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Brief in Support of Order to Show Cause

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Ronald W. Yarbrough
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Pittsgrove, NJ 08318
[redacted]
Plaintiff, Pro Se

August 27, 2026

VIA JEDS

Honorable _____, J.S.C. Superior Court of New Jersey, Chancery Division, General Equity Part Salem County Courthouse 92 Market Street Salem, New Jersey 08079

Re: Yarbrough v. Lake Centerton Park Homeowners Association, Inc., et al.
Docket No. SLM-C-_____-26
Letter Brief in Support of Order to Show Cause with Temporary Restraints (R. 4:52-1) and for Leave to Proceed Summarily (R. 4:67)

Dear Judge _____:

Plaintiff Ronald W. Yarbrough, appearing pro se, submits this letter brief, as R. 4:52-1(c) requires and in the form R. 1:4-9 contemplates, in support of his application for an Order to Show Cause with temporary restraints and for leave to proceed summarily on Counts One, Three, Four, Five, Six, Seven and Eight of the Verified Complaint. Plaintiff relies on the Verified Complaint, the Certification of Ronald W. Yarbrough with Exhibits A through KKK ("Yarbrough Cert."), and the Certification of Kathleen A. Yarbrough, a non-party witness ("K. Yarbrough Cert.").

PRELIMINARY STATEMENT

This case is about who may decide to sell Centerton Lake and take out its dam. Plaintiff says the members of the Association must decide, by the vote the Association's own Certificate of Incorporation and the Nonprofit Corporation Act require. The Board of the Association is

proceeding as though it may decide alone, and it has told the State - but not the members - that it expects a purchase offer "by the end of this summer or sooner," that a contract for the Association's signature will follow, and that the dam will be removed before closing. Yarbrough Cert., Ex. DD.

The governing documents are not ambiguous. Article SEVENTH of the Certificate of Incorporation permits "dedication or other transfer of Common Area ... only with the approval of the Board of Directors and (i) the affirmative vote of two-thirds of the outstanding votes of Class A and B members ... at a meeting of members called upon due notice of the purpose of such meeting or (ii) the written consent of Class A and B members representing two-thirds of the votes thereof," and only after the Association has first offered to dedicate the property to the municipality. Ex. A. The recorded Declaration says the Association may transfer Common Area only "in accordance with its Certificate of Incorporation." Ex. B, Art. III, sec. 2(d). N.J.S.A. 15A:10-11 separately requires notice to every member and a two-thirds vote before a nonprofit corporation sells substantially all of its assets. And N.J.S.A. 15A:3-2(a) gives a member the right to sue to enjoin an unauthorized transfer. None of the required steps has been taken. That is not disputed; it cannot be, because the Association has no minutes, notices, or votes to show, and it has ignored plaintiff's written requests for them. Nor is this the first time: in February 2022 the same Board conveyed 12.97 acres of the same Common Area to private buyers for $20,000 by a deed signed by Wheaton alone, without a member vote, and since 2024 it has let the Township taxes on the lake parcel go unpaid as a stated strategy, so that the parcel was sold at tax sale in January 2025.

The relief sought pending the return date is modest: no contract and no dam removal until the members vote. The Association loses nothing by waiting for a vote it is required to hold. The dam, once removed, cannot be put back; the lake, once conveyed, is gone. That is the definition of irreparable harm. Plaintiff also asks that the governance counts - open meetings, the annual meeting and election, books and records, and ADR - proceed summarily under R. 4:67-1(b),

because they turn on the Association's own documents and on the absence of documents the Association was required to keep. The damages counts can follow on the plenary track.

Plaintiff is self-represented and knows that he is held to the Rules like any litigant. Venner v. Allstate, 306 N.J. Super. 106 (App. Div. 1997). He has tried to keep this application to what the documents show.

STATEMENT OF FACTS

Plaintiff relies on the Verified Complaint and the Yarbrough Certification and summarizes only the facts material to this application. Paragraph references are to the Verified Complaint ("VC").

The Association. Lake Centerton Park Homeowners Association, Inc. was incorporated in 1987 as a New Jersey nonprofit corporation with lot-owner members. Ex. A. It holds title to Block 1503, Lot 73, Pittsgrove Township - the 70.8-acre Centerton Lake, the dam and spillway tract, and the surrounding common land - by a 2000 deed from the developer for one dollar. Ex. C; VC 34-35. The Association's own minutes call the parcel "the common lake property" and "the common property and dam," and its account statements to members show the Township taxes on Block 1503, Lot 73 paid from members' dues. Ex. X, para. 5(c); Ex. EE. Its bank balance was $857.94 in July 2024 and $5,600.17 in May 2026. Ex. X; Ex. Y. The parcel is its only real property and substantially all of its assets. VC 35, 140.

The instruments. Article SEVENTH of the Certificate (quoted in full at VC 22) requires a first offer of dedication to the municipality and a two-thirds-of-outstanding-votes member approval at a purpose-noticed meeting, or two-thirds written consent, for any dedication or transfer of Common Area. The Declaration, recorded November 18, 1987 at Deed Book 703, Page 1, gives every owner an appurtenant "right and easement of enjoyment in and to the Common Area," limits the Association's transfer power to transfers "in accordance with its Certificate of Incorporation," vests the dam in the Association "which shall be responsible for the maintenance

and operation of the dam," and permits amendment only by a two-thirds vote and recording. Ex. B, Arts. III sec. 2, VII secs. 2, 5(a); VC 24-31.

The State determination. On April 24, 2012 the Department of Community Affairs determined in writing that PREDFDA applies to the Association, told the Association's counsel so, and wrote: "We expect compliance in the future." Ex. L; VC 43. The Association did not appeal.

The meetings. The Association's meetings have been held in the homes of its officers - Wheaton's (2001), Rossi's (2003, 2024), and [redacted] (2005) - with one exception: on April 24, 2010, on ten days' written notice signed by Wheaton, the Association met at the Pittsgrove Township Senior Center, with an agenda that included the election of officers and directors and the statement, as to a State funding application for the dam, that "A vote by the Homeowners will be required to formally approve moving forward." Exs. F, G, I, X; VC 53-55, 63, 99. No meeting of members was held from April 24, 2010 until July 16, 2024. VC 69, 99. On July 14, 2024, after receiving an email confirmation of a July 16 meeting at the Rossi residence, Yarbrough delivered a written demand to Wheaton and every household that meetings be moved to "a neutral public facility, such as the Pittsgrove Senior Center," citing the DCA determination by name and date. Ex. W. The Board held the meeting at the Rossi residence anyway and recorded that Yarbrough's letter "was not relevant to discuss or respond to." Ex. X, para. 3(e); VC 98-105. In May 2026 the Board imposed and spent a $700-per-household assessment by letter, treating silence by an email deadline as approval. Ex. Y; VC 107-108.

The 2022 conveyance. By deed dated February 7, 2022 and recorded February 8, 2022 at Deed Book 4621, Page 116, the Association - the only signature for which is Wheaton's as "Secretary," with no corporate attestation or seal and an individual-form acknowledgment - conveyed 12.97 acres of Block 1503, Lot 73 to Michele and Douglas K. Mehaffey for $20,000, reciting a Planning Board minor-subdivision approval (Resolution No. 21-17, November 23, 2021) but no resolution of the Association's Board, no member meeting, no member vote, no written consent

and no offer of dedication; the remainder of Lot 73 is 87.2 acres, more or less. Exs. KK, LL; VC 81-84. Plaintiff received no notice of a meeting, ballot or consent form; his recollection is that homeowners were told by email that not responding would be treated as consent. Yarbrough Cert. para. 49. The Association has never accounted for the $20,000. Id.

The tax sale. The July 16, 2024 minutes record the Board's decision to "postpone paying any Township taxes on the common lake property in an effort to get the Township to take over the common property and dam." Ex. X, para. 5(c). The 2024 taxes went unpaid, and on January 15, 2025 the Township sold Block 1503, Lot 73 at tax sale to Trystone Capital Assets, LLC for $2,326.60; Tax Sale Certificate No. 25-00037, at 18 percent redemption interest, was recorded May 9, 2025 at Book 4728, Page 239. Ex. OO; VC 106. The Board then did it again: the 2025 taxes went unpaid, and on January 14, 2026 the Township sold the same parcel a second time, issuing Tax Sale Certificate No. 26-00018 for $5,192.02, also at 18 percent. Neither sale drew a competing bid - both certificates carry the statutory maximum rate and a premium of $0.00. The 2026 first, second and third quarter taxes went unpaid as well and were paid by the certificate holder on August 5, 2026. As of August 24, 2026 the two certificates require $12,866.91 to redeem, growing $5.60 a day, and both are held by Foundation Properties, LLC. Ex. HHH; VC 106A-106C. Yarbrough Cert. para. 52.

The dam and the sale. The dam was damaged in December 2009 and the lake has been kept lowered since on NJDEP direction. Ex. Q. The Association obtained a State loan and, in July 2015, NJDEP Permit No. 1494 to rehabilitate the dam; no work was done and the permit expired in 2017. Exs. K, M, N, O; VC 61-65. In 2016 and again in 2020 the Association offered to donate the property to the State's Green Acres Program; on January 30, 2020 Wheaton told NJDEP the Association had "no intentions or desire to repair the dam"; in 2021 NJDEP directed the Association, as owner, to repair or [redacted] the dam; in 2022-2023 a removal design was funded through a third-party nonprofit; on January 16, 2024 NJDEP ordered an inspection report and warned of penalties and a possible order to remove the dam; and by August 4, 2026 Wheaton

reported to NJDEP that "we are currently in the process of working with Green Acres to acquire the lake property," that "Two land appraisals have been completed," that "Green Acres will ... prepare the contract for review and signature by the HOA," that "The dam will need to be removed prior to Green Acres closing on the land," and that "We are hoping to get the offer from Green Acres by the end of this summer or sooner." Exs. P, Q, R, S, T, U, DD; VC 70-79, 87-96. None of this was ever noticed to the members, considered at a meeting, or voted on. VC 80, 96-97; Yarbrough Cert. paras. 14, 34-41; K. Yarbrough Cert. paras. 4-6. Plaintiff learned of it on August 7, 2026 through an OPRA production. VC 96.

The demands. Plaintiff's written Notice, ADR Demand and Records Request of May 20, 2026 - which asked, among other things, for the insurance policies, the minutes and votes since 2024, the Citizens United agreement and study, and the member roster - have not been answered; no response of any kind had been received as of August 18, 2026. Ex. Z; VC 109-110; Yarbrough Cert. para. 43. Plaintiff's letters of August 18, 2026, sent in his own name, to the Board (insurance tender; supplemental Article VII, Section 3 notice naming the sale and dam removal; N.J.S.A. 15A:5-24(b) request) and to Green Acres, the Fish and Wildlife Service and CU Maurice River are Ex. GG. VC 113-114.

ARGUMENT

POINT I - TEMPORARY RESTRAINTS AND A PRELIMINARY INJUNCTION SHOULD ISSUE UNDER CROWE v. DE GIOIA

Interim relief is governed by Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982): the applicant must show (1) that relief is necessary to prevent irreparable harm; (2) that the legal right underlying the claim is settled; (3) a reasonable probability of ultimate success on the merits; and (4) that the relative hardship to the parties favors relief. The showing must be by clear and convincing

evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012). Each factor is met, and met on defendants' own documents.

A. Irreparable harm. Harm is irreparable when it cannot be redressed adequately by money damages. Crowe, 90 N.J. at 132-33. Two things are threatened here, and neither can be undone. First, the dam. Defendants' own plan is that "The dam will need to be removed prior to Green Acres closing on the land." Ex. DD. Removal is the first physical act in the sequence, and it is permanent; a removed dam is not restored by a judgment. Second, the land. Block 1503, Lot 73 is unique real property in which plaintiff holds a recorded appurtenant easement of enjoyment. Ex. B, Art. III, sec. 2. A conveyance to the State would extinguish that easement and the Association's covenant to maintain the Common Area for its members. Equity has long treated the loss of an interest in specific land, and of a recorded covenant benefiting it, as harm for which damages are inadequate. See Bubis v. Kassin, 184 N.J. 612, 625, 630-31 (2005) (holding a berm violated an 1887 recorded covenant, crediting the owner's quarter-century reliance on it, and remanding to the Chancery Division to grant relief); Fleischer v. James Drug Stores, 1 N.J. 138, 146-47 (1948) (specific relief lies where the subject matter has peculiar value and damages are impracticable). The timing is defendants' own: an offer "by the end of this summer or sooner," a contract to follow, and removal before closing. Ex. DD. The State has since confirmed the transaction is live: on August 25, 2026 NJDEP denied plaintiff's records request for the acquisition file in full, on the stated ground that the records are Green Acres "land acquisitions records that are confidential pursuant to N.J.S.A. 47:1A-9 & N.J.A.C. 7:1D-3.2(c)" - an exemption that holds records back while a land transaction or active project is actively under negotiation and no binding contract has been executed. Ex. KKK; VC 113A. There is a third exposure. The Board's own tax-default strategy has already put the parcel through a tax sale; a recorded certificate at 18 percent interest now stands against it, and if it is not redeemed the certificate holder may foreclose the right of redemption once two years have run from the January 15, 2025 sale, N.J.S.A. 54:5-86(a), or sooner if the parcel is certified abandoned,

N.J.S.A. 54:5-86(b) - a second route, independent of the Green Acres sale, by which the members lose the Common Area outright. Ex. OO; VC 106C, 172-175. Without a restraint, the case will be about unwinding a closing rather than preventing an unauthorized one - and N.J.S.A. 15A:3-2(a) itself contemplates that the time to act is before the transfer, by a suit "to enjoin the doing of any act or the transfer of real or personal property." See also Fountain House of N.J., Inc. v. Montague Twp., 13 N.J. Tax 387, 400 n.9 (Tax 1993) (ultra vires acts of a nonprofit stand "unless and until a proceeding shall be commenced in accordance with the provisions of N.J.S.A. 15A:3-2").

B. The legal right is settled. The right at issue is the members' right to decide, by the vote the governing instruments prescribe, whether the Association's Common Area is transferred and whether its dam is removed. That right is written in three places, and none is doubtful.

The Certificate of Incorporation. Article SEVENTH:

> "The Association may not dissolve or sell, transfer or otherwise dispose of any of its property which is designated as Common Area or the General Plan of Development except to an organization conceived and established to own and maintain such Common Area, without first offering to dedicate such property to the municipality in which it is located, or to any other appropriate government agency which may be suggested by the Planning Board of such municipality. > > Dissolution, dedication or other transfer of Common Area shall be permitted only with the approval of the Board of Directors and (i) the affirmative vote of two-thirds of the outstanding votes of Class A and B members, voting as a class, ... at a meeting of members called upon due notice of the purpose of such meeting or (ii) the written consent of Class A and B members representing two-thirds of the votes thereof, as a class ...." Ex. A.

Article THIRD(a) makes the Association's power to "sell, dedicate or otherwise transfer property" expressly "subject to the provisions of this Certificate." Article ELEVENTH permits amendment of the Certificate only by the same two-thirds of the outstanding votes. Ex. A. Under

N.J.S.A. 15A:2-8(a)(7) a certificate may limit the powers of the corporation and its trustees; under N.J.S.A. 15A:6-1 the board manages the corporation "except as ... in its certificate of incorporation otherwise provided"; and under N.J.S.A. 15A:5-12(a) and (d), a greater voting requirement in the certificate controls and "shall be rescinded or modified only by a like vote."

The Declaration. Every owner has "a right and easement of enjoyment in and to the Common Area," subject to "the right of the Association to dedicate or transfer all or any part of the Common Area in accordance with its Certificate of Incorporation." Ex. B, Art. III, sec. 2(d). That is the whole of the Association's transfer power under the recorded covenants: in accordance with the Certificate, i.e., Article SEVENTH. And the Declaration vests the dam in the Association, "which shall be responsible for the maintenance and operation of the dam," a covenant that "shall run with and bind the land" and may be amended only by two-thirds of the outstanding votes and recording. Ex. B, Art. VII, secs. 1, 2, 5(a). Removal is not maintenance.

The statute. N.J.S.A. 15A:10-11(a)(2) provides that a sale or other disposition of "all, or substantially all, the assets of a corporation, if not in the usual and regular course of its activities," may be made only if "(a) The board shall recommend such sale ... and direct that it be submitted to a vote at a meeting of members; (b) Written notice shall be given not less than 20 nor more than 60 days before the meeting to each member of record ... and the notice shall include, or shall be accompanied by a statement summarizing the principal terms of the proposed transaction; (c) At the meeting the members may approve the sale ... upon receiving the affirmative vote of two-thirds of the votes cast by the members entitled to vote thereon ... subject to such greater ... requirements as are adopted pursuant to section 15A:5-12." N.J.S.A. 15A:5-6 governs any consent in lieu of a meeting and imposes a 20-day waiting period for asset sales. And N.J.S.A. 15A:3-2(a) provides that lack of corporate power "may be asserted ... [i]n a proceeding by a member or trustee against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation," and that where the act is to be

performed under a contract, the court, with all parties before it, "may ... set aside and enjoin the performance of the contract."

Nothing in PREDFDA displaces any of this. N.J.S.A. 45:22A-44(a) provides that, "Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization." The instruments and Title 15A are the law of the Association's organization. And under N.J.S.A. 45:22A-46(a) and N.J.A.C. 5:26-8.12, any binding Board vote - including the Board recommendation N.J.S.A. 15A:10-11 requires - must itself be taken at a noticed open meeting. The Department of Community Affairs' 2012 determination that PREDFDA applies to this Association is entitled to the deference New Jersey courts give an agency's interpretation of the statute it enforces, N.J. Ass'n of School Administrators v. Schundler, 211 N.J. 535, 548-49 (2012); Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 24 (2009), and in any event the Legislature has since provided that the Act's governance provisions apply "regardless of the development's date of establishment," N.J.S.A. 45:22A-43(a).

Plaintiff is aware of no reported New Jersey decision voiding or enjoining a homeowners association's sale of common property specifically for want of the member vote required by N.J.S.A. 15A:10-11 or a certificate provision, and he does not represent that there is one. The right does not depend on case law; it is in the instruments and the statute. The cases confirm the frame: an association's powers derive from its governing documents and statute, and action beyond them is unauthorized. Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344, 367 (2007); Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650 (1988); Verna v. Links at Valleybrook, 371 N.J. Super. 77 (App. Div. 2004); see Point III.

C. Reasonable probability of success. This is a documents case. Whether the required steps were taken is answered by the Association's own records: there is no notice of a member meeting on the sale or the dam, no minutes of one, no vote, no written consents, no Board resolution, and

no offer of dedication to Pittsgrove Township. Yarbrough Cert.; VC 97, 143. The Association was asked in writing on May 20, 2026 for its minutes, notices, votes and written consents since 2024 and produced nothing. Ex. Z. The only member-level record touching the dam - the April 14, 2010 notice - shows the Board acknowledging that "A vote by the Homeowners will be required" even to apply for State funds. Ex. I. Against that, defendants can offer only their own account of "several" conversations "with some of our Homeowner members" (Ex. P) and a July 2024 living-room meeting whose minutes record no vote on any sale (Ex. X). And the record shows how this Board treats the requirement when it does transfer Common Area: in February 2022 it conveyed 12.97 acres of Lot 73 to private buyers by a deed Wheaton signed alone, reciting a Planning Board approval but no member vote, no written consent and no offer of dedication to the Township. Exs. KK, LL; VC 81-84. A Board that has already sold Common Area without a vote will sign the State's contract without one unless restrained. Under any standard, the probability that plaintiff prevails on the question whether the Board has authority to sign a contract or remove the dam without a member vote is high.

D. Balance of hardships and security. The restraint asks the Association to do nothing it is not already required to do: hold a properly noticed member meeting and take a vote before it signs anything or removes anything. If the members approve, the Association may proceed. If they do not, the Board never had authority to proceed. The State's timetable is its own; nothing in the record shows that a pause of weeks costs the Association anything, and the Board itself has asked NJDEP for extensions of time on the dam for years (Exs. S, DD). On the other side of the balance is the permanent loss of a lake, a dam and a recorded easement. Plaintiff asks that no bond, or a nominal one, be required under R. 4:52-3, because the restraint preserves the status quo and imposes no measurable cost on defendants.

E. Notice. R. 4:52-1(a) permits temporary restraints on notice or, without notice, on a showing that immediate and irreparable damage will probably result before notice can be given and a hearing held. Plaintiff gave defendants informal notice of this application by email to Wheaton at

the address he uses for Association business [redacted] with a copy to Rossi, on August 21, 2026, and again on the day of filing, and has so certified (Certification of Ronald W. Yarbrough, paragraph 54). Plaintiff asks that the restraints issue pending the return date because defendants have stated in writing that the offer and contract may arrive at any time, and because the Board's pattern - documented at VC 125 - is to act without telling the members.

POINT II - THE GOVERNANCE COUNTS SHOULD PROCEED SUMMARILY UNDER R. 4:67

R. 4:67 reaches this case by two routes. Under R. 4:67-1(a) and R. 4:67-2(a), an action "in which the court is permitted by rule or by statute to proceed in a summary manner" is commenced by order to show cause and proceeds summarily as of course. Under R. 4:67-1(b) and R. 4:67-2(b), the Court may order that any other action - other than a matrimonial action or an action in which unliquidated monetary damages are sought - proceed as a summary action where "it is likely that the matter may be completely disposed of in a summary manner." Both routes are present.

First, the statutes themselves provide for summary proceedings on two of the counts. N.J.S.A. 15A:5-2 provides that where an annual meeting has not been held within the statutory period, "the Superior Court may, upon the application of a member, summarily order the meeting or the election, or both, to be held at a time and place, upon notice and for the transaction of business as may be designated in the order." N.J.S.A. 15A:5-23 provides that "[a]ny election by members may be reviewed by the Superior Court in a summary manner, or otherwise, in an action brought by a member entitled to vote at the election," and that the Court "may confirm the election, order a new election or provide all other relief as justice may require." N.J.S.A. 15A:5-24(d) authorizes the Court to compel production of books and records on proof of a member's proper purpose. Count Five (books and records) falls within N.J.S.A. 15A:5-24(d), and the annual-meeting and election relief sought in Prayer M falls within N.J.S.A. 15A:5-2 and 15A:5-23.

Second, the remaining governance counts turn on documents, and no substantial issue of fact exists as to the facts that decide them. Whether the Association posted a schedule, gave seven days' written notice stating location and agenda, held meetings at a suitable location, took minutes, and took binding action only at open meetings (N.J.S.A. 45:22A-46(a); N.J.A.C. 5:26-8.12, 8.2(d)) is shown by the Association's own notices and minutes - and by the absence of any for fourteen years. Whether the Association provided an ADR procedure after a written demand (N.J.S.A. 45:22A-44(c)) is shown by its silence. Whether a member vote was taken on the sale or the dam is shown by the same silence. Plaintiff's Certification attaches every relevant document in his possession, and the Association was asked in writing for anything else and produced nothing. If defendants contend that some notice, meeting or vote exists that plaintiff has not seen, R. 4:67-5 permits the Court to hear that issue on affidavits or take testimony on it; it does not require conversion of the whole case to a plenary action. The counts seeking money relief and individual liability - Counts Ten (fiduciary duty), Eleven (accounting), Thirteen (damages) and Fourteen (punitive damages) - and Count Two (the 2022 conveyance) are pleaded for plenary or final-hearing disposition after the governance counts are decided, and plaintiff asks that they be severed for that purpose.

Summary disposition also serves the interests of justice for a reason particular to this record: the Association's cheapest response to a governance suit is to hold one compliant meeting before the return date and call the case moot. A voluntary change in conduct that can be reversed the day the case ends does not moot a claim for a binding order. Redd v. Bowman, 223 N.J. 87, 104 (2015). Plaintiff asks that the Court enter the governance relief as an order, whatever the Board does in the interim.

POINT III - THE BOARD'S ACTIONS ARE OUTSIDE ITS AUTHORITY AND RECEIVE NO BUSINESS-JUDGMENT DEFERENCE

Defendants will invoke the business judgment rule. It does not reach this case, because the rule protects only decisions a board was authorized to make.

The New Jersey formulation asks two questions: whether the board's action was authorized by statute or by the governing documents, and, if so, whether it was fraudulent, self-dealing or unconscionable. Papalexiou v. Tower West Condominium, 167 N.J. Super. 516 (Ch. Div. 1979); Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344, 367 (2007); Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 175 (2011) (quoting Green Party, 164 N.J. at 147-48); see Green Party of N.J. v. Hartz Mountain Indus., Inc., 164 N.J. 127, 147 (2000). The first question is dispositive here. Our Supreme Court has invalidated association action that exceeded the power delegated by the association's documents, Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650 (1988), and the Appellate Division has said plainly that "the board's conduct cannot be shielded by the 'business judgment' rule, which applies only when a board has the authority to make such a decision." Verna v. Links at Valleybrook, 371 N.J. Super. 77, 93 (App. Div. 2004). See also Sulcov v. 2100 Linwood Owners, Inc., 303 N.J. Super. 13, 31 (App. Div. 1997) ("The business judgment rule bars judicial inquiry into the decisions of the board of directors made in good faith. ... However, that rule applies where the board is authorized to make the decision. The business judgment rule does not apply to decisions that are beyond the limits of the by-laws."); Reilly v. Riviera Towers Corp., 310 N.J. Super. 265, 270 n.4 (App. Div. 1998) (quoting Sulcov; rule unavailable "where the Board is not authorized under its governing documents"); Walker v. Briarwood Condo Ass'n, 274 N.J. Super. 422 (App. Div. 1994) (no authority absent statutory or documentary basis). An association may sue and be sued by its members on the association's own duties. Siller v. Hartz Mountain Assocs., 93 N.J. 370 (1983).

The closest fit on the mechanism is Muslim Ummah Trust, Inc. v. Husaeen, Nos. A-0130-18T4, A-0271-18T4 (App. Div. Mar. 16, 2020) (per curiam), an unpublished opinion cited under R. 1:36-3 (copy served herewith; not precedential). There the Appellate Division affirmed a judgment invalidating actions of a Title 15A nonprofit taken at meetings whose notices did not

comply with the governing documents, holding that the "failure to comply with the notice requirements rendered the business judgment rule inapplicable because the actions ... were unauthorized," slip op. at 16-17, and rejecting the argument that N.J.S.A. 15A:3-2's first sentence saves an unauthorized act: "Defendants ... overlook the second part of that sentence and subsection (a): 'but the lack of capacity or power may be asserted ... [i]n a proceeding by a member or trustee against the corporation to enjoin the doing of any act[.]' N.J.S.A. 15A:3-2(a). Plaintiff did just that by bringing suit to enjoin the contested actions ...." Slip op. at 17. That is this suit.

Two anticipated arguments should be addressed now. First, defendants may say Article THIRD(g) of the Certificate lets the Board "do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the Owners." Ex. A. That clause is limited "[i]nsofar as permitted by law," Article THIRD(a) makes the transfer power "subject to the provisions of this Certificate," and Article SEVENTH is the specific provision on transfers of Common Area; the specific controls the general, and a Board that may not spend $501 without member approval under its own Book of Regulations (Ex. E) plainly may not sell the lake without them. Second, defendants may say the parcel is not "Common Area" because the Certificate's definition speaks of property "designated" by the Association. Ex. A, Art. SECOND. The Association's own minutes call it "the common lake property" and "the common property and dam" (Ex. X, para. 5(c)); the developer conveyed it for one dollar as the community's common land under a recorded Declaration whose Exhibit A includes the lake and whose Article VII vests the dam in the Association (Exs. B, C); and Article SEVENTH reaches property designated as Common Area "or the General Plan of Development." In any event N.J.S.A. 15A:10-11 applies to a disposition of substantially all assets whether or not the parcel is labeled Common Area. And the Board cannot say Lot 73 was never "designated" Common Area while it treated a 12.97-acre piece of the same lot as the Association's to sell in 2022 - a transfer that itself

was subject to Article SEVENTH and was made without the vote it requires. Exs. KK, LL; VC 81-84, 137-140.

Finally, the "not substantially all" argument. The parcel is the Association's only real property; its liquid assets were $857.94 in July 2024 and $5,600.17 in May 2026 (Exs. X, Y); and the Association exists to own and maintain the lake and dam (Ex. B, preamble and Art. VII, sec. 5). Plaintiff's request under N.J.S.A. 15A:5-24(b) for the year-end balance sheet (Ex. GG) will settle the point if defendants contest it. Article SEVENTH, moreover, does not depend on it.

POINT IV - THE DECLARATION'S 60-DAY NOTICE PROVISO DOES NOT BAR THIS APPLICATION

Article VII, Section 3 of the Declaration gives "any member" the right to enforce the Declaration by any proceeding at law or in equity, provided that a member notify the Association in writing of his intention to do so and the nature of his claim at least 60 days before doing so. Ex. B. Defendants will raise it. Plaintiff addresses it candidly.

First, the proviso governs only proceedings to enforce "restrictions, conditions, covenants, reservations, liens and charges ... imposed by the provisions of this Declaration." Counts One, Three, Four, Five and Six rest on the Certificate of Incorporation and on N.J.S.A. 15A:10-11, 15A:3-2(a), 15A:5-2, 15A:5-24, 45:22A-44(c) and 45:22A-46(a). Those are not proceedings to enforce the Declaration, and the proviso does not reach them. The Declaration itself confirms that the Association's transfer power is defined by the Certificate (Art. III, sec. 2(d)); a suit under N.J.S.A. 15A:3-2(a) to enjoin a transfer the Certificate forbids does not depend on the Declaration.

Second, as to the open-meeting, records and assessment claims, plaintiff gave the Association written notice of the nature of his claims on July 14, 2024 and again on May 20, 2026, more than 60 days before this action, and demanded compliance. Exs. W, Z. The Association recorded the

2024 notice as "not relevant to discuss or respond to" (Ex. X, para. 3(e)) and did not answer the 2026 letters. A notice provision exists so that an association can cure before it is sued; this Association was told and chose not to.

Third, as to the sale and the dam removal (Count Two), the Association concealed the facts giving rise to the claim. It told the State of its donation offers, its decision not to repair, the removal project and the sale from 2016 through August 4, 2026, and told the members nothing. VC 70-96, 125. Plaintiff learned of the sale on August 7, 2026 by a public-records request and served the supplemental Article VII, Section 3 notice naming the sale and the dam removal on August 18, 2026. Ex. GG. A party that withholds the facts that would trigger a notice period cannot then invoke the period to run out the clock while the harm it concealed goes forward; equity estops it. And a notice period cannot sensibly be read to require a member to stand aside for 60 days while the dam is removed and the contract is signed - the very acts the covenant he seeks to enforce forbids. Plaintiff therefore asks (a) that the Court hold, not dismiss, Count Two pending the running of the 60 days from the supplemental notice, if the Court concludes the proviso applies to it; and (b) that the temporary restraints and preliminary injunction issue on Count One, which does not depend on the Declaration, in the meantime. Plaintiff will supplement the record on the sixty-first day.

POINT V - NO EXHAUSTION IS REQUIRED, ADR IS NOT A BAR, AND THE PENDING DCA COMPLAINT DOES NOT CALL FOR DEFERRAL

Exhaustion. N.J.A.C. 5:26-8.14(d) provides that an owner may seek relief in the Superior Court without first pursuing or completing the Department of Community Affairs' complaint process, and N.J.A.C. 5:26-8.14(d)(1) provides that when a complaint is filed in a court of competent jurisdiction the Department holds its action in abeyance pending the court decision. Plaintiff's pending Department complaint (Ex. AA) therefore does not bar this action; on the contrary, the regulation contemplates exactly this sequence, and plaintiff will notify the Department of this

filing. Nor is deferral to the agency under primary-jurisdiction principles appropriate. Those principles apply where the agency's expertise is needed to decide the question, Boss v. Rockland Elec. Co., 95 N.J. 33 (1983); Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549 (1979); here the agency has already decided the only question within its expertise - that PREDFDA applies (Ex. L) - the remaining questions are of corporate authority under Title 15A and the Certificate, which the agency does not administer, and the Department has told plaintiff its review will take months while defendants' own timetable is measured in weeks. VC 111; Ex. DD.

ADR. N.J.S.A. 45:22A-44(c) requires the Association to "provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association ... which shall be readily available as an alternative to litigation." Defendants may argue, by analogy to the Condominium Act cases, that plaintiff must be sent to ADR first. See Finderne Heights Condo. Ass'n v. Rabinowitz, 390 N.J. Super. 154 (App. Div. 2007); Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507 (App. Div. 2012). The argument fails on this record for a simple reason: the Association has never adopted or offered any ADR procedure. Yarbrough proposed mediation in writing in 2010; plaintiff demanded ADR in writing on May 20, 2026 and asked for the Association's procedure or a statement that none exists; the Association did not respond. Ex. Z; VC 109-110, 158-160. An association that has not provided the alternative to litigation the statute requires cannot invoke that statute to keep a member out of court. The failure is itself Count Six. And ADR has nothing to say about Count One: the question whether the Board has corporate authority to convey the Association's only real property is not a "dispute between [an] individual unit owner[] and the association" of the kind the ADR provision addresses; it is a question of the members' rights under the Certificate and Title 15A, on which the members, not a mediator, are the decision-makers.

CONCLUSION

Plaintiff respectfully asks that the Court enter the Order to Show Cause with temporary restraints in the form submitted; set a return date; grant leave to proceed summarily on Counts One through Six; and, on the return date, enter the proposed Order and Judgment.

Respectfully submitted,

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Ronald W. Yarbrough, Plaintiff Pro Se

Enclosures: Verified Complaint; Certification of Ronald W. Yarbrough with Exhibits A through KKK; Certification of Kathleen A. Yarbrough (non-party witness); proposed Order to Show Cause; proposed Order and Judgment; copy of Muslim Ummah Trust, Inc. v. Husaeen (App. Div. Mar. 16, 2020) (R. 1:36-3)

cc: [on service] Lake Centerton Park Homeowners Association, Inc., c/o Clifford C. Wheaton, Registered Agent; Clifford C. Wheaton; Michael M. Rossi III

TABLE OF AUTHORITIES (for the filed version; all cites to be citator-checked before filing)

Cases - Bell Tower Condo. Ass'n v. Haffert, 423 N.J. Super. 507 (App. Div. 2012) - Boss v. Rockland Elec. Co., 95 N.J. 33 (1983) - Brown v. City of Paterson, 424 N.J. Super. 176 (App. Div. 2012) - Bubis v. Kassin, 184 N.J. 612 (2005) - Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344 (2007) - Crowe v. De Gioia, 90 N.J. 126 (1982) - Finderne Heights Condo. Ass'n v. Rabinowitz, 390 N.J. Super. 154 (App. Div. 2007) - Fleischer v. James Drug Stores, 1 N.J. 138 (1948) - Fountain House of N.J., Inc. v. Montague Twp., 13 N.J. Tax 387 (Tax 1993) - Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549 (1979) - Green Party of N.J. v. Hartz Mountain Indus., Inc., 164 N.J. 127 (2000) - Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14 (2009) - Muslim Ummah Trust, Inc. v. Husaeen, Nos. A-0130-18T4, A-0271-18T4 (App. Div. Mar. 16, 2020) (unpublished; R. 1:36-3) - N.J. Ass'n of School Administrators v. Schundler, 211 N.J. 535 (2012) - Papalexiou v. Tower West Condominium, 167 N.J. Super. 516 (Ch. Div. 1979) - Redd v. Bowman, 223 N.J. 87 (2015)

- Reilly v. Riviera Towers Corp., 310 N.J. Super. 265 (App. Div. 1998) - Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150 (2011) - Siller v. Hartz Mountain Assocs., 93 N.J. 370 (1983) - Sulcov v. 2100 Linwood Owners, Inc., 303 N.J. Super. 13 (App. Div. 1997) - Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650 (1988) - Venner v. Allstate, 306 N.J. Super. 106 (App. Div. 1997) - Verna v. Links at Valleybrook, 371 N.J. Super. 77 (App. Div. 2004) - Walker v. Briarwood Condo Ass'n, 274 N.J. Super. 422 (App. Div. 1994)

Statutes and Regulations - N.J.S.A. 15A:2-8; 15A:3-2; 15A:5-2; 15A:5-6; 15A:5-12; 15A:5-23; 15A:5-24; 15A:6-1; 15A:10-11 - N.J.S.A. 45:22A-43; 45:22A-44; 45:22A-46 - N.J.S.A. 54:5-86 - N.J.A.C. 5:26-8.2; 5:26-8.12; 5:26-8.14

Rules - R. 1:4-9; R. 1:36-3; R. 4:52-1; R. 4:52-3; R. 4:67-1; R. 4:67-5