

NORTH CAROLINA
MOORE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 745

PAUL R. BREZINSKI, MICHAEL G.)
HUGHES, DONALD E. SNELL,)
THOMAS F. LOSAPIO, JOANNE M.)
LOSAPIO, RICHARD J. WILLIAMS,)
JAMES H. CHRISTNER, MARY ELLEN)
BUCKLEY, SUSAN J. KEENAN,)
MICHAEL J. KEENAN,)

Plaintiff,

v.

SEVEN LAKES WEST LANDOWNERS)
ASSOCIATION, INC.,)

Defendants.

DEFENDANT’S MOTION TO DISMISS, ANSWER,
AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, Seven Lakes West Landowners Association, Inc., (“Defendant” and/or “Association”) by and through its undersigned counsel and responds to allegations the Plaintiffs’ Complaint, and alleges and says as follows:

MOTION TO DISMISS-Rule 12(b)(7)

Defendant moves pursuant to Rule 12(b)(7) of the North Carolina Rules of Civil Procedure that Plaintiffs’ claims for relief against it be dismissed for failure to join a necessary party. In the event Plaintiffs are requesting that this Court enter a declaratory judgment, permanent injunction, or other ruling invalidating the Defendant Association or its authority to govern the membership, Plaintiffs should be required to join all owners. The Association moves that Plaintiffs’ claims be dismissed pursuant to Rule 12(b)(7) for failure to join all necessary parties. The election results at issue in this case affect the voting rights of all members within the Association that voted and are therefore necessary parties to any action that impacts their vote. Plaintiff cannot obtain the

relief sought of invalidating the election results and eliminating all other voting members rights to enforce the same, without affording those members an opportunity to be heard.

MOTION TO DISMISS – Rule 12(b)(1); 12(b)(6)

Defendant moves pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure that Plaintiffs' claims for relief against it be dismissed for lack of subject matter jurisdiction and failure to state a claim for which relief may be granted. Plaintiffs lack standing to prosecute the claims before this Court, therefore this Court lacks subject matter jurisdiction as to Plaintiffs' claims. Additionally, Defendants assert that the Plaintiffs have failed to comply with the substantive and procedural requirements for instituting derivative claims under N.C.G.S. § 55A-7-40 and, hereby move for dismissal. Plaintiffs lack standing to recover certain alleged damages either individually or derivatively on behalf of the Association. Furthermore, all Plaintiffs except Plaintiff Mary Ellen Buckley lack standing to challenge the results of the 2021 director election. Moreover, Plaintiffs claims are moot and not justiciable, therefore this Court lacks subject matter jurisdiction and Defendants move for dismissal.

The Complaint fails to state a claim against the Association including, but not limited to the following: (a) Plaintiffs attempt to derivatively assert claims held by the Association under NCGS § 55A-7-40; (b) Plaintiffs attempt to assert any individual claims or rights on which they are now judicially estopped; (c) Plaintiffs, derivatively on behalf of the Association, attempt to assert any claims or rights held by any of them individually; (d) Plaintiffs attempt to substitute their own judgment for the good faith business judgment of the Association by filing suit before the Association can investigate further; (e) Plaintiffs lack damages or immediate and irreparable harm; (f) Plaintiffs lack standing to recover costs and attorney fees derivatively on behalf of the

Association; and (g) All Plaintiffs except Plaintiff Mary Ellen Buckley lack standing to challenge to results of the 2021 director election.

ANSWER

With respect to the individually enumerated paragraphs of Plaintiffs' Complaint, the Defendant Association alleges and says as follows:

1. It is admitted that Paul R. Brezinski owns real property at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 1 of the Complaint.

2. It is admitted that Michael J. Hughes owns real property at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 2 of the Complaint.

3. It is admitted that Donald E. Snell owns real property at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 3 of the Complaint.

4. It is admitted that Thomas F. LoSapio owns real property at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners

Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 4 of the Complaint.

5. It is admitted that Joanne M. Losapio owns real property at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 5 of the Complaint.

6. It is admitted that Richard J. Williams at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 6 of the Complaint.

7. It is admitted that James H. Christner at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 7 of the Complaint.

8. It is admitted that Mary Ellen Buckley at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 8 of the Complaint.

9. It is admitted that Susan J. Keenan at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 9 of the Complaint.

10. It is admitted that Michael J. Keenan at Seven Lakes West in Moore County, North Carolina. It is denied that he is a Member of Seven Lakes West Homeowners Association, but admitted that he is a Member of Defendant, Seven Lakes West Landowners Association, Inc. Except as expressly admitted herein, Defendant lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 10 of the Complaint.

11. In response to the allegations set forth in Paragraph 11 of the Complaint, it is admitted that Defendant, Seven Lakes West Landowners Association, Inc. is a nonprofit corporation organized and existing under the laws of the State of North Carolina. Except as specifically admitted herein, the remaining allegations of Paragraph 11 are denied.

12. The allegations set forth in Paragraph 12 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the allegations of Paragraph 12 are denied as stated.

13. The allegations set forth in Paragraph 13 of the Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the allegations of Paragraph 13 are denied as stated.

14. In response to the allegations of Paragraph 14 of the Complaint, it is admitted that in or about 1979 Longleaf, Incorporated undertook to develop certain lots or parcels of land that it

owned. Except as specifically admitted herein, Defendant denies the remaining allegations of Paragraph 14 of the Complaint.

15. In response to the allegations of Paragraph 15 of the Complaint, it is admitted that Longleaf, Incorporated as the Declarant and owner of the property described in Exhibit A, recorded a Declaration of Restrictive Covenants in Book 449, Page 662 of the Moore County Registry (“Covenants”). Except as specifically admitted herein, Defendant denies the remaining allegations of Paragraph 15 of the Complaint.

16. The allegations of Paragraph 16 of the Complaint are admitted.

17. As to the allegations of Paragraph 17 of the Complaint, it is admitted that the Amendment is a written and recorded legal document, which speaks for itself, and is the best evidence of its content therein. It is expressly denied that the Plaintiffs’ allegations purporting to summarize this Amendment, accurately reflect the provisions of that Amendment, therefore, except as specifically admitted herein, Defendant denies the remaining allegations of Paragraph 17 of the Complaint.

18. In response to the allegations of Paragraph 18 of the Complaint, it is admitted upon information and belief that there has not been a subsequent amendment regarding developer voting rights that conflicts with or is contrary to the Amendment recorded in Book 653, Page 560 of the Moore County Registry. Except as specifically admitted herein, the remaining allegations of Paragraph 18 are denied.

19. In response to the allegations of Paragraph 19 of the Complaint, it is admitted that Seven Lakes West is a community consisting of over 1,500 residential lots with approximately 1,200 improved lots and 700 unimproved lots. Except as specifically admitted herein, the remaining allegations of Paragraph 19 are denied.

20. In response to the allegations of Paragraph 20 of the Complaint, it is admitted that Members pay approximately \$1,300 per year in Association assessments. Except as specifically admitted herein, the remaining allegations of Paragraph 20 are denied.

21. With respect to the allegations of Paragraph 21 of the Complaint, it is admitted that Community Association Services, Inc. is under contract with the Association as its managing agent. To the extent that the allegations of Paragraph 21 vary, conflict, or contradict the terms of the written contract in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 21 are denied.

22. The allegations of Paragraph 22 of the Complaint are admitted upon information and belief.

23. In response to the allegations of Paragraph 23 of the Complaint, it is admitted that the Association is governed in part by the By-Laws of the Association. It is further admitted that a copy of the By-Laws dated, February 2020 is attached to the Complaint as **Exhibit 1**. Except as specifically admitted herein, the remaining allegations of Paragraph 23 of the Complaint are denied.

24. In response to the allegations of Paragraph 24 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 24 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 24 are denied.

25. In response to the allegations of Paragraph 25 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 25 vary, conflict, or contradict

the written By-Laws in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 25 are denied.

26. In response to the allegations of Paragraph 26 of the Complaint, the By-Laws and Covenants of the Association are both written legal documents, which speak for themselves, and are the best evidence of the contents of each document. To the extent that the allegations of Paragraph 26 vary, conflict, or contradict the written By-Laws or Covenants in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 26 are denied.

27. In response to the allegations of Paragraph 27 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 27 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied.

28. In response to the allegations of Paragraph 28 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 28 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 28 are denied.

29. In response to the allegations of Paragraph 29 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 29 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 29 are denied.

30. In response to the allegations of Paragraph 30 of the Complaint, it is admitted that the Annual Meeting of the Association was held on March 17, 2019. It is further admitted that that a Recruiting Committee was in existence and at the annual meeting the Board announced the approval of the three new Recruiting Committee members, all of whom were non-board Members, including Sam Makson. Except as specifically admitted herein, the remaining allegations of Paragraph 30 of the Complaint are denied.

31. In response to the allegations of Paragraph 31 of the Complaint, it is admitted that members of the Recruiting Committee are tasked with seeking members of the Association to run as candidates for Board elections. The allegation of legal responsibilities of the Recruiting Committee are legal conclusions and require no answer. To the extent the Court should determine these allegations require a response, and except as specifically admitted herein, the remaining allegations of Paragraph 31 of the Complaint are denied.

32. The allegations of Paragraph 32 of the Complaint are denied.

33. In response to the allegations of Paragraph 33 of the Complaint, it is admitted that in accordance with the Bylaws, the 2019 Board decided to extend the Board from five to seven Directors. Except as specifically admitted herein, the remaining allegations of Paragraph 33 are denied.

34. In response to the allegations of Paragraph 34 of the Complaint, it is admitted that there were open three director seats for the 2020 election. Except as specifically admitted herein, the remaining allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 of the Complaint are denied.

36. In response to the allegations of Paragraph 36 of the Complaint, it is admitted that the E-Blasts dated November 22, 2019, and November 29, 2019, included information on the

Board's decision to extend the Board from five to seven directors in accordance with the Bylaws. Except as specifically admitted herein, the remaining allegations of Paragraph 36 are denied.

37. In response to the allegations of Paragraph 37 of the Complaint, it is admitted that these E-Blasts also included information on the Recruiting Committee seeking community members interested in candidacy for serving as a Director on the Board. Except as specifically admitted herein, the remaining allegations of Paragraph 37 are denied.

38. In response to the allegations of Paragraph 38 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 38 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. The remaining of the allegations of Paragraph 38 of the Complaint are denied.

39. The allegations of Paragraph 39 of the Complaint are denied.

40. In response to the allegations of Paragraph 40 of the Complaint, it is admitted that only two candidates ran for the three open director seats in the 2020 election. Except as specifically admitted herein, the remaining allegations of Paragraph 40 are denied.

41. The allegations of Paragraph 41 of the Complaint are denied.

42. The allegations of Paragraph 42 of the Complaint state a legal conclusion. To the extent the Court determines that a response is required, the allegations of Paragraph 42 are denied.

43. In response to the allegations of Paragraph 43 of the Complaint, it is admitted that on or about March 15, 2020, the Association conducted its annual meeting, which included election of the directors. It is further admitted that Pat Zlotin and Todd Brown were elected to the Board of Directors. Except as specifically admitted herein, the remaining allegations of Paragraph 43 are denied.

44. The allegations of Paragraph 44 of the Complaint are denied.

45. In response to the allegations of Paragraph 45 of the Complaint, it is admitted that the E-blasts dated July 10, 2020, and July 17, 2020, included information from the Board about two open director seats and sought volunteers to fill the two vacant positions. As stated in the E-blasts the vacancies were created by the resignation of Dan Lawson and the seventh director seat not being filled in the 2020 election results. Except as specifically admitted herein, the remaining allegations of Paragraph 45 are denied.

46. In response to the allegations of Paragraph 46 of the Complaint, it is admitted that on by E-blast dated July 31, 2020, the Board provided information regarding the Board meeting held on July 28, 2020, in which sixty-seven (67) Members attended and one of the items on the agenda was the ratification of Jim Greaves and Roberta Mannes as new directors. Except as specifically admitted herein, the remaining allegations of Paragraph 46 are denied.

47. In response to the allegations of Paragraph 47 of the Complaint, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 47 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 47 are denied.

48. The allegations of Paragraph 48 of the Complaint are denied.

49. The allegations of Paragraph 49 of the Complaint state a legal conclusion to which no response is required. To the extent that the Court should determine a response is required, the allegations of Paragraph 49 are denied.

50. The allegations of Paragraph 50 of the Complaint state a legal conclusion to which no response is required. To the extent that the Court should determine a response is required, the allegations of Paragraph 50 are denied.

51. The allegations of Paragraph 51 of the Complaint are admitted.

52. In response to the allegations of Paragraph 52 of the Complaint, it is admitted that on or around December of 2020 that then, director John Goodman informed the Board that he would be resigning effective March 21, 2021.

53. In response to the allegations of Paragraph 53 of the Complaint, it is admitted that the E-Blast sent on or about November 13, 2020, included information about the recruiting committee and seeking candidates for board director vacancies for the 2021 term. Except as specifically admitted herein the allegations of Paragraph 53 are denied.

54. In response to the allegations of Paragraph 54 of the Complaint, it is admitted that the ballot included six candidates running for the three director seats for the 2021 election. Except as specifically admitted herein, the remaining allegations of Paragraph 54 are denied.

55. The allegations of Paragraph 55 of the Complaint are denied.

56. The allegations of Paragraph 56 of the Complaint are denied.

57. The allegations of Paragraph 57 of the Complaint are denied.

58. The allegations of Paragraph 58 of the Complaint are denied.

59. The allegations of Paragraph 59 of the Complaint are denied.

60. In response to the allegations of Paragraph 60 of the Complaint, it is admitted that on or about February 17, 2021, Mr. Hedrich posted a message on the Association's message board about alleged misconduct or illegal actions of the Board. Except as specifically admitted herein, the remaining allegation of Paragraph 60 are denied.

61. In response to the allegations of Paragraph 61 of the Complaint, it is admitted that the E-blast sent on or about February 19, 2021, included a response from the Board to the allegations against it on the Association's message board by Mr. Herdrich. Except as specifically admitted herein, the remaining allegations of Paragraph 61 are denied.

62. The allegations of Paragraph 62 of the Complaint are denied.

63. The allegations of Paragraph 63 of the Complaint are denied.

64. The allegations of Paragraph 64 of the Complaint are denied.

65. The allegations of Paragraph 65 of the Complaint are admitted.

66. Defendant is unable to admit or deny the entirety of the allegations set forth in Paragraph 66 given the lack of specificity as to the "purportedly swept" reference as to director election and is therefore denied. Defendant further denies the reference, "Board's Preferred Candidates". It is admitted that Louis Eisel, Josh Davis, and Tim Niewald were elected as directors in the 2021 director election. Except as specifically admitted herein, the remaining allegations of Paragraph 66 are denied.

67. In response to the allegations of Paragraph 67 of the Complaint, it is admitted that following the 2021 election results that Plaintiff Brezinski requested the vote totals for each candidate and that the Board declined to provide this information without first speaking with its counsel at that time. Except as specifically admitted herein, the remaining allegations of Paragraph 67 of the Complaint are denied.

68. In response to the allegations of Paragraph 68 of the Complaint, it is admitted that on or about March 22, 2021, that Plaintiff Brezinski demanded to inspect certain records. Except as specifically admitted herein, the remaining allegations of Paragraph 68 are denied.

69. In response to the allegations of Paragraph 69 of the Complaint, it is admitted that the Board sought the advice of its then legal counsel and thereafter allowed Plaintiff Brezinski to review the voting spreadsheets regarding the 2021 director election. Except as specifically admitted herein, the remaining allegations are denied.

70. In response to the allegations of Paragraph 70 of the Complaint, it is admitted that Plaintiff Brezinski and Plaintiff Buckley reviewed the voting spreadsheets at the Community Manager's office. Defendant lacks sufficient information or knowledge to admit or deny the allegations of Paragraph 70 as to Plaintiff Brzezinski's personal interpretation of the voting spreadsheets, including what he saw, or what he counted. The voting spreadsheets are a written document of the Association which speaks for themselves and are the best evidence of the contents therein. To the extent the allegations of Paragraph 70 conflict, vary, or contradict the Association's voting spreadsheet documents in any way, those allegations are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 70 are denied.

71. The Association lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 71 of the Complaint, and therefore, denies the same.

72. The Association lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 72 of the Complaint, and therefore, denies the same.

73. The Association lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 73 of the Complaint, and therefore, denies the same.

74. In response to the allegations of Paragraph 74 of the Complaint, it is admitted upon information and belief that the Community Manager, Sharon Hodges, was not present at the time Plaintiffs Brezinski and Buckley reviewed the voting spreadsheets. The Association lacks

sufficient information or knowledge to admit or deny the allegations contained in Paragraph 74 of the Complaint, and therefore, deny the same.

75. The Association lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 75 of the Complaint, and therefore, denies the same.

76. The allegations of Paragraph 76 of the Complaint are denied.

77. In response to the allegations of Paragraph 77 of the Complaint, it is admitted that the Defendant consulted with its then attorney regarding questions received by Plaintiffs concerning the election, and that thereafter, the April 2, 2021, E-blast addressed these questions concerning the 2021 election, including the right of lots owned by certain builders to vote. It is further admitted that the E-blast also stated that, "However, regardless of whether or how they were cast, we have determined that these votes did not affect the outcome of the election." Except as specifically admitted herein, the remaining allegations of Paragraph 77 are denied.

78. The allegations of Paragraph 78 of the Complaint are denied.

79. The allegations of Paragraph 79 of the Complaint state a legal conclusion to which no response is required. Should the Court determine that a response is required, the allegations of Paragraph 79 of the Complaint are denied.

80. In response to the allegations of Paragraph 80 of the Complaint, including footnote number four, the By-Laws of the Association are a written legal document, which speaks for itself, and is the best evidence of its content therein. To the extent that the allegations of Paragraph 80 vary, conflict, or contradict the written By-Laws in any way, those allegations are denied. Except as specifically admitted herein, the remaining allegations of Paragraph 80 are denied.

81. In response to the allegations of Paragraph 81 of the Complaint, it is admitted that Mr. Don Smith sent email correspondence to Sharon Hodges on or about March 26, 2021

concerning the 2021 director elections. That email correspondence is a writing, which speaks for itself and is the best evidence of its contents. To the extent the allegations of Paragraph 81 conflict, vary, or are contrary to said written document, the same are denied. Except as specifically admitted herein, the remaining allegations of Paragraph 81 are denied.

82. The remaining allegations of Paragraph 82 of the Complaint are denied.

83. Defendant is unable to admit or deny the entirety of the allegations set forth in Paragraph 83 given the lack of specificity as to the “formal demand” reference, specifically who it was sent by and when. Therefore, Defendant denies the allegations of Paragraph 83 of the Complaint.

84. In response to the allegations of Paragraph 84 of the Complaint, it is admitted that Plaintiffs’ counsel sent a letter dated April 8, 2021, entitled, “Notice and Demand for Correct Action.” Except as specifically admitted herein, the remaining allegations of Paragraph 84 are denied.

85. In response to the allegations of Paragraph 85 of the Complaint, it is admitted that Plaintiffs’ attorney’s letter requested that Ms. Mannes resign from the Board and that an audit of the 2021 director election be conducted. That letter is a writing, which speaks for itself and is the best evidence of its contents. To the extent the allegations of Paragraph 85 conflict, vary, or are contrary to said written document, the same are denied. Except as specifically admitted herein, the remaining allegations of Paragraph 85 are denied.

86. In response to the allegations of Paragraph 84 of the Complaint, it is admitted that a letter dated April 27, 2021, from the Association’s then counsel was sent to Plaintiffs’ counsel and that letter is a writing, which speaks for itself and is the best evidence of its contents. To the extent the allegations of Paragraph 86 of the Complaint conflict with this written document, the

same are denied. Except as expressly admitted herein, the remaining allegations of Paragraph 84 of the Complaint are denied.

87. The allegations of Paragraph 87 of the Complaint are denied.

FIRST CLAIM FOR RELIEF

88. Defendant hereby adopts and realleges its responses to Paragraphs 1 through 87 of the Complaint as if the same were again set forth herein.

89. The allegations of Paragraph 89 of the Complaint appear to state a legal conclusion to which no response is required. Should the Court determine a response is required, the allegations of Paragraph 89 are denied.

90. The allegations of Paragraph 90 of the Complaint, including its subparts are denied.

91. The allegations of Paragraph 91 of the Complaint, including its subparts are denied.

92. The allegations of Paragraph 92 of the Complaint are denied.

SECOND CLAIM FOR RELIEF

93. Defendant hereby adopts and realleges its responses to Paragraphs 1 through 92 of the Complaint as if the same were set forth again herein.

94. The allegations of Paragraph 94 of the Complaint, including its subparts are denied.

EACH AND EVERY OTHER ALLEGATION SET FORTH IN PLAINTIFFS' COMPLAINT, NOT HEREIN ADMITTED, IS DENIED.

FIRST DEFENSE (Business Judgment Rule)

At all times relevant to Plaintiffs' Complaint, the actions and/or omissions of the duly authorized representatives of the Defendant Association were protected by the "business judgment" rule and/or the provisions of N.C.G.S. § 55A-8-30, upon which Defendant Association

specifically pleads and relies upon as a defense, in whole or in part, to the claims herein asserted against the Association.

SECOND DEFENSE
(Compliance with Legal Authority)

At all times relevant to Plaintiffs' Complaint, Defendant Association has substantially complied with the authority granted to it pursuant to the Declaration, the Articles of Incorporation and Bylaws of the Association, and/or the provisions of Chapter 47F and 55A of the North Carolina General Statutes.

THIRD DEFENSE
(Good Faith)

At all times relevant to Plaintiffs' Complaint, the duly authorized representatives of the Defendant Association acted in good faith in their interpretation of the Declaration, Articles of Incorporation and Bylaws of the Association, and the provisions of Chapter 47F and 55A of the North Carolina General Statutes, and such good faith is pled as a bar, in whole or in part, to the claims herein asserted against the Association.

FOURTH DEFENSE

Defendant asserts the plain language of the Declaration, Bylaws, Articles of Incorporation, and other governing documents and agreements of the Association as a bar to Plaintiffs' claims.

FIFTH DEFENSE
(Waiver and/or Estoppel)

Defendant Association specifically pleads and relies upon the doctrines of laches, waiver and/or estoppel as a bar, in whole or in part, to the claims herein asserted against the Association.

SIXTH DEFENSE
(Failure to Exhaust Administrative Remedies)

Defendant contends that Plaintiffs have failed to exhaust all administrative remedies with the Association prior to filing suit and are further estopped and have waived the right to raise the allegations in the Complaint based on such actions.

SEVENTH DEFENSE

(Mootness)

Defendant contends Plaintiffs' claims, in whole or in part, are moot in light of the plain language of the Association's governing documents and the voting records for the 2020-2021 director election. Accordingly, the Complaint should be dismissed with prejudice for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

EIGHTH DEFENSE

(Ratification)

Defendant contends that Plaintiffs' claims are barred in whole or in part by Plaintiffs' ratification of alleged, but denied, improper actions taken by the duly authorized representatives of the Association on its behalf.

NINTH DEFENSE

(Standing)

To the extent that some or all of the Plaintiffs have brought claims in their individual capacity, rather than derivatively, such claims should be dismissed given that some or all of the Plaintiffs lack of standing to bring such claims against the Association.

TENTH DEFENSE

(Absence of Immediate and Irreparable Harm)

Defendant contends that Plaintiffs have failed to demonstrate immediate and irreparable harm.

ELEVENTH DEFENSE

(Statutory Immunity)

Defendant asserts N.C. Gen. Stat. § 55A-8-60 as providing immunity to the duly authorized representatives of the Association as to the Plaintiffs' claims alleged in the Complaint.

TWELFTH DEFENSE

Defendant asserts in bar of Plaintiffs' claims its justified reliance on learned professionals for purposes of guiding the judgment of the duly authorized representatives of the Association.

THIRTEENTH DEFENSE

Defendant asserts any and all legal or equitable affirmative defenses that currently exist and/or may hereafter be discovered to any and all claims asserted by Plaintiffs.

RESERVATION AND NON-WAIVER

Defendant Association reserves the right to amend this Answer and to supplement such other defenses as may be adduced through further investigation, discovery, and the trial in this matter.

JURY DEMAND

Defendant Association demands a trial by jury in this action on all issues so triable.

WHEREFORE, Defendant Seven Lakes Landowners Association, Inc. hereby prays unto the Court as follows:

1. That Defendant's Motions to Dismiss be granted;
2. Plaintiffs' Complaint be dismissed with prejudice;
3. Plaintiffs' request for declaratory judgment and permanent injunction with denied with prejudice;
4. For the costs of this action, including attorney's fees as allowed by law; and
5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted, this the 9 day of August, 2021.

JORDAN PRICE WALL GRAY AND CARLTON, PLLC



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Attorneys for Defendant


CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing parties, named below, with the foregoing document by placing a copy in a properly addressed envelope with adequate postage thereon, in the United States Mail, in the manner prescribed by Rule 5 of the Rules of Civil Procedure.

Jackson D. Wicker
4000 Westchase Blvd., Suite 120
Raleigh, North Carolina 27607
Attorneys for Plaintiffs

This the 9 day of August, 2021.

JORDAN PRICE WALL GRAY JONES & CARLTON, PLLC



Hope Derby Carmichael