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Opposition brief of the Mehaffey defendants

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efendants, Michele Mehaffey and Douglas K. Mehaffey

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-17-26 Civil Action

BRIEF IN OPPOSITION TO PLAINTIFF'S ORDER TO SHOW CAUSE
on behalf of
DEFENDANTS MICHELE MEHAFFEY and DOUGLAS K. MEHAFFEY

On the Brief:
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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

PRELIMINARY STATEMENT 4

STATEMENT OF FACTS AND PROCEDURAL HISTORY 5

LEGAL ARGUMENT 9

POINT I — The Mehaffey Defendants Take No Position on the Dispute Over the Lake, the Dam, and the Association's Governance, But Any Relief on the Return Date Should Be Expressly Limited So That It Does Not Reach the 2022 Deed or the Mehaffey Parcel 9

POINT II — Plaintiff Cannot Satisfy Any of the Crowe Factors as to a Conveyance Completed and Recorded More Than Four and One-Half Years Before Suit 11

A. There Is No Threat of Irreparable Harm to Plaintiff from the 2022 Conveyance 11

B. Plaintiff's Claim to Void the Deed Rests on No Settled Right and Has No Reasonable Probability of Success 12

C. The Balance of Hardships Weighs Decisively Against Any Relief Touching the Mehaffey Parcel 16

POINT III — The Challenge to the 2022 Deed Cannot Be Decided Summarily Under R. 4:67 and Should Proceed, With Count Two, on the Plenary Track 17

POINT IV — The Expedited Disclosure in Paragraph D of the Order to Show Cause Should Not Be Directed to the Mehaffey Defendants 18

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Brown v. City of Paterson, 424 N.J. Super. 176 (App. Div. 2012) 11

County of Morris v. Fauver, 153 N.J. 80 (1998) 13

Crowe v. De Gioia, 90 N.J. 126 (1982) 5, 11, 16

Fox v. Millman, 210 N.J. 401 (2012) 13

Garden State Equality v. Dow, 216 N.J. 314 (2013) 11

Knorr v. Smeal, 178 N.J. 169 (2003) 13

Muslim Ummah Trust, Inc. v. Husaeen, Nos. A-0130-18T4, A-0271-18T4 (App. Div. Mar. 16, 2020) (unpublished) 12

Statutes

N.J.S.A. 15A:3-2 .....12, 17

N.J.S.A. 15A:10-11 .....8, 14

Court Rules

R. 1:36-3 .....12, 13

R. 4:28-1(a) 4

R. 4:67-1 17

Other Authorities

Declaration of Covenants and Restrictions, DB 703, Pg 1, Art. VII, §§ 3, 5(c) 8, 10, 15, 17

Certificate of Incorporation, Lake Centerton Park HOA, Art. SEVENTH 8, 15

PRELIMINARY STATEMENT

Defendants, Michele Mehaffey and Douglas K. Mehaffey (the "Mehaffey Defendants") are not part of the dispute that brought Plaintiff to this Court on an emergent basis. That dispute concerns whether the Board of Defendant Lake Centerton Park Homeowners Association, Inc. (the "Association") may sell the remainder of Block 1503, Lot 73 to the State through the Green Acres Program and remove the Centerton Lake dam without a vote of the members. The Mehaffey Defendants are not parties to the Green Acres transaction, have no role in the dam, are not members of the Association, and are accused of no wrongdoing. Plaintiff concedes as much. He joins them "solely as necessary parties under R. 4:28-1(a)," and he seeks no money judgment and no costs against them. *CHC2026274709, Verified Complaint ("VC")* ¶¶ *3A, 9*.

The Mehaffey Defendants are here because, in February 2022, they paid the Association $20,000 for 12.97 acres of open farmland on the west side of the lake, lying between two (2) farms they own, to be added to their adjoining Lot 79. They did so after the Association's President and Treasurer signed a written contract of sale, after the Association wrote to every member proposing the sale, after the Pittsgrove Township Planning Board approved the subdivision at a public meeting, and under a Deed executed by the Association's Secretary, signed by the Planning Board's Chair and Secretary, and recorded at Deed Book 4621, Page 116 (the "Deed" and the "Mehaffey Parcel").

Plaintiff received the Association's April 25, 2021, letter proposing the sale and chose not to respond. The Association then told the members, in February 2022 and again in May 2022, that the sale had closed and that the $20,000 had been applied to the Association's State dam loan, a debt that was later paid in full for the benefit of every member, Plaintiff included. Plaintiff said nothing for four and one-half years.

In the meantime, the Mehaffey Defendants openly used the land as part of their farm, paid its taxes, and put approximately $81,000 into acquiring, subdividing, and improving it.

Although Plaintiff's brief says that the claim concerning the 2022 conveyance belongs on the plenary track, his Order to Show Cause asks for leave to proceed summarily on Count Three, whose demand for relief runs against the Mehaffey Defendants and asks the Court to declare the Deed void. The Mehaffey Defendants therefore submit this limited Opposition and ask for four (4) things. First, that any relief entered on the return date be expressly limited so that it does not reach the Mehaffey Parcel or adjudicate the validity of the Deed. Second, that no preliminary relief issue against them, because Plaintiff cannot meet any of the Crowe v. De Gioia factors as to a conveyance completed in 2022. Third, that the challenge to the Deed, which turns on disputed facts and equitable defenses, proceed with Count Two on the plenary track. Fourth, that the ten-day expedited disclosure in paragraph D not be directed to them. On every other issue between Plaintiff and the Association, the Mehaffey Defendants take no position.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The parties and the Parcel. The Association is a New Jersey nonprofit corporation that, before 2022, held record title to Block 1503, Lot 73, Pittsgrove Township, comprising Centerton Lake, the dam, and surrounding land. *VC ¶¶ 6, 34-35*. The Mehaffey Defendants, who are husband and wife, reside in Bridgeton, where they operate Parsonage Run Nursery, and own adjoining Lot 79 in Block 1503, a farm they bought in April 2021. *VC ¶ 9; Certification of Douglas K. Mehaffey and Michele Mehaffey ("Mehaffey Cert.") ¶¶ 1-3*. The land they later bought from the Association was farmland lying between Lot 79 and another farm they had bought in 2020 (Block 1503, Lot 1), and was already being farmed by that farm's prior owner. *Mehaffey Cert. ¶¶ 4-5*. They are not members of the Association and have never attended an Association meeting, voted, or claimed a vote. *Id. ¶¶ 11-12*.

The Mehaffey Defendants' offer. In April 2021, the Mehaffey Defendants met with Defendant Michael Rossi, went over the Association's property map, and told him they wished to buy approximately ten (10) acres of the farmland to join their two (2) farms. *Mehaffey Cert. ¶¶ 6-7*. On April 22, 2021, Mr. Rossi emailed them the text of a proposed offer letter, and on April 24 they sent him a written offer of $20,000, offering to pay for the survey and subdivision and asking that he "take this offer to your lake members and have them agree to this proposal." *Id. ¶¶ 8-9 & Ex. A*.

The April 25, 2021 letter. The next day, by letter dated April 25, 2021, the Association, through its Secretary/Treasurer, Clifford C. Wheaton, proposed to every member the sale of "the 10 + acres of our land that is located on the west side of the lake" for $20,000, invited objections, and stated that members who did not respond by April 30th would be noted as agreeing that the Association should proceed. *VC ¶ 81; Certification of Ronald W. Yarbrough ("Yarbrough Cert.") ¶ 14(f) & Ex. UU*. Plaintiff admits that he received the letter and did not respond to it. *Yarbrough Cert. ¶¶ 14(f), 49*. He does not allege that any member objected.

The contract of sale. The Association then accepted the offer. Id. ¶ 10. By an Agreement for Sale of Real Estate dated May 24, 2021, signed for the Association on May 18, 2021, by its President, [redacted] and by Mr. Wheaton as Treasurer, the Association agreed to sell approximately ten-plus acres for $20,000, the land to be surveyed and added to Lot 79 by minor subdivision, with the Mehaffey Defendants to pay the survey and closing costs. *Id. ¶¶ 13-14 & Ex. B*. The Mehaffey Defendants paid the $2,000 deposit the Agreement required. *Id. ¶ 15*.

The subdivision and the conveyance. At their own expense, the Mehaffey Defendants retained Pennell Land Surveying, Inc., to prepare a boundary survey and Plan of Minor Subdivision and applied to the Pittsgrove Township Planning Board for approval. *Mehaffey Cert. ¶¶ 17-19 & Exs. C, D*. The Board Engineer reported that no variances were requested and that the

land would continue to be farmed. *Id. ¶ 20 & Ex. D*. The Board heard the application at a public meeting on November 9, 2021, took sworn testimony, and granted minor subdivision approval, memorialized by Resolution No. 21-17 adopted November 23, 2021. *VC ¶ 82; Mehaffey Cert. ¶¶ 21-22 & Ex. E*. By deed dated February 7, 2022, and recorded February 8, 2022, at Deed Book 4621, Page 116, the Association, by Mr. Wheaton as Secretary, conveyed 12.97 acres, more or less, to the Mehaffey Defendants for $20,000, "to be added to Lot 79." *VC ¶ 83; Yarbrough Cert. ¶ 49 & Ex. KK; Mehaffey Cert. ¶¶ 23-25 & Ex. F*. As the Resolution required, the Deed also bears the signatures of the Planning Board's Chair and Secretary. *Mehaffey Cert. ¶ 24 & Ex. F*. The Mehaffey Defendants paid the full price, and Mr. Wheaton signed the settlement statement for the Association. *Id. ¶¶ 15, 26-27 & Ex. G.* The same day, the Mehaffey Defendants combined the Parcel with Lot 79 by a deed recorded at Deed Book 4621, Page 121, and Mr. Wheaton signed a deed for the remainder of Lot 73 that the Association kept. *Id. ¶¶ 28-29 & Ex. H*. That remainder is approximately 87.2 acres. *Id. ¶ 17 & Ex. C; Pl.'s Br. (Statement of Facts) (citing Exs. KK, LL)*.

Notice to the members and application of the proceeds. By letter dated February 19, 2022, Mr. Wheaton told the members that the sale had closed and that the $20,000 would be applied to the principal of the Association's State dam loan, attaching a payment schedule reflecting that application. *Yarbrough Cert. ¶ 49 & Ex. VV*. The May 28, 2022 notice of the June 15, 2022 members' meeting again reported the completed land sale and the application of the $20,000 to the loan, and the June 15, 2022 minutes record the sale. *Id.; VC ¶¶ 85-86; Exs. SS, TT*. Plaintiff pleads that the June 15, 2022 meeting "was noticed to Yarbrough." *VC ¶ 119*. The State loan was paid in full in April 2023. *VC ¶ 90*.

The Mehaffey Defendants' reliance. Since February 2022, the Mehaffey Defendants have treated the Parcel as part of Lot 79, with which they combined it by recorded deed, and have paid the real estate taxes on it; the combined lot is assessed as qualified farmland. *Mehaffey Cert.*

¶¶ *28, 35 & Ex. J*. Their use of the Parcel has been open and visible, and they have invested in it: they installed a two-tower irrigation pivot at a cost of approximately $40,000 and an underground irrigation main at a cost of approximately $3,600, and spent approximately $10,000 trimming back the edge of the woods. *Id.* ¶ *37*. Beyond the $20,000 price, they paid $7,674.65 for the survey, the Planning Board's professional review, preparation of the subdivision deeds, and settlement charges including title insurance, recording fees, and realty transfer fee, for a total acquisition cost of $27,674.65. *Id.* ¶ *34 & Exs. C, G, I*. No house or other residential structure has been built on the Parcel. *Id.* ¶ *33*. From the closing until the Mehaffey Defendants were served with this action, no one, including Plaintiff, ever told them of any objection to the sale or any claim that the Deed was invalid. *Id.* ¶ *36*.

This action. Plaintiff filed his Verified Complaint and proposed Order to Show Cause on August 27, 2026, more than four and one-half years after the Deed was recorded. His emergent application is directed to the pending Green Acres sale of the remainder of Lot 73 and the planned removal of the dam. *Pl.'s Br., Point I.A*. As to the 2022 conveyance, Count Two alleges that the subdivision violated the Declaration's statement that "Block 87, Lot 1" shall "not be subdivided," and Count Three alleges that the conveyance violated Article SEVENTH of the Certificate of Incorporation and N.J.S.A. 15A:10-11; both ask the Court to declare the Deed void and restore the Parcel to the Common Area. *VC* ¶¶ *132-145*. Count Three's demand for relief runs against the Mehaffey Defendants. Plaintiff's brief states that Count Two ("the 2022 conveyance") should be severed for plenary disposition, *Pl.'s Br., Point II*, and acknowledges that his pre-suit notice of the conveyance claims under Article VII, Section 3 of the Declaration was not given until August 18, 2026, nine days before he filed. *VC* ¶ *130; Pl.'s Br., Point IV*.

On September 1, 2026, the Court entered the Order to Show Cause, denied all temporary restraints, and set a return date of November 2, 2026. The temporary restraints Plaintiff sought

were directed only to the Association, Mr. Wheaton, and Mr. Rossi. The Order requires defendants to file opposition by October 22, 2026. The Order also lists as relief sought on the return date: (A) a preliminary injunction against any transfer of Block 1503, Lot 73; (B) a preliminary injunction against work on the dam; (C) leave to proceed summarily on Counts One, Three, Four, Five, Six, Seven, and Eight; (D) ten-day expedited disclosure by "defendants," including "the subdivision application, any authorization, the closing statement and the disposition of proceeds of the conveyance recorded February 8, 2022 at Deed Book 4621, Page 116"; (E) a members' meeting; and (F) redemption of the tax sale certificates.

The Mehaffey Defendants previously filed their Answer, Separate Defenses, and Contingent Crossclaims separately. *CHC2026336133*.

LEGAL ARGUMENT

POINT I. THE MEHAFFEY DEFENDANTS TAKE NO POSITION ON THE DISPUTE OVER THE LAKE, THE DAM, AND THE ASSOCIATION'S GOVERNANCE, BUT ANY RELIEF ON THE RETURN DATE SHOULD BE EXPRESSLY LIMITED SO THAT IT DOES NOT REACH THE 2022 DEED OR THE MEHAFFEY PARCEL.

The Mehaffey Defendants take no position on whether the Association may sell the remainder of Lot 73 to the State, whether the dam may be removed, how the Association must notice its meetings, or whether it must redeem the tax sale certificates. Those questions are between Plaintiff and the Association. But several forms of relief Plaintiff seeks are drafted broadly enough to reach the Mehaffey Parcel and the Deed, and the Mehaffey Defendants ask that any order entered on the return date say plainly that it does not.

First, paragraph A of the Order to Show Cause would enjoin "defendants" and "all persons acting in concert with them" from executing any instrument "transferring or agreeing to transfer any interest in the real property known as Block 1503, Lot 73." The Mehaffey Defendants are

named defendants. The Mehaffey Parcel was subdivided out of Lot 73 in 2021 and has been part of Lot 79 since 2022. An injunction phrased in terms of "Lot 73" and directed to all "defendants" would, at a minimum, cast a cloud over the Mehaffey Defendants' title and their ability to finance, encumber, or deal with their own land, though Plaintiff alleges no threatened transfer of the Parcel and seeks no restraint against them. Any injunction should be limited to the Association, its officers and agents, and the land the Association now holds.

Second, Count One and paragraph A of the Prayer for Relief seek a declaration that the covenants of Article VII, Section 5 of the Declaration are "valid, subsisting and enforceable by [plaintiff] against the Association and against any successor in title." *VC ¶ 131*. The Mehaffey Defendants are, on Plaintiff's theory, successors in title to part of the former Lot 73. Whether Article VII, Section 5(c) applies to the Mehaffey Parcel at all, and whether its conveyance to an adjoining owner as open land breached that covenant, are the subject of Count Two, which Plaintiff himself assigns to the plenary track. Any summary declaration under Count One should state that it does not adjudicate those questions.

Third, Count Three is on the list of counts Plaintiff asks to decide summarily, and it contains the request to declare the Deed void. *VC ¶¶ 141-142*. As shown in Points II and III, that request cannot be decided summarily and should be severed. If the Court grants summary treatment of Count Three as it relates to the pending Green Acres transaction, the order should state that the portion of Count Three directed to the 2022 conveyance proceeds on the plenary track.

These limits cost Plaintiff nothing. His emergent harm, as he describes it, is the loss of the lake and the dam through the pending sale to the State. *Pl.'s Br., Point I.A*. The Mehaffey Parcel is not part of that sale and has nothing to do with the dam. Limiting the order protects innocent third parties without diminishing any relief Plaintiff legitimately needs before final hearing.

POINT II PLAINTIFF CANNOT SATISFY ANY OF THE CROWE FACTORS AS TO A CONVEYANCE COMPLETED AND RECORDED MORE THAN FOUR AND ONE-HALF YEARS BEFORE FILING SUIT.

A party seeking a preliminary injunction must show that the relief is necessary to prevent irreparable harm, that the legal right underlying the claim is settled, that there is a reasonable probability of ultimate success on the merits, and that the balance of hardships favors relief. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982); Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Each factor must be shown by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012). Disputed facts do not invariably preclude interim relief, and courts may take a less rigid view of the factors when relief merely preserves the status quo. Brown, 424 N.J. Super. at 183; Garden State Equality, 216 N.J. at 320. Interim relief exists to preserve the status quo pending a decision on the merits. *See* Crowe, 90 N.J. at 132-34. As to the Mehaffey Parcel, the status quo, for more than four and one-half years, is that the Mehaffey Defendants own it.

A. There Is No Threat of Irreparable Harm to Plaintiff from the 2022 Conveyance.

Plaintiff's showing of irreparable harm is about two things: the removal of the dam and a conveyance of the lake parcel to the State. *Pl.'s Br., Point I.A*. Neither involves the Mehaffey Parcel. The Parcel is not part of any proposed sale to the State and has nothing to do with the dam. *Mehaffey Cert.* ¶ *38*. Nothing is about to happen to it. It remains in agricultural use, no residential structure has been built on it, and Plaintiff does not allege that it is being sold, developed, or built upon. *Id.* ¶¶ *33, 35, 37 & Ex. J*. A conveyance completed in February 2022 is not a harm that can be prevented by an injunction entered in November 2026. Whatever rights Plaintiff claims in the Parcel can be fully adjudicated at final hearing.

B. Plaintiff's Claim to Void the Deed Rests on No Settled Right and Has No Reasonable Probability of Success.

1. N.J.S.A. 15A:3-2 supports denial of interim rescission of the completed conveyance.

Plaintiff's theory is that the Association lacked the power to convey without a member vote. The Nonprofit Corporation Act provides that no corporate act or conveyance shall be invalid because the corporation lacked capacity or power, subject to specified proceedings. N.J.S.A. 15A:3-2. Subsection (a) permits a member or trustee to seek to enjoin a corporate act or transfer. If the unauthorized act or transfer is or is to be performed or made pursuant to a contract, the court may, with all contracting parties joined and if equitable, set aside and enjoin performance, and may allow compensation for resulting loss or damage, excluding anticipated profits. N.J.S.A. 15A:3-2(a). That language supports the Mehaffey Defendants' argument that a fully performed 2022 conveyance differs from a transfer whose performance remains to be enjoined. The statute does not expressly resolve every challenge to a completed deed, however, and this argument does not dispose of independently asserted covenant claims. Subsection (b) permits proceedings by the corporation, directly or through specified representatives or members in a representative suit, against incumbent or former officers or trustees; subsection (c) authorizes specified proceedings by the Attorney General. N.J.S.A. 15A:3-2(b), (c).

Muslim Ummah Trust, Inc. v. Husaeen, Nos. A-0130-18T4, A-0271-18T4 (App. Div. Mar. 16, 2020) (unpublished), on which Plaintiff relies, does not resolve the third-party conveyance issue.[1] There, the Appellate Division applied N.J.S.A. 15A:3-2(a) in affirming relief concerning internal governance measures adopted in 2013 and 2014, challenged in a suit filed in 2017. The decision therefore cannot be distinguished solely on the ground that the challenged acts had already occurred. Rather, it concerned corporate governance measures and their continuing operation, not

[1] A copy of this unreported decision is included herewith. R. 1:36-3

rescission of a fully executed deed to third-party purchasers. It supplies no holding that compels interim rescission here. The decision is unpublished and nonprecedential; and its citation is subject to the service requirements of R. 1:36-3. Plaintiff's own Prayer for Relief tracks the statute, asking the Court to set aside "any such contract" for the State sale "upon joinder of the other parties to it." *VC, Prayer ¶ C*. The completed conveyance presents a materially different remedial question that should not be resolved against the purchasers on this interim record.

2. Laches, acquiescence, and ratification present substantial defenses to equitable rescission.

Laches bars enforcement of a known right when a party engages in "inexcusable and unexplained delay" in exercising it, to the prejudice of the other party. Knorr v. Smeal, 178 N.J. 169, 180-81 (2003); *see* Fox v. Millman, 210 N.J. 401, 417-18 (2012). The court considers the length of the delay, the reasons for it, and the changing conditions of the parties during the delay. County of Morris v. Fauver, 153 N.J. 80, 105 (1998). Fox rejects use of laches to shorten the limitations period governing an otherwise timely action at law, while distinguishing claims for equitable relief. Fox, 210 N.J. at 418-22. Here, the Mehaffey Defendants invoke laches against the equitable request to set aside the Deed, not as a substitute limitations period for a timely claim for damages. County of Morris, which rejected laches on its record, likewise requires attention to knowledge and prejudice, not delay alone. Fauver, 153 N.J. at 105. Plaintiff's papers provide substantial grounds for that fact-sensitive defense. He received the April 2021 letter proposing the sale and chose not to respond. *Yarbrough Cert. ¶ 14(f)*. He was told in February 2022 that the sale had closed. *Yarbrough Cert. ¶ 49 & Ex. VV*. The June 2022 meeting notice, which he pleads was "noticed to Yarbrough," reported the completed sale again. *VC ¶ 119; Ex. SS*. The Deed has been of record since February 8, 2022. Plaintiff does not explain why he waited until August 2026. His stated reason for urgency, his August 7, 2026, discovery of the Green Acres negotiations (*VC* ¶

96), has nothing to do with a conveyance he knew about in 2021 and 2022. Meanwhile the Mehaffey Defendants paid $27,674.65 to buy, subdivide, and close on the Parcel, combined it with Lot 79 by recorded deed, paid the taxes, and, openly and visibly, invested approximately $53,600 more in irrigation and in clearing the wood line. *Mehaffey Cert. ¶¶ 26-29, 34-35, 37 & Exs. G-J*. That is precisely the change in the parties' positions that laches protects.

The same facts support consideration of acquiescence and corporate ratification, subject to proof of the knowledge and authority necessary to give the Association's conduct that effect. The Association did not merely stand by. Its President and Treasurer signed the contract of sale, and its Secretary signed the Deed, the deed for the Association's remainder, and the settlement statement. *Mehaffey Cert. ¶¶ 13-14, 24, 27, 29 & Exs. B, F, G, H*. The Association solicited objections from its members, received none, accepted the purchase price, applied it to the principal of its State dam loan, reported the sale and the use of the proceeds to every member twice, and recorded the sale in the minutes of a members' meeting, without objection. *Exs. UU, VV, SS, TT; VC ¶¶ 85-86*. The loan was then retired for the benefit of every member. *VC ¶ 90*. The Association's receipt and use of the proceeds bear on the equitable defenses and any appropriate remedy, but Plaintiff's individual silence or indirect benefit does not by itself establish corporate ratification or compliance with a required member vote. The identity, knowledge, and authority of those whose conduct is relied upon remain matters for plenary development. *Equity* should also consider the disposition of the purchase price before ordering restoration of the land.

3. The present record does not establish a disposition of "all, or substantially all" of the Association's assets.

N.J.S.A. 15A:10-11(a) requires a member vote only for 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." The Mehaffey Parcel was 12.97 acres. The Association retained approximately 87.2

acres, including the lake and the dam. *Pl.'s Br. (Statement of Facts)*. The limited acreage conveyed and retention of the lake and dam support the defense position that the transaction did not dispose of substantially all assets. The statute establishes no acreage-percentage safe harbor, however, and acreage alone is not conclusive. The relative value and significance of the assets conveyed and retained require development before that statutory threshold can be finally resolved. This statutory argument also does not eliminate any independent voting requirement imposed by the governing documents.

4. Article SEVENTH and the Declaration raise disputed questions, not settled rights.

Whether Article SEVENTH of the Certificate of Incorporation applied depends on whether the Parcel was "Common Area," which the Certificate defines by reference to property designated by the Association; Plaintiff anticipates that dispute and argues it. *Pl.'s Br., Point III*. Whether Article VII, Section 5(c) of the Declaration applies depends on whether "Block 87, Lot 1" on the 1987 tax map included the Mehaffey Parcel, which Plaintiff alleges but the Mehaffey Defendants cannot confirm (*VC ¶ 32*), and on whether a covenant that the land "will remain open and shall not be subdivided nor allowed to have residential structures thereon" is breached by conveying open farmland, with municipal subdivision approval, to an adjoining farmer who keeps it in agricultural use and builds no residence. *VC ¶ 30; Mehaffey Cert. ¶¶ 20-22, 33, 37 & Exs. D, E, J.* Plaintiff also concedes that his pre-suit notice under Article VII, Section 3 of the Declaration was given nine (9) days before he sued, not sixty (60). *VC ¶ 130*.

Moreover, the Mehaffey Defendants, who are not members, dealt with the Association through its officers at every step. Mr. Rossi solicited their offer and was asked to put it to the members; the Association's President and Treasurer then signed the contract of sale; and, after public subdivision approval, its Secretary signed the Deed and the settlement statement. *Mehaffey*

Cert. ¶¶ 6-9, 13-14, 21-27 & Exs. A, B, E, F, G. Those circumstances bear on the Mehaffey Defendants' claimed good-faith reliance, but officers' acts do not themselves conclusively establish member assent or apparent authority. Any apparent-authority defense requires examination of manifestations attributable to the Association and the reasonableness of the purchasers' reliance, rather than the officers' own assertions alone. Planning Board approval does not itself establish compliance with the Association's internal voting requirements. They had no access to the Association's books or records, were never told of any objection or of any need for a further vote, knew of no defect in the Association's authority, and relied on its officers' acts and the Planning Board's approval. *Mehaffey Cert. ¶¶ 16, 30-31*. These are contested questions of fact and law. They are not the "settled" rights Crowe requires.

C. The Balance of Hardships Weighs Decisively Against Any Relief Touching the Mehaffey Parcel.

On one side is Plaintiff, who seeks no money from the Mehaffey Defendants, identifies no harm the Parcel is causing him, and waited four and one-half years to complain. On the other side are the Mehaffey Defendant who are good-faith purchasers that paid full value, spent another $7,674.65 to survey, subdivide, and close, invested approximately $53,600 more in irrigation and clearing, have relied on their title since 2022, and stand to lose land that joins their two farms and has been part of their farm for more than four and one-half years. *Mehaffey Cert. ¶¶ 4-5, 28, 33-39*. If the Deed were set aside, the Mehaffey Defendants' recourse would be against an Association whose bank balance Plaintiff himself places at $857.94 in July 2024 and $5,600.17 in May 2026, whose only real property is subject to two (2) tax sale certificates, and which spent the purchase price retiring its State loan. *VC ¶¶ 90, 102, 106C; Pl.'s Br. (Statement of Facts)*. Equity does not unwind a completed purchase on those terms, and certainly not on an interim application.

POINT III. THE CHALLENGE TO THE 2022 DEED CANNOT BE DECIDED SUMMARILY UNDER R. 4:67 AND SHOULD PROCEED, WITH COUNT TWO, ON THE PLENARY TRACK.

R. 4:67-1(b) applies to qualifying actions when, on a properly noticed motion, it appears likely that the matter may be completely disposed of in a summary manner. Where a party objects to trial on the pleadings and affidavits and there may be a genuine issue of material fact, the court must hear evidence on the matters genuinely in issue. Id. The Rule permits an evidentiary hearing within the summary proceeding; an objection or factual dispute does not automatically require conversion. For good cause shown, however, the court may order the action to proceed as a plenary action. Ibid. The Mehaffey Defendants object to adjudication of the Deed's validity on the present papers and request plenary treatment for the reasons that follow.

Plaintiff's summary-track argument is that the governance counts "turn on documents" and on "the absence of documents the Association was required to keep." *Pl.'s Br., Point II*. That may be true of whether the Association held open meetings or posted a schedule. It is not true of the challenge to the Deed. Laches, acquiescence, and ratification depend on what Plaintiff knew and when, why he waited, and what the Mehaffey Defendants did in reliance. Bona fide purchaser status and apparent authority depend on what the Mehaffey Defendants knew and were told before closing. The Declaration claim depends on the location of "Block 87, Lot 1" on a 1987 tax map and on the purpose of the open-space covenant. If relief under N.J.S.A. 15A:3-2(a) is available, its equitable conditions and compensation provisions require consideration of the Mehaffey Defendants' payments, taxes, and improvements since 2022. *See Mehaffey Cert.* ¶¶ *34-37*. The breadth of those factual issues, the need for discovery, and the overlap with Count Two constitute good cause for plenary treatment rather than final adjudication on the present papers.

Plaintiff himself recognizes this. He asks that Count Two, which he describes as "the 2022 conveyance," be severed for plenary disposition, *Pl.'s Br., Point II*, and his proposed final order

puts Count Two on the plenary track, *Proposed Order & Judgment ¶ 10*. Counts Two and Three seek identical relief as to the Deed and rest on the same facts. Hearing the Deed challenge in two (2) pieces on two (2) tracks would risk inconsistent results and waste the parties' and the Court's resources. The portion of Count Three directed to the 2022 conveyance (*VC ¶¶ 141-142*) should proceed with Count Two as a plenary action.

POINT IV. THE EXPEDITED DISCLOSURE IN PARAGRAPH D OF THE ORDER TO SHOW CAUSE SHOULD NOT BE DIRECTED TO THE MEHAFFEY DEFENDANTS.

Paragraph D would order "defendants," within ten days, to produce Association records, including "the subdivision application, any authorization, the closing statement and the disposition of proceeds of the conveyance" recorded at Deed Book 4621, Page 116. The Mehaffey Defendants do not object to the Association producing its own records, and they would welcome production of the Association's authorizations and its records of the members' response to the April 2021 letter. The records of the sale, the subdivision, and the closing that are in the Mehaffey Defendants' possession are already before the Court as exhibits to their Certification, including the contract of sale, the Planning Board's resolution, the Deed, the settlement statement, and the invoices for the survey, review, and deed preparation. *Mehaffey Cert. Exs. A-J*. But the Mehaffey Defendants are not the Association, have no access to its books, minutes, votes, or record of members, and should not be subject to a ten-day production order in an emergent proceeding directed at the Association's governance. *Mehaffey Cert. ¶ 16*. Any further discovery from the Mehaffey Defendants should proceed in the ordinary course under the rules governing plenary actions.

CONCLUSION

For these reasons, the Mehaffey Defendants respectfully request that the Court enter the accompanying form of Order: ***(1)*** denying Plaintiff's application to the extent it seeks preliminary

or summary relief against the Mehaffey Defendants or affecting the Mehaffey Parcel or the Deed; ***(2)*** providing that any preliminary injunction or declaration entered on the return date does not apply to the Mehaffey Defendants or the Mehaffey Parcel and does not adjudicate the validity of the Deed; ***(3)*** denying leave to proceed summarily on Count Three insofar as it seeks to void or set aside the Deed, and directing that those claims proceed with Count Two as a plenary action; and ***(4)*** providing that the expedited disclosure in paragraph D is not directed to the Mehaffey Defendants. The Mehaffey Defendants take no position on the remaining relief sought.

Respectfully submitted,

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/s/ *Raymond J. Went*

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