-000002-17 Civil Action **STIPULATION PURSUANT TO R. 4:9-1 PERTAINING TO THE FILING OF AN AMENDED COMPLAINT**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, that Defendants consent to the filing of Plaintiffs' Amended Complaint dated May 4, 2017.

Jardim, Meisner & Susser, P.C. Attorneys for Plaintiff	**Marshall Dennehey Warner Coleman & Goggin** Attorneys for Defendants
By: ____________________ Brian M. Rader, Esquire	By: ____________________ Howard Mankoff, Esquire
Dated:	Dated:

Brian M. Rader Esq. (ID # 012692009)
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Plaintiffs, Mary Purzycki, Kenneth Purzycki, Dhiren Patel, Daniel Desai, Rita Desai, Rashmin Patel William Martin, Barbara Seaman, Sabina Vermont, Madeline Keyworth Elaine Gavalyas, Anthony Longo, Dipak Patel, Sunil Patel and Jiuisha Patel through their attorney Brian M. Rader, Esquire and by way of Amended Complaint against the Lake Parsippany Property Owners Association, Inc. says:

PARTIES

1. Plaintiffs Mary Purzycki, Kenneth Purzycki, Dhiren Patel, Rita Desai, Rashmin Patel William Martin, Barbara Seaman, Sabina Vermont, Madeline Keyworth Elaine Gavalyas, Anthony Longo, (the "Owners") are owners of certain lots located within a

geographic region of the Township of Parsippany-Troy Hills (the "Township"), New Jersey, more formally known as Lake Parsippany.

2. The Lake Parsippany Property Owners Association, Inc. ("LPPOA") is a corporation.

JURISDICTION AND VENUE

3. Jurisdiction is proper in the Superior Court of New Jersey – Morris County because Lake Parsippany is located in Morris County, New Jersey.

FACTS COMMON TO ALL COUNTS

4. In the early 1930's, The New York Daily Mirror, part of the Mirror Holding Corp., ("Mirror") purchased a large tract (the "Tract") of pasture and farmland in Parsippany. Mirror excavated out 159 acres and erected a dam that formed Lake Parsippany (the "Lake").

5. On or about October 24, 1933, the Lake Parsippany Property Owners' Association (the "LPPOA") was duly incorporated to manage certain facilities (the "Common Facilities") within Lake Parsippany, including the Lake

6. Through a series of indentures (hereinafter collectively referred to as the "Indenture"), Mirror conveyed the Common Facilities to the LPPOA.

7. Through the 1930's and 1940's, the Tract and its Common Facilities were marketed and advertised as being for the *exclusive* use of all lot owners (hereinafter referred to as the "Lot Owners" or "Property Owners). There are approximately 2,200 Lot Owners.

8. While membership in the LPPOA is and always has been voluntary, the Indenture contains various restrictions.

9. For example, in the December 7, 1935 Indenture, various lots designated collectively as the "Club House Grounds", were to be held for the benefit and use of the LPPOA members as a "Club House or social center for general recreational purposes".

10. However, on October 20, 1996, the LPPOA conveyed the Club House Grounds to the Board of Fire Commissioners, Fire District No. 3, to operate a firehouse.

11. Per the March 4, 1939 Indenture, Lots 1972-1981 were conveyed from Mirror to the LPPOA upon expressed condition that same be used "always for and as a Tennis Court".

12. However, on November 1, 1996, the LPPOA sold Lots 1972-1981 to a residential developer, Eckstein & Taylor, Inc., who in turn constructed residential properties.

13. In addition, per the Indenture, the LPPOA was to "at all times keep, maintain and improve the streets, roads, avenues and drives for the benefit and use of the residents and inhabitants of Lake Parsippany and for the benefit of the general public".

14. The LPPOA has not maintained the streets, roads, avenues and drives since 1948. The Township maintains the streets, roads, avenues and drives.

15. Further, pursuant to the Indenture, the Lake was to be 'held by the Association (the LPPOA) for the use of the *Property Owners* at Lake Parsippany for boating, bathing and fishing, subject to the *rights of the adjoining owners*, to use the said waters for like purposes, subject also to sanitary regulations..." (hereinafter referred to as the "Restrictive Covenant").

16. However, property owners, i.e., Lot Owners, are and always have been prohibited from using the Lake.

17. Indeed, only "private members" of the LPPOA are entitled to use and enjoy the Lake.

18. Moreover, any individual, whether they reside in the Tract or otherwise, are entitled to become "private members" of the LPPOA, and by virtue of their membership, are granted the right to use the Lake.

19. Similarly, the beaches and the club house are leased to individuals or groups, whether they reside in the Tract or otherwise, who desire to use the Common Facilities for private events.

20. In other words, the LPPOA is a mere social club that does not govern a common-interest community. Lot Owners are not afforded any rights whatsoever simply because of their status as property owners in the Tract.

21. Additionally, pursuant to the LPPOA's By-Laws, "[a]ny person of good moral character who is either a property owner or a resident of Lake Parsippany or adult member of a property owner or resident's immediate family properly proposed and vouched for shall be entitled to be a member of this association."

22. Accordingly, the LPPOA's policy of permitting any individual to join the LPPOA, and permitting any individual to gain use and enjoyment of the Lake, whether they were a Lot Owner or a member of a Lot Owner's immediate family or otherwise, is not only a violation of the Indenture, but a violation of the LPPOA's own By-Laws.

23. Eventually, even maintenance of the Lake's dams and drainage basins were delegated to the Township of Parsippany.

24. To illustrate a true lack of exclusivity and a complete abolition of any common/neighborhood scheme, in or about 1990, the slogan for Lake Parsippany became: "You don't have to live here, to play here... You just have to join!".

25. On or about August 3, 2015, the LPPOA issued a memorandum to members of the LPPOA stating the following: "In reviewing our annual finances, the Board has projected that the possibility exists that we may be unable to support the lake from our operating budget within the next 6-10 years."

26. Accordingly, the LPPOA pursued an investigation into the possibility of "assessing" the Owners, or charging a mandatory, annual fee against all Lot Owners (the "Assessment").

27. The LPPOA engaged Dolan and Dolan, Attorneys at Law ("Dolan") who issued an opinion, which the LPPOA publicized on its website, and distributed to members of the public at open meetings.

28. The opinion of Dolan asserts that the Lot Owners maintain an easement over the Lake; hence, they are responsible to maintain and preserve same. The language Dolan relies upon is the Restrictive Covenant.

29. The Assessment was introduced to the public as an "easement assessment".

30. Alternatively, Dolan suggested that the LPPOA could "encourage property owners to voluntarily elect" to enter into a restrictive covenant which would bind the individual property to membership in the LPPOA. The LPPOA never pursued this option.

31. The LPPOA breached the Restrictive Covenant upon which it relies. The Lot Owners' rights in the Lake, i.e, the right to bathe, fish and boat, were subject to the right of adjoining landowners *only*.

32. Moreover, as noted above, the Club House Grounds were to be held as a social center or for recreational purposes, and Lots 1972-1981 were to be restricted for the use of a

"tennis court". The Club House Grounds were sold to the Fire Department for $300,000.00, and Lots 1972-1981 (Lots 1940-1993) were conveyed to Eckstein & Taylor for $641,600.00.

33. Notably, the deeds which conveyed the foregoing lots from the LPPOA to the Fire Department and Eckstein & Taylor, respectively, did not include the Restrictive Covenant or make any mention of the LPPOA whatsoever.

34. On or about October 23, 2013, Mirror Pond, another Common Facility, was delegated to the Township.

35. In other words, over time, the LPPOA delegated and relieved itself of the vast majority of its responsibilities.

36. The LPPOA's approach toward management of the Common Facilities was accomplished without regard for the Indenture.

37. Now, after several material deviations from the Indenture, the LPPOA grieves that it is in dire need of funds because in recent years, its membership has decreased. By failing to maintain the exclusivity and failure to adhere to the Restrictive Covenant as well as the various other restrictive covenants contained within the Indenture, the LPPOA has willfully abolished Lake Parsippany's original plan or neighborhood scheme.

38. Despite the foregoing, the LPPOA approved the Assessment by way of a resolution indicating that the LPPOA would charge the Lot Owners the Assessment, and permit the LPPOA to establish collection actions against the Lot Owners for non-payment (the "Resolution"). The Resolution, which cites case law that is highly distinguishable from Lake Parsippany, further asserts that Lot Owners who fail to pay would be charged interest, late fees and attorney's fees, and a lien may be recorded against the Lot Owners' property.

39. The LPPOA, even though it deprived Lot Owners usage of the Lake, to justify charging the Lot Owners a mandatory assessment, now alleges that the Lot Owners actually maintained an easement and are therefore responsible for preserving and maintaining same.

40. On or about January 7, 2017, the LPPOA, through its property management company, Cedarcrest Property Management ("Cedarcrest"), sent the Lot Owners an "invoice as of 12/31/16", for $115.00. The invoice further states that "payment is due January 1, 2017" (the "Invoice").

41. The Invoice was accompanied by correspondence which indicated that if payment is not received by March 15, 2017, a "a late notice will be mailed to include a $25.00 late fee asking for payment immediately".

42. However, there is no contract between the parties, and no statute, that would authorize the LPPOA to charge any late fee.

43. The threat of a $25.00 late fee was intentional, and was intended to intimidate and harass the Lot Owners into paying the Assessment.

44. Further, there is no basis to record a lien against the properties of Lot Owners. There is nothing contained in any document, recorded or otherwise, that imposes an obligation on the Lot Owners, or that would place the Lot Owners on notice of a possible lien.

45. The LPPOA cannot compel the Lot Owners to preserve and maintain the Lake, a body of water which they never had a right to use and enjoy.

46. In addition, there is no obligation contained in the Indenture or otherwise imposing a duty to make any payments to the LPPOA, and the circumstances of this matter, i.e., the LPPOA's blatant and overall disregard for the various facets of the Indenture, do not warrant an imposition of any obligation upon the Lot Owners.

47. Considering the absence of any obligation to pay assessments to the LPPOA, there of course exists no formula by which to calculate assessments.

48. Relying upon the Restrictive Covenant, the LPPOA is attempting to bind all owners within the Tract to unspecified obligations.

49. The Owners, who qualify as Lot Owners, now bring this action to restrain the LPPOA from levying and enforcing the Assessment.

FIRST COUNT
Declaratory Judgment Pursuant to N.J.S.A. 2A:16-53 to Determine the Rights, Interests and Obligations of the Parties

50. The Owners incorporate herein by reference all the allegations made in previous paragraphs, inclusive, as though fully set forth herein.

51. N.J.S.A. 2A:16-51 provides that the purpose of the Declaratory Judgment Act is to be liberally construed to effectuate its purpose which is to settle and afford relief from the uncertainty and insecurity with respect to rights, status and legal obligations.

52. The Declaratory Judgment Act empowers the court to declare rights, status and other legal relations, affected by a statute or otherwise, within its legal and equitable jurisdiction. N.J.S.A. 2A;16, 2A:16-53.

53. N.J.S.A. 2A:16-53 provides that a "person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

54. As noted in the Resolution, based on language in the Master Deed, and particular case law, the LPPOA is moving to levy an Assessment against all Lot Owners.

55. The LPPOA must be barred from implementing and enforcing the Assessment because to justify the Assessment, the LPPOA relies on language in the Master Deed that the LPPOA itself violated.

56. The LPPOA, through its conduct, abolished the original plan, or common-interest scheme that was intended for Lake Parsippany.

57. Moreover, the Assessment is based on an alleged easement. However, Lot Owners have been deprived of the right to use the Lake, never maintained a right of way over the Lake, and therefore never derived a benefit from the Lake. Accordingly, the Lot Owners cannot be compelled to bear a burden.

58. Moreover, there is no obligation contained in the Indenture and no formula by which to calculate assessments. Relying upon the Restrictive Covenant only, the LPPOA is attempting to bind all owners within the Tract to unspecified obligations.

59. Moreover, the LPPOA's Resolution further asserts the intent to establish a collection procedure in the event the Owners do not pay the assessment. Pursuant to the Resolution, the LPPOA intended to establish a collection procedure to collect not only the Assessment, but interest, late fees, attorney's fees, and the right to record a lien against a Lot Owners' property.

60. There is no basis to record a lien against the Lot Owners, and there is no privy of contract or applicable statute to justify an award of attorney's fees or late fees.

61. However, on or about January 7, 2017, the LPPOA, through Cedarcrest, sent Invoices to the Lot Owners which threatened to charge a $25.00 late fee if the Lot Owners failed to pay the Assessment by March 15, 2017.

62. Based on the foregoing, there presently exists an actual controversy between the Owners and the LPPOA.

63. The LPPOA must be barred from implementing and enforcing the Assessment, and the Assessment must be invalidated as an improper exercise of authority.

WHEREFORE, Plaintiff demands judgment against Defendant as follows: (1) Declaring and adjudging the nature and extent of Plaintiff's rights and obligations; specifically barring the LPPOA from implementing and collecting the Assessment; (2) compensatory damages, (3) consequential damages, (4) punitive damages, (5) remedies provided for under any state and/or federal statutes; (6) lawful interest, (7) attorney's fees and costs together with such other and further relief as this Court may deem just and proper.

Jardim, Meisner & Susser, P.C.
Attorneys for Plaintiff

Dated: 5/14/17

By:
Brian M. Rader, Esquire

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4 Brian M. Rader, Esq. is designated as trial counsel in this matter.

NOTICE PURSUANT TO RULE 1:5-1(a) and RULE 4:18-4(c)

Take notice that, pursuant to R. 1:5-1(a) and R. 4:18-4(c), Plaintiffs hereby demand that each party named in the complaint that serves or receives pleadings of any nature (including discovery) to or from any other party to the action, forward copies of same along with any

documents provided in answer or response thereto to counsel for Plaintiffs and take notice that this is a continuing demand.

CERTIFICATION PURSUANT TO R. 4:-1

The undersigned certifies that, upon their initial review of this matter, that no other action or arbitration proceeding is currently contemplated and that they are unaware of any other parties who currently should be joined to this action.

Brian M. Rader, Esquire

Dated: 5/4/17

CERTIFICATION PURSUANT TO RULE 1:38-7(b).

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b). I further certify that this dispute is not the subject of any other action pending in in any other court or pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this Complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in the original certification.

Brian M. Rader, Esquire

Dated: 5/4/17

VERIFICATION

I, Mary Purzycki, of full age, hereby certifies as follows:

1. I am a Lot Owner in Lake Parsippany, and reside at 273 Marcella Road, Parsippany, NJ 07054.

2. I have read the foregoing amended complaint and on my own personal knowledge and review, I know that the facts set forth herein are true and they are incorporated in this certification by reference.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: 5/4/17

MARY PURZYCKI