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May 1, 2019

To: Lake Parsippany Property Owners

RE: Purzycki, Mary v. Lake Parsippany Property Owners Association  
Docket No.: MRS-C-2-17  
Our File No.: 21256.01511

Dear Class Member:

Enclosed are Court order, approving the certification of a class and a Class Action Amended Complaint, in which certain property owners whose lot and block the Lake Parsippany Property Owners Association, Inc. alleges are located on filed maps for Lake Parsippany, seek a declaratory judgment that an easement assessment, recently imposed by the Lake Parsippany Property Owners Association, is invalid.

The resolution of the claims in the enclosed Amended Complaint will affect your rights. If you do not retain your own attorney to answer the complaint, then you are waiving your right to present legal arguments on an individual basis. This means that you will be bound by the legal arguments that the attorneys are presenting to the Court, and will therefore be bound by whatever the decision the Court renders in the case. The class is represented by Brian M. Rader, Esq. The Lake Parsippany Property Owners Association is represented by Howard B. Mankoff, Esq., of Marshall Dennehey Warner Coleman & Goggin.

Inquiries may be directed to the following:

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Very truly yours,

Marshall, Dennehey, Warner, Coleman & Goggin

*/s/ Howard B. Mankoff*

By: Howard B. Mankoff, Esq.

Rader Law, LLC

*/s/ Brian M. Rader*

By: Brian M. Rader, Esq.

HBM/lt

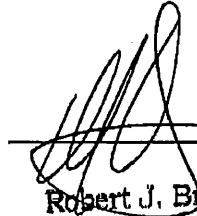
1. The Complaint in this matter is hereby amended, and the class is hereby certified pursuant to R. 4:32-1(b)(2) on the basis that the primary relief sought is declaratory.
2. Mary Purzycki is hereby appointed class representa

3. Brian M. Rader, Esquire is hereby appointed class counsel.
4. The class shall consist of all individuals or entities who received an invoice from the LPPOA in January 2017 for payment of an easement assessment.
5. The Complaint included as part of the motion shall be deemed filed and shall be served within seven (7) days of the entry of this Order.

6. \*

Counsel for the Association shall serve a copy of this Order upon all interested parties within 7 days of receipt.

*Issue: notice & cost.  
Class cert. agreed to  
Reasons on record*

  
J.S.C.  
Robert J. Brennan, P.J., Ch.

*\* Notice to class members shall be given by ordinary 1<sup>st</sup>-class mail. For now, costs to be split between TTS & J on a 50-50 basis without prejudice to either side's applying later for adjustment to the allocation.*

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## AMENDED COMPLAINT

1. Mary Purzycki ("Plaintiff" or "Purzycki") is the owner of a certain lot (273 Marcella Road, Parsippany, New Jersey 07054) located within a geographic region of the Township of Parsippany-Troy Hills (the "Township"), New Jersey.
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 the geographic location in question is located in Morris County, New Jersey.

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### **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"), including the subject Lake

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

7. The Tract and its Common Facilities were supposed to be 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. Eventually, even maintenance of the Lake's dams and drainage basins were delegated to the Township of Parsippany.

22. 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!".

23. 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."

24. 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").

25. 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.

26. 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.

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



28. 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.

29. 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*.

30. 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.

31. 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.

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

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

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

35. 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 never recognized a neighborhood scheme.

36. The LPPOA has never complied with applicable laws and codes relevant to homeowner associations, and common-interest communities in general.

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37. 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.

38. 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.

39. 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").

40. 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".

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

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

43. 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.

44. 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.

45. 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.

46. Moreover, there are no By-Laws in title, and Lot Owners are not give a copy of By-Laws upon purchasing lots. Accordingly, there is no possible way Lot Owners could ever be on notice that they were subject to the acts and decisions of the LPPOA.

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. Purzycki, who qualifies as a Lot Owner, now brings this action seeking injunctive relief, and a corresponding declaratory ruling, to restrain the LPPOA from levying and enforcing the Assessment on behalf of herself, and other similarly situated.

### **CLASS ALLEGATIONS**

50. Purzycki brings this class action on behalf of herself and others similarly situated pursuant to R. 4:32-1(a) and R. 4:32-1(b)(2).

51. The LPPOA has acted in a way that is applicable to the class. Plaintiff seeks to represent all Lot Owners and/or all individuals or entities who received an invoice from the LPPOA in January 2017 for payment of an easement assessment (the "Class") in this action which seeks a declaratory ruling on the issues herein. Plaintiff is not seeking monetary relief.

52. Plaintiff is a Lot Owner and was the recipient of the Invoice.

53. This action satisfies the numerosity, commonality, typicality, and adequacy requirements.

54. There are no individual issues; rather, the LPPOA is attempting to uniformly implement the Assessment on a singular theory. Accordingly, this case will advance the same facts and legal theories as there is nothing individualistic about the claims and defenses.

55. Multiple separate lawsuits would not serve the interest of judicial economy.

### **FIRST COUNT**

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

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

57. 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.

58. 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.

59. 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."

60. 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.

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

62. There is no common-interest scheme in this geographic location.

63. 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.

64. 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.

65. By-Laws are not recorded in title, and By-Laws are not provided to Lot Owners upon purchase of a lot.

66. 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.

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

68. 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.

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

70. 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) an Order pursuant to R. 4:32 permitting this County to be maintained as a class action on behalf of the Class as specified herein, and appointing Purzycki and Plaintiff's counsel as class in the case; (2) Declaring and adjudging the nature and extent of Plaintiff's rights and obligations; specifically barring the LPPOA from implementing and collecting the Assessment; (3) remedies provided for under any state and/or federal statutes; (4) attorney's fees and costs together with such other and further relief as this Court may deem just and proper.

Rader Law, LLC  
Attorneys for Plaintiff

Dated: 4/6/18

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.

Dated: 4/6/18

  
Brian M. Rader, Esquire

**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: 4/6/18