Publication copy

Opposition brief of the Association, Wheaton and Rossi

Source: Superior Court of New Jersey, eCourts, SLM-C-000017-26, Trans ID CHC2026339507; filed by Defendants Association, Wheaton, Rossi

Published by Ronald W. Yarbrough, plaintiff, as part of the public record of Yarbrough v. Lake Centerton Park Homeowners Association, Inc., et al., Superior Court of New Jersey, Chancery Division, Salem County, Docket No. SLM-C-000017-26.

This copy is the filed or produced document with these changes only: black boxes cover (1) names, addresses, telephone numbers and e-mail addresses of persons who are not parties, (2) personal identifiers and financial account numbers (R. 1:38-7), (3) telephone and e-mail contact details, and (4) plaintiff's personal financial information, marked "Redacted: plaintiff's personal financial information". Withheld pages, if any, are replaced by a notice page. The complete document is available from the Court.

MARKS, O'NEILL, O'BRIEN, DOHERTY & KELLY, P.C.
BY: Christian M. Scheuerman, Esquire
Attorney I.D. [redacted]
BY: Stephen D. Holmes, Esquire
Attorney I.D. [redacted]
535 Route 38 East, Suite 501
Cherry Hill, NJ 08002
[redacted]

ATTORNEY FOR DEFENDANTS Lake Centerton Park Homeowners Association, Inc., Clifford C. Wheaton, and Michael M. Rossi

[redacted](CMS/SDH)

RONALD W. YARBROUGH,

PLAINTIFF,

v.

LAKE CENTERTON PARK HOMEOWNERS ASSOCIATION, INC.; CLIFFORD C. WHEATON, individually; MICHAEL M. ROSSI III, individually; MICHELE MEHAFFEY; and DOUGLAS K. MEHAFFEY,

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
SALEM COUNTY

DOCKET NO.: SLM-C-000017-26

CIVIL ACTION

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR ENTRY OF AN ORDER TO SHOW CAUSE AND A PRELIMINARY INJUNCTION AND OTHER RELIEF

On the Brief

Christian M. Scheuerman, Esquire
Stephen D. Holmes, Esquire

PRELIMINARY STATEMENT

This case involves the proposed removal of a dam at the Lake Centerton Park Homeowners Association (hereafter "the Association") and the potential sale of the dam and adjacent property to Green Acres. The Association faces a regulatory obligation that cannot be avoided: the Centerton Lake Dam located on the Association's property must be rehabilitated or formally [redacted] The Association first pursued rehabilitation. It retained engineers, obtained an NJDEP permit, obtained State financing, and spent $68,879 of its own money on design work.

However, the rehabilitation project ultimately proved beyond the financial capacity of the approximately ten-household HOA community. Estimates for the rehabilitation exceeded $1.7 million, and Plaintiff's own exhibits place the anticipated cost as high as $2 million to $3 million. The NJDEP thereafter directed the Association to proceed toward formal [redacted] if rehabilitation could not occur. The Association has followed that course by obtaining written member support, an engineering study, and has solicited assistance from State, federal, and nonprofit partners.

Plaintiff seeks to stop that solution. He characterizes the Association's multiyear compliance effort as a "secret plan" to eliminate the lake and transfer the Association property without member approval. The record shows that this allegation is completely ridiculous. Owners representing eight household interests approved the dam [redacted] in October 2021. After Green Acres offered to buy the dam and surrounding property for $315,000, seven HOA households voted unanimously to accept it.

[1] In other words, to take the dam out of use by removing it.

Plaintiff's application rests on a premise that no longer exists. He filed the Verified Complaint on August 27, 2026, alleging that no member vote to approve the dam [redacted] and sale had occurred. However, on September 8, 2026, the Association held a Special Homeowner Meeting and obtained a 7-0 vote accepting the Green Acres offer. Whatever Plaintiff may argue about the meeting's formalities,[2] he cannot establish that the HOA members were never consulted and never approved the project.

The Association maintains that the September 8 vote is valid. Neither the Yarbrough or [redacted] households were eligible to vote on September 8 because both are in arrears of HOA dues and thus in bad standing with the Association. Seven affirmative votes equals seventy percent and exceeds the two-thirds vote required to pass, even if Plaintiff and every other nonvoting household are counted and treated as opposed.

Moreover, there is presently no threat of irreparable harm so the order to show cause should be denied. For example, Green Acres has always required member consideration and a resolution approving the sale before it will execute a contract to purchase the property. No purchase agreement exists, no deed has been prepared, no closing date has been scheduled, and the State's dam-removal conditions remain unsatisfied. Removal of the dam also requires a survey, an engineer design, a hydraulic analysis, permitting, funding, contractor bidding and retention, dry-hydrant coordination,[3] and a NJDEP closeout.[4] In other words, Plaintiff seeks to

[2] Any alleged irregularity in the owner vote can be ratified at any time by the ownership and such ratification will relate back to the date of the original vote. Port Liberte II Condominium Ass'n, Inc. v. New Liberty Residential Urban Renewal Co., LLC, 435 N.J. Super. 51, 65-66 (2014).
[3] Dry-hydrant coordination requires working directly with the local fire department, private landowners, and local or state environmental agencies to plan, install, and maintain non-pressurized suction systems for rural fire suppression.
[4] An NJDEP closeout refers to the official finalization and closure of an environmental case.

restrain a transaction which has unresolved contingencies which are far from complete, not an impending conveyance.

In the order to show cause, Plaintiff also asks the Court to adjudicate disputed governing instruments, unwind a 2022 conveyance, create permanent meeting procedures, compel broad document production, invalidate assessments and liens, require tax redemption, and compel performance of a disputed dam covenant. These issues require discovery and plenary adjudication. They do not justify emergent relief.

The Court should therefore respectfully deny the preliminary injunction and decline to allow the case to proceed as a summary action.

STATEMENT OF FACTS

A. The Association First Pursued Rehabilitation of the Dam

The dam was damaged during a major rainfall event in December 2009. NJDEP directed that the impoundment be lowered, and it has remained lowered since. (VC ¶ 61; Pl.'s Br. at 5; Pl. Ex. Q; Wheaton Cert. ¶ 6.)

The Association has pursued preservation of the property through governmental or public open-space programs since 2010. Its 2010 application to the Salem County Open Space Preservation Program proposed repairing or replacing the dam and then transferring the property to Green Acres and/or the County open-space program. The County requested clarification, and Board Member Wheaton responded that the estimated project cost was not to exceed $511,000, that Green Acres had previously offered a $400,000 grant but had not confirmed whether the funding remained available.

Moreover, Wheaton further explained that the Association sought County funding for any difference between available Green Acres funding and the final project cost. Pittsgrove

Township adopted Resolution No. 2010-72 supporting the application and confirmed that the Association had authorized it on April 24, 2010. Although the proposed engineering solution later changed to [redacted] the Association continued to pursue preservation through a governmental or public entity. (Wheaton Cert. ¶¶ 27-30, Exs. Q-S.)

The Association retained engineers, obtained designs, secured NJDEP Permit No. 1494 in 2015, and activated approximately $1.2 million in State financing. (VC ¶¶ 61, 70-72; Pl. Exs. K, M-O; Wheaton Cert. ¶¶ 7-8.) It drew approximately $68,879 for engineering and design. However, rehabilitation estimates later exceeded $1.7 million. Plaintiff's own exhibits confirm estimates for the rehabilitation project between $2 million and $3 million. (VC ¶ 72; Pl. Exs. N-O; Wheaton Cert. ¶ 9.)

The Association members concluded that a community of this size could not responsibly continue borrowing toward a project whose estimated cost materially exceeded its financing. This is especially so given that the Plaintiff has a long history of failing to pay his HOA dues and is chronically in arrears. As a result, the Association discontinued further draws from the loan and continued repaying the amount already borrowed. (Wheaton Cert. ¶¶ 10-11.)

Thus, the record reflects an unsuccessful rehabilitation effort, not abandonment.

B. The NJDEP Requires Rehabilitation or Formal [redacted]

On May 24, 2021, NJDEP advised that the dam remained regulated and had to be rehabilitated or officially [redacted] Because rehabilitation would not proceed, NJDEP directed a [redacted] schedule. (VC ¶ 78; Pl. Ex. R; Wheaton Cert. ¶ 22, Ex. E.) On August 11, 2021, NJDEP supported the Association's coordination with project partners, granted additional time, and required the impoundment to remain lowered and the spillway channels clear. (VC ¶ 79; Pl. Ex. S; Wheaton Cert. ¶ 23, Ex. H.)

The Association thereafter coordinated with CU Maurice River, the United States Fish and Wildlife Service, NRCS, Princeton Hydro, Salem County, NJDEP, and Green Acres concerning removal, funding, bridge coordination, engineering, and permanent preservation. (VC ¶¶ 87-94; Pl.'s Br. at 5-7; Pl. Exs. SS-TT, VV-WW, BBB-CCC; Wheaton Cert. ¶ 24.)

C. Members and Independent Engineers Support [redacted]

On October 1, 2021, owners representing eight household interests signed a written statement supporting [redacted] and cooperation with Citizens United and State and federal agencies. (Wheaton Cert. ¶¶ 25-26, Ex. I.) The June 2022 meeting materials also addressed [redacted] the NRCS application, outside funding, and the anticipated feasibility study. (VC ¶¶ 88-89; Pl. Exs. SS-TT.)

Princeton Hydro's August 2023 study found significant erosion, deterioration of the wooden spillway, undermined stabilization features, and water passing beneath or through the spillway. A probe could be advanced by hand approximately 9.5 feet beneath the spillway apron. Princeton Hydro concluded that the structure was compromised, beyond its intended service life, and a promising candidate for removal. (Wheaton Cert. ¶¶ 31-34, Ex. J.)

The study estimated approximately $434,000 in 2023 project costs and identified substantial remaining investigation, surveying, hydraulic analysis, design, permitting, procurement, construction, dry-hydrant coordination, and closeout. (Wheaton Cert. ¶¶ 33-34, Ex. J.) These remaining steps confirm that the removal of the dam has never been imminent, and thus the present order to show cause is not appropriate.

E. Green Acres Offers a Viable But Highly Conditional Path

Green Acres' proposal to acquire the property requires State-interest review, appraisals, title and environmental review, an offer, member consideration, a Resolution to Sell, survey

work, a contract, satisfaction of conditions, and closing. Dam removal also has to occur before closing on the sale of the property. (VC ¶¶ 94-97; Pl. Ex. CCC; Wheaton Cert. ¶¶ 37-40, Ex. L-M.)

On August 19, 2026, Green Acres offered $315,000 to purchase the land. The offer provides payment in full at closing, no realty transfer tax to the Association, and State-funded title, environmental, and survey work. It also authorizes escrowed acquisition funds for eligible pre-closing engineering. (Wheaton Cert. ¶¶ 41-45, Ex. M.) The transaction thus provides a practical path to complete necessary work, satisfy valid expenses and liens, end the Association's long-term dam responsibility, and preserve the property as public open space.

Green Acres requires presentation of the offer to the membership and a Resolution to Sell before a contract can be executed. When Plaintiff filed the complaint and order to show cause on August 27, 2026, no contract existed, no deed had been prepared ready, no closing was scheduled, and the removal conditions remained unsatisfied. (Wheaton Cert. ¶¶ 45-47).

F. The Members Were Informed and Approved the Offer After the Complaint Was Filed

At the June 16, 2026 meeting, members were advised that Green Acres had completed two appraisals, would determine value and issue an offer, and would order a survey and prepare a contract only if the Association accepted. Members also were informed that removal, design, permitting, debris cleanup, and funding remained to be completed before closing. (Wheaton Cert. ¶¶ 39-40, Ex. L.)

On September 8, 2026, seven household voting interests attended a Special Homeowner Meeting. The members discussed the $315,000 price, State-paid transaction expenses, anticipated federal physical-removal assistance, debris removal, engineering costs, taxes, liens,

and remaining conditions. Rossi moved to accept the offer, [redacted] seconded, and the participating eligible households voted 7-0 in favor. (Wheaton Cert. ¶¶ 47-54, Ex. N.)

The Association treated the Yarbrough and [redacted] households as ineligible because both were substantially delinquent in HOA fees, which is a common theme for these households. That decision followed the Book of Regulations, which provides that an owner more than thirty days delinquent in dues or fines may not vote or hold office without majority consent. (Wheaton Cert. ¶¶ 53-54, Ex. F.)

The vote was sufficient even if the Court rejects that eligibility determination. The directory identifies ten ownership groups corresponding to ten voting lots or interests, one vote each. Seven affirmative votes therefore equal seventy percent and exceed two-thirds of all outstanding household or lot voting interests. (Wheaton Cert. ¶¶ 3, 57, Ex. A.)

On or about October 15, 2026, Salem County advised the Association that it had declined what the letter described as the Association's "previous proposal to donate Lake Centerton Park to the County" because the property's long-term operational and financial responsibilities did not align with the County's current budgetary and strategic plans. The letter addresses only a proposal for Salem County to accept the property; it does not refer to the August 19, 2026, Green Acres offer or otherwise address the Green Acres acquisition process. (Wheaton Cert. ¶¶ 55-56, Ex. T.)

G. The Remaining Disputes are Historical, Monetary, and Remediable

Plaintiff's claims regarding records, ADR, meeting, assessments, lien, insurance, and tax claims span decades. [redacted: plaintiff's personal financial information] (Wheaton Cert. ¶¶ 12-19). Those

records contradict Plaintiff's categorical assertions that the Association never produced records, never offered ADR, and acted without authorization.

The accounting claims are monetary. [redacted] A credit, accounting, lien adjustment, or damages remedy is adequate if Plaintiff ultimately prevails.

Defendants do not ask the Court to endorse continued tax delinquency as a permanent policy. The certificates remain redeemable, Plaintiff identifies no filed foreclosure action or fixed redemption cutoff, and the members discussed obtaining payoff information and satisfying or allocating the amount. (VC ¶¶ 106-106D, 170-175; Pl. Exs. OO, HHH; Wheaton Cert. ¶¶ 70-74.) The issue requires current payoff information and a lawful funding mechanism; it does not justify enjoining Green Acres or [redacted]

LEGAL ARGUMENT

I. Plaintiff Cannot Establish Substantial and Imminent Irreparable Harm

A preliminary injunction is extraordinary relief. Plaintiff must prove, clearly and convincingly, substantial and imminent irreparable harm, a settled legal right and reasonable probability of success, a favorable balance of hardships, and consistency with the public interest. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982); Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

Defendants do not dispute that a completed conveyance of unique real property may present concerns not fully compensable in money. But no conveyance has every been imminent. Green Acres had not even prepared a contract and multiple conditions must still be satisfied before a contract can even be executed, let alone the scheduling of closing.

Removal of the dam, one pre-condition to even execute the contract, is even under away. Final design, permitting, funding, procurement, construction planning, dry-hydrant coordination, and regulatory closeout also remain to be completed. Plaintiff's proofs establish nothing more than preliminary planning which is not a justification for a preliminary injunction.

The remaining claimed injuries are likewise remediable. Records can be produced, ADR can occur, charges can be credited, liens can be adjusted, and tax certificates can be redeemed. Those issues do not satisfy any Crowe necessary for the entry of a preliminary injunction.

II. Plaintiff Cannot Show a Settled Right or a Reasonable Probability of Success

A. The Maintenance Covenant Does Not Clearly Require Perpetual Reconstruction

Plaintiff interprets "maintenance and operation" as an absolute obligation to reconstruct and perpetually impound water regardless of cost, physical condition, or regulatory direction. The Declaration does not expressly say that. Plaintiff's interpretation also would require the Association to disregard NJDEP's lawful [redacted] directive. At minimum, the interaction between the covenant and NJDEP's directive presents a substantial merits question that cannot be resolved in Plaintiff's favor on an interlocutory record.

B. The Association Reasonably Applied the Voting Restriction, and the Vote Independently Exceeded Two-Thirds

The Association maintains that the Book of Regulations was adopted as part of its governing framework under the authority conferred by the Declaration and bylaws, and that its delinquency provision validly suspended Plaintiff's voting rights while his account remained substantially delinquent. N.J.S.A. 15A:5-10 permits voting rights to be limited or denied as specified in an association's certificate or bylaws. Plaintiff's challenge to the Regulations' status or application is a disputed merits question.

The Court need not resolve that question now. Seven affirmative votes exceed two-thirds of all ten identified lot or household voting interests even if Plaintiff is counted as eligible and opposed.

C. Plaintiff's "no vote" premise is superseded by the September 8 member action

Plaintiff's moving papers repeatedly rely on the alleged absence of any member vote. The September 8 vote changed that factual record. Plaintiff may challenge procedure, but he cannot establish likelihood of success on the premise that the members never considered the offer.

D. Plaintiff did not Comply with the Declaration's Sixty-Day Pre-Suit Notice Requirement

Article VII, Section 3 of the Declaration requires a member seeking to enforce the any Association covenant to provide written notice of the intended suit and the nature of the claim at least sixty days before filing. Plaintiff sent his demand on August 18, 2026, and then filed this action on August 27, 2026, nine days later. (VC ¶¶ 113-114; Pl. Exs. EEE-GGG.) Plaintiff's assertion of an "emergency" is simply fictitious and does not erase the notice requirement, particularly where no closing or physical removal of the dam is imminent. At minimum, noncompliance prevents Plaintiff from establishing a settled contractual right or clear likelihood of success on the Declaration-based claims

E. The Board's Good-Faith Regulatory Decisions Warrant Deference

Under the business judgment rule, Courts should not second-guess authorized association decisions absent fraud, self-dealing, unconscionable conduct, dishonesty, or incompetence. Papalexiou v. Tower West Condominium, 167 N.J. Super. 516, 526-29 (Ch. Div. 1979); Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344, 369-70 (2007). The Board relied on NJDEP, engineers, agencies, funding partners, member action, and financial

realities. Plaintiff identifies no personal benefit to Wheaton or Rossi. Thus, the business judgment rule and the order to show cause should be dismissed.

III. The Balance of Hardships and Public Interest Favor Continued Regulatory Compliance

An injunction would leave approximately ten households responsible for a compromised regulated dam while delaying the only financially viable route to compliance and preservation. The $315,000 acquisition, engineering escrow, State-paid due diligence, and anticipated federal assistance substantially reduce that burden. Delay risks increased professional costs, lost agency participation, continued tax and insurance exposure, and regulatory enforcement.

Plaintiff faces no comparable interim hardship. Title cannot pass without a contract, satisfied conditions, dam removal, and closing. Any additional member-approval formalities can occur before execution or deed delivery. The public interest favors safety, compliance, environmental restoration, informed member action, and preservation as public open space.

IV. Plaintiff's Proposed Restraints Are Broader Than the Harm He Alleges and Would Alter the Status Quo

Plaintiff claims injury from a final conveyance of the land and removal of the dam which has not even happened yet and which are not even on the horizon. The status quo is a lowered impoundment of the lake and an active regulatory process. The Association must remain free to inspect and monitor the dam, clear channels and obstructions, perform engineering and hydraulic work, prepare designs and permits, pursue grants, communicate with agencies, complete title, survey and environmental work, obtain estimates, solicit contractors, and perform preventive or emergency work.

V. A R. 4:67 Summary Action is Not Appropriate in this Case

Each count Plaintiff seeks to adjudicate summarily turns on contested facts or law: Count One requires interpretation of the maintenance covenant in light of NJDEP's directive. Count Three requires examination of the authorization and ratification of the 2022 and proposed transactions. Count Four requires proof concerning meeting notices, locations, attendance, waiver, and action. Count Five requires proof of the requests, prior productions, privilege, possession, confidentiality, and good standing. Count Six requires the complete ADR history and identification of disputes suitable for ADR. Count Seven requires proof of adoption and calculation of each assessment; and Count Eight requires examination of the rehabilitation history, engineering condition, regulatory requirements, and financial feasibility.

Plaintiff attempts to infer the nonexistence of corporate action from gaps in his personal records. The Association has produced contrary contemporaneous documents. Authenticity, completeness, credibility, and accounting cannot be resolved through summary treatment. The requested counts should proceed on the regular discovery track.

VI. Any Approval Uncertainty Can Be Cured Through a Confirmatory Vote

The Association does not concede that the September 8 vote is deficient. But if the Court determines that there are any technical irregularities the remedy is a ratification vote, not an injunction. Port Liberte II holds that an act within an association's corporate power, but allegedly lacking authorization, may be ratified at any time and such ratification dates back to the original action. Port Liberte II, 435 N.J. Super. at 65-68.

VII. The Remaining Mandatory Relief Should Be Denied

A. Records

Defendants recognize that Plaintiff may be entitled to appropriate nonprivileged corporate records. The dispute concerns scope, privilege, confidentiality, possession, redaction, and Plaintiff's demand that every category be produced to every member within ten days. Production should proceed through ordinary discovery.

B. Tax Redemption.

The tax redemption issue is now moot. The Association redeemed the tax certificates on September 28, 2026. (Wheaton Cert. ¶¶ 75).

CONCLUSION

Defendants respectfully request that the Court:

1. Deny Plaintiff's application for preliminary restraints and a preliminary injunction;
2. Deny Plaintiff's request for Rule 4:67 summary treatment;
3. Place any remaining non-ADR claims on the ordinary discovery track;
4. Dismiss without prejudice suitable internal governance, records, assessment, lien, election, and meeting disputes for ADR;
5. Permit all safety, maintenance, engineering, design, permitting, funding, environmental, survey, title, agency-coordination, and other reversible regulatory work to continue; and
6. Deny Plaintiff's remaining mandatory and catch-all relief.

MARKS, O'NEILL, O'BRIEN, DOHERTY & KELLY, P.C.

/s/ *Christian M. Scheuerman*
Christian M. Scheuerman, Esquire
Stephen D. Holmes, Esquire
Attorney for Defendant(s),
Lake Centerton Park Homeowners Association, Inc.
,

Date: October 22, 2026

[redacted] v. 2