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July 9, 2020

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**Re: Lake Parsippany Property Owners Association /
Complaint Filed by Lake Parsippany Voting Rights Group**

Dear Mr. Fahy and Mr. Hannaman:

This office represents Lake Parsippany Property Owners Association (“LPPOA”), respondent in the above-captioned matter. I am in receipt of a complaint dated June 25, 2020, filed with Department of Community Affairs (“DCA”) and received in my office on June 30, 2020 regarding certain alleged voting rights violations at Lake Parsippany.

History: By way of background, Lake Parsippany is a private, residential lake community formed by a series of filed maps by the developer, Mirror Holding Corporation, in the 1930’s. When properties in the original filed map area were purchased, each owner and successor in title received the exclusive rights to the individual lot and home, but also received certain rights for the use of

the common properties, including the lake and other recreational lots, subject to certain covenants and restrictions.

For many years, membership in LPPOA had been considered voluntary and the burden of maintaining the lake and common properties fell on a relatively small percentage of the property owners in the community. However, after undertaking research of LPPOA's formation documents and the chain of title for several properties in Lake Parsippany, it was determined that each property included an easement stating the transfer included "the right to use in common with others the waters of Lake Parsippany for bathing, boating and fishing." These individual easement rights were further confirmed in a deed from Mirror Holding Corporation to Lake Parsippany Property Owners Association dated June 7, 1935, where the developer transferred all the common property subject to covenants, which included a promise on the part of LPPOA to pay taxes on the property, that LPPOA would at all times properly keep and maintain the clubhouse for the benefit and use of the members as a social center or for general recreational purposes and that the lake itself would be held for the benefit of the property owners at Lake Parsippany for boating, bathing and fishing, subject to the rights of the adjoining owners to the use of said waters for like purposes.

Mandatory Assessment: LPPOA was concerned that based on its membership trends, escalating costs and the financial pressure on the existing members would result in financial crisis within a short number of years. Following its investigation of its formation history, the Board of Trustees determined it was in the best interest of the community that all property owners pay an assessment which represented an equitable pro-rata sharing of the common expenses of the lake and recreational facilities, and resolved to make that recommendation to the membership. On October 19, 2016 at a special meeting of the membership of LPPOA, the Resolution was adopted for an assessment on all property owners for their fair share of the maintenance expenses of the lake and common properties. All property owners were notified of the proposed changes which were implemented in annual assessments beginning in 2017. Several open meetings were held to provide information to the community.

Suit against LPPOA: In January of 2017 at one of the informational meetings, LPPOA was served with a verified complaint by the following property owners, Mary Purzycki, Kenneth Purzycki, Dhiren Patel, Rita Desai, Daniel Desai, Rashmin Patel, William Martin, Barbara Seaman, Sabina Vermont, Madeline Keyworth, Elaine Galvalyas, Anthony Longo, Dipak Patel, Sunil Patel, Jiuisha Patel; the Plaintiffs in that matter were represented in that matter by attorney Brian Radar, Esq. who also filed the subject complaint to DCA along with Renee Steinhagen of the New Jersey Appleseed. In fact, you will note that several of the names on the partial list of the so-called “Lake Parsippany Voting Rights Group” were also plaintiffs in the litigation. Because the plaintiffs sought an interpretation of covenants and restrictions of record, the Court required that all approximately 2200 property owners be served with the complaint. Plaintiffs also filed an amended complaint, seeking a declaration that the 2017 amendments to the Planned Real Estate Development Full Disclosure Act (“PREDFDA”) N.J.S.A. 45:22A-45.1 et seq., did not apply to Lake Parsippany.

Following discovery, Plaintiffs filed a Motion for Summary Judgment, and LPPOA filed a cross-motion. By Order dated October 7, 2019, (which was included with the filed complaint to DCA) Honorable Stuart A. Minkowitz, A.J.S.C. found in favor of LPPOA. Judge Minkowitz specifically found that Lake Parsippany was a common interest community and further found that easements found in chain of title of each of the individual property owners conferred a benefit on the easement holders and accordingly, “with the benefit, ought to come the benefit.” (See 2019 Order, Page 10).

The 2017 amendments PREDFDA had not been enacted at the time the fair share assessment was initiated by LPPOA, which had already implemented a two-tiered system based on the prior case law regarding easement holders and mandatory maintenance payments. Under the existing case law, all easement owners were required to pay maintenance, but not required to be members of the association. LPPOA offered these two-tiers to the community: residents could choose to pay just the maintenance fee of \$115, or full membership for \$315. Judge Minkowitz specifically looked at this two-tiered system (See 2019 Order, Page 9) and recognized that residents in Lake Parsippany had the option to become full members of LPPOA and through this expanded

membership they gained additional perks, such as the ability to vote in association meetings. However, Judge Minkowitz recognized that LPPOA offered *residents* the option to decide whether they wanted to take advantage of these benefits as full members. Judge Minkowitz further analyzed the two-tiered system at Page 11-12, and determined that “LPPOA’s two-tiered approach indicates that it carefully considered what qualifies as basic lake upkeep and that it did not attempt to unfairly charge tract residents more than what was necessary. Thus, LPPOA has authority to require tract property owners to contribute to the reasonable maintenance of the lake and it adopted a rational approach when calculating the easement assessment and additional membership fees.”

Following the decision of the Court on October 23, 2019, plaintiffs filed a Motion for Reconsideration, which was denied on March 22, 2020. In its decision, the Court stated that “[a] Motion for Reconsideration is not an opportunity for a second bite at the apple. It is not a mechanism for unhappy litigants to attempt once more to air their positions and re-litigate issues already decided.” (Citations omitted).

In its decision, the Court pointed out that the plaintiffs failed to raise the issue regarding voting structure before the Court. Plaintiffs also failed to raise the issue regarding any contractual obligations between plaintiffs and defendants. The Court emphasized that the plaintiffs only sought resolution of two arguments: that LPPOA lacked authority to charge a mandatory assessment in order to maintain the lake and that the case must be dismissed as moot, if Governor Murphy signs Bill 5043¹. The Court stated “[i]t is not for the Court to determine precisely how defendants should carry out their assessment scheme, including exactly how fines and fees are to be collected, when plaintiffs never requested that specific relief.” (See Page 5 of the Order Denying Reconsideration).

Finally, the Court stated that the plaintiffs never requested the Court to rule on LPPOA’s right to impose liens on the resident’s property and failed to request the Court to make any specific judicial determination or to void any alleged liens.

¹ That bill sought amendments to the 2017 PREDFDA amendments but was conditionally vetoed by the Governor in August of 2019. A new similar bill has been introduced for this year, but based on the decision of Judge Minkowitz, will not affect the resolution of this case.

Plaintiffs failed to file a timely appeal and the decision of the Court stands.

Having failed in Court, several of the plaintiffs, now calling themselves the Lake Parsippany Voting Rights Group, are seeking a third bite of the apple from DCA.

Two-tiered assessment: It is acknowledged that the Planned Real Estate Development Full Disclosure Act provides all members of common interest community with certain rights and privileges, including rights related to election of trustees and voting. In LPPOA's invoices for 2020, LPPOA reflected that all property owners were full members and invoiced all property owners at \$315 per year. However, LPPOA further provided directly on the invoice "[m]embers may elect to pay a basic membership fee of \$115 instead of the full membership fee of \$315 if they waive certain rights and privileges. Please see the website for a full listing of the rights and privileges associated with each level of membership. Payment of the basic membership fee will confirm the member's waiver of rights of full membership, including the right to vote and serve on the Board."

Accordingly, all property owners of LPPOA are considered full members with full voting rights, unless the member elects to waive full membership rights and pay a basic membership fee of \$115. I emphasize that the waiver of rights is the choice of the individual property owner, not determined by LPPOA.

Since the Court's decision, LPPOA has made a concerted effort to meet with members and address the individual and broader concerns of the community. Board meetings have been filled to capacity, and last hours while each member had a chance to voice their concerns. As a result of member input, the Board decided to waive dues from those who did not pay after the litigation started (2018 and 2019), agreeing to modify the budget goals to address the reserve and capital account issues, and the needed maintenance of the common properties. At the suggestion of members present, the Board formed a committee to consider options to address member hardships in paying the fees. After the start of the pandemic, the Board twice extended the time to pay

membership dues (now due August 1) before late payment charges were added. The Board postponed collection actions. The Board made efforts to fill Board and committee vacancies with willing volunteers, some of whom were plaintiffs in the litigation or supported plaintiffs' positions and planned for elections at the Annual Meeting for positions whose terms expire this year.

LPPOA encourages full membership for all property owners. It is axiomatic that having one level of membership, with one fee and uniform rights for all would be the easiest way for LPPOA to manage the community and plan the budget each year. But LPPOA continued to offer basic membership, as allowed by the Court, as a response to the community members who state they do not want to participate in the activities or use the facilities, but just want to pay a basic maintenance fee. The so-called "Voting Rights Group" if successful, will eliminate this option for their neighbors.

In reference to elections, it is acknowledged over the years that the Board struggled to attract a sufficient numbers of volunteers to fill Board positions and that many positions remained vacant, or Board members were pressed into service beyond their terms. However, the Board has worked diligently to attract volunteers and encourage full members to nominate and run for Board positions. The Board has provided all members with the required "call" for nominations and plans to hold elections for vacant positions at the Annual Meeting on September 13, 2020, in accordance with LPPOA's By-Laws, and PREDFDA.

Please contact me if any further information is required.

Very truly yours,

DOLAN & DOLAN, PA

Eileen McCarthy Born

EMB/ljb

By: Eileen McCarthy Born, Esq.

cc: Renee Steinhagan, NJ Appleseed (via email & mail)
Brian Rader, Esq. (via email & mail)