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**IN THE SUPERIOR COURT OF WASHINGTON
FOR SPOKANE COUNTY**

ROBERT LEE, an individual; JAMES
POWERS, an individual; SUSAN EMRY, an
individual; NEAL KIMBALL, an individual;
and RUSS BISHOP, an individual,

Plaintiffs,

vs.

REFLECTION LAKE COMMUNITY
ASSOCIATION, a Washington non-profit
corporation; RICK SMITH, an individual;
JOE DICKINSON, an individual; JAMES
BOOTHBY, an individual; and CHARLIE
BENNETT, an individual,

Defendants.

No.

**COMPLAINT FOR
DECLARATORY AND
OTHER RELIEF**

**[RCW 7.24 et seq.
RCW 24.03 et seq.
RCW 64.38 et seq.
RCW 64.90 et seq.]**

Plaintiffs, through their counsel, by way of Complaint against Defendants, allege as follows:

PARTIES

1. Defendant Reflection Lake Community Association (“Community Ass’n”) is a non-profit corporation organized under the laws of Washington, with its principal place of business in Spokane County, Washington.

1 2. Plaintiffs are members of an interim Board of Directors of the Community
2 Ass'n, appointed in March of 2020 by Richard Miller.

3 3. Plaintiff Robert Lee, an individual, owns real property in Reflection Lake First
4 Addition, and was appointed a member of the interim Board.

5 4. Plaintiff James Powers, an individual, owns real property in Reflection Lake
6 First Addition, and was appointed a member of the interim Board.

7 5. Plaintiff Susan Emry, an individual, owns real property in Reflection Lake First
8 Addition, and was appointed a member of the interim Board.

9 6. Plaintiff Neal Kimball, an individual, owns real property in Reflection Lake
10 First Addition, and was appointed a member of the interim Board.

11 7. Plaintiff Russ Bishop, an individual, owns real property in Reflection Lake
12 First Addition, and was appointed a member of the interim Board.

13 8. Defendant Rick Smith, an individual, is president of the *ad hoc* election Board
14 of Directors of the Community Ass'n.

15 9. Defendant Joe Dickenson, an individual, is vice-president of the *ad hoc* Board
16 of the Community Ass'n.

17 10. Defendant James Boothby, an individual, is treasurer of the *ad hoc* Board of
18 the Community Ass'n.

19 11. Defendant Charlie Bennett, an individual, is secretary of the *ad hoc* Board of
20 the Community Ass'n.

1 (c) The members are deadlocked in voting power and have failed,
2 for a period that includes at least two consecutive annual meeting
3 dates, to elect successors to directors whose terms have, or
4 otherwise would have, expired;

(d) The corporate assets are being misapplied or wasted; or

5 (e) The corporation has insufficient assets to continue its
6 activities and it is no longer able to assemble a quorum of
7 directors or members[.]

RCW 24.03.266(1).

8 18. The court has the power to appoint one or more receivers, general or custodial,
9 to manage the affairs of the corporation, and also to wind up and liquidate. RCW
10 24.03.271(3) ~ (7).

11 19. *Ultra vires*, or lack of capacity or power, “may be asserted... in a proceeding
12 by the corporation... or through members in a representative suit, against the officers or
13 directors of the corporation for exceeding their authority.” RCW 24.03.040(2)

14 20. “All persons who assume to act as a corporation without authority to do so shall
15 be jointly and severally liable for all debts and liabilities incurred or arising as a result
16 thereof.” RCW 24.03.470.

17 21. The Homeowners’ Associations Act came into effect in 1995. The Community
18 Ass’n falls within the ambit of this Act, as "homeowners' association" or "association" means
19 “a corporation, unincorporated association, or other legal entity, each member of which is an
20 owner of residential real property located within the association's jurisdiction, as described
21 in the governing documents, and by virtue of membership or ownership of property is
22 obligated to pay real property taxes, insurance premiums, maintenance costs, or for
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1 improvement of real property other than that which is owned by the member.” RCW
2 64.38.010(11).

3 22. RCW 64.38.025 supplies the standard of care for members of the board of
4 directors, and provides that the board of directors “shall not act on behalf of the association
5 to... elect members of the board of directors... but the board of directors may fill vacancies
6 in its membership of the unexpired portion of any term.”

7
8 23. Owners may remove any member of the board of directors, with or without
9 cause, at any meeting of the owners at which a quorum is present. RCW 64.38.025(5).

10 24. A quorum is present if “the owners to which thirty-four percent of the votes...
11 are present in person or by proxy.” RCW 64.38.040.

12 25. All meetings of the board of directors “shall be open for observation by all
13 owners of record and their authorized agents”, and the board must make corporation
14 documents available to owners upon reasonable request. RCW 64.38.035, .45

15
16 26. A person aggrieved by a violation of one of the above-listed provisions may
17 obtain attorney’s fees in a suit to enforce the provision. RCW 64.38.050.

18 27. In 2019, the Legislature specified that going forward, new homeowners’
19 associations would be organized under the common interest ownership act, RCW 64.90 *et*
20 *seq.*, as would any association that modified its bylaws, and that RCW 64.90.095, .405(1)(b)
21 and (c), .525, and .545 presently apply to any existing homeowners’ association. RCW
22 64.38.095.
23

1 36. County records provide that Reflection Lake, Inc. was active from 1958 until
2 2001, as it sold individual lots within the two platted developments surrounding Reflection
3 Lake. (See **Exhibit 2**)

4 37. The West Shore of the Lake was platted in 1957, under the name Reflection
5 Lake Addition. (**Exhibit 3**)

6 38. The Dedication provides that the “Subdivider assumes no responsibility for the
7 furnishing of domestic water to the purchaser.” (Id.)

8 39. West Shore property owners subsequently obtained domestic water service
9 from another entity.

10 40. The Dedication also provides that the Subdivider “dedicate[s] to the property
11 owners in this addition... the roads and drives... for the right to ingress and egress[.]” (Id.)
12

13 41. The roads within the West Shore remain private, and are not owned or
14 maintained by Spokane County.

15 42. County records provide that the owners of West Shore lots organized into the
16 Reflection Lake Homeowners’ Association, which was active from 1978 until 2002. (**Exhibit**
17 **4**)

18 43. The East Shore of the Lake was platted in 1967, under the name Reflection
19 Lake First Addition. (**Exhibit 5**)

20 44. The Dedication provides that “Spokane County will bear no maintenance
21 responsibility” for the private roads within the East Shore. (Id.)

22 45. East Shore owners subsequently dedicated their private roads to Spokane
23 County, which now maintains said roads as public rights-of-way.

1 46. The Dedication also provides that “domestic water shall be provided to each
2 lot prior to sale of a lot in this plat.” (Id.)

3 47. The owners of lots in the East Shore formed the Reflection Lake Community
4 Association in 1978, as a Washington non-profit corporation. (**Exhibit 6**)

5 48. Also in 1978, by accident later corrected six (6) years later, the developer
6 (Reflection Lake, Inc.) transferred title of common property within the East Shore –
7 Reflection Lake First Addition, to the Reflection Lake Homeowners’ Association, which was
8 the association of owners within the West Shore – Reflection Lake Addition. (Compare
9 **Exhibit 7** with **Exhibit 10**)

10 49. In 1980, owners within the East Shore – Reflection Lake First Addition, formed
11 the Reflection Water Ass’n, for the purpose of maintaining “that water system which
12 furnishes domestic water” to East Shore lots. (**Exhibit 8**)

13 50. The natural spring which is the source of the domestic water flows into the east
14 side of the Lake, and its Water System ID # is 71700, regulated by the Office of Drinking
15 Water within the Department of Social and Human Services.

16 51. In 1984, there was confusion between the Reflection Lake Homeowners’
17 Association (West Shore owners) and the Reflection Lake Community Association (East
18 Shore owners), when the Homeowners’ Ass’n placed a lien on property located within the
19 purview of the Community Ass’n. (**Exhibit 9**)

20 52. As referenced *supra*, in 1984, H.D. Hackney of developer Reflection Lake,
21 Inc., filed a correction to the 1978 deed, specifying that the title to common property within
22

1 the East Shore – Reflection Lake First Addition would belong to the Community Ass’n,
2 rather than the association of owners on the other side of the Lake. **(Exhibit 10)**

3 53. In December of 1984, the Community Ass’n recorded CC&Rs which combine
4 elements from the dedications of both the 1957 West Shore plat and the 1967 East Shore plat.
5 **(Exhibit 11)**

6 54. In 2001, the Community Ass’n entered into leases with the owners of five (5)
7 lots situated above the spring, recorded under No. 4585199.

8 55. In 2003, the Homeowners’ Ass’n formally merged into the Community Ass’n,
9 and adopted new bylaws and CC&Rs. The surviving entity, which is the homeowners’
10 association for owners of all lots on both sides of the lake, continues to operate under the
11 Community Ass’n name. **(Exhibit 12)**

12 56. The 2003 CC&Rs also combine elements from the dedications of both the 1957
13 West Shore plat and the 1967 East Shore plat. (Id.)

14 57. In 2006, the Community Ass’n recorded Amended CC&Rs and bylaws.
15 **(Exhibit 13)**

16 58. In 2017, the Board of the Community Ass’n sent a notice seeking termination
17 of the five-lot-lease recorded under No. 4585199, referenced *supra*.

18 59. In 2019, the Board of the Community Ass’n recorded in its meeting minutes its
19 discussion of a plan to dispute the authority of the Water Ass’n, and to take control of the
20 water system serving East Shore lots, of the Water Ass’n itself, or both. **(Exhibit 14)**

1 60. In October of 2019, Board member Charles Bennet sent an email which had
2 the effect of blocking the Water Ass'n's effort to obtain grant funding for water system
3 maintenance and improvement. **(Exhibit 15)**

4 61. In December of 2019, the Water Ass'n made publicly available an opinion
5 letter from an attorney, explaining that the Community Ass'n did not have legal authority
6 over the Water Ass'n. **(Exhibit 16)**

7 62. On January 14, 2020, the Community Ass'n held a special meeting concerning
8 the water system and the Water Ass'n. **(Exhibit 17)**

9 63. On January 21, 2020, the Board of the Community Ass'n sent notices to the
10 officers of the Water Ass'n, purporting to "terminate the services" of the Water Ass'n.
11 **(Exhibit 18)**

12 64. On February 6, 2020, the Board of the Community Ass'n had another meeting,
13 framing the issue as a dispute between the Community Ass'n and the Water Ass'n. **(Exhibit**
14 **19)**

15 65. In early March of 2020, the Board of the Community Ass'n resigned, with the
16 exception of Richard Miller. **(Exhibit 20)**

17 66. Mr. Miller appointed eight (8) interim members to the Board. (Id.)

18 67. The interim Board members elected James Powers as president; Neal Kimball
19 as vice-president; Jerry Parker as treasurer, and Susan Emry as secretary. (Id., **Exhibit 21**)

20 68. Board meetings were cancelled for April, May, June, and July.

1 69. By letter dated August 21, 2020, eight (8) members of the Community Ass'n
2 stated they had formed an '*ad hoc* election committee' to replace the interim Board with new
3 members. **(Exhibit 22)**

4 70. By announcement, the *ad hoc* committee declared September 26, 2020 as the
5 meeting to remove the Board and replace it with another Board. **(Exhibit 23)**

6 71. In an email from October 2, 2020, member and lot owner Dan Freas described
7 several of the ways in which the '*ad hoc* election' failed to follow the bylaws, and was likely
8 invalid. **(Exhibit 24)**

9 72. By email dated October 4, 2020, *ad hoc* Board member (and president) set forth
10 the *ad hoc* election committee's (apparently anonymous) Board vote tally. **(Exhibit 25)**

11 73. By email dated October 6, 2020, interim Board president James Powers
12 suggested to the membership that the Community Ass'n be separated into several entities,
13 organized so that the only members of each will be those with a common ownership interest.
14 **(Exhibit 26)**

15 74. On October 10, 2020, the *ad hoc* Board posted minutes of the September 26,
16 2020 special meeting. **(Exhibit 27)**

17 75. Also on October 10, 2020, the *ad hoc* Board posted minutes of their October 6,
18 2020 meeting. **(Exhibit 28)**

19 76. On October 17, 2020, Plaintiff Robert Lee sent an email request to review the
20 records of the *ad hoc* election. **(Exhibit 29)**

21 77. Defendant Rick Smith, *ad hoc* Board president, responded that "The
22 Washington State constitution holds that ballots are secret." (Id.)
23

1 78. Mr. Smith also admitted that the ‘*ad hoc* election committee’ had no official
2 status with the Community Ass’n, and therefore no records were kept of it or by it. (Id.)

3 79. The next day, October 18, 2020, Mr. Smith posted a second meeting minutes
4 of the “Special Election Meeting” on September 26, 2020. (Exhibit 30)

5 80. On November 17, 2020, Banner Bank served copies of an interpleader
6 summons and complaint, concerning the bank accounts in the name of the Community Ass’n.
7

8 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF – AD HOC ELECTION**

9 81. The preceding paragraphs are re-alleged as if fully set forth herein.

10 82. The bylaws provide that “Any officer may resign at any time by giving written
11 notice to the Board of directors or to the President, or to the Secretary of the Association.”
12 (Bylaws, ¶ 7.3)

13 83. “Each officer shall hold their office until they resign or are removed[.] ...
14 Officers may be appointed at any time by the Board of Directors for the purpose of initially
15 filling an office or filling a newly created vacant office.” (Bylaws, ¶ 7.2 – see also RCW
16 64.38.025(2))
17

18 84. “Vacancies on the Board of Directors may be filled by a majority of the
19 remaining directors, even though less than a quorum, or by a sole remaining director. Each
20 director so appointed shall hold office until his/her respective successor is elected at the
21 annual or a special meeting of the members.” (Bylaws, ¶ 5.5)

22 85. The New Board Announcement posted March 17, 2020 provides that Mr.
23 Richard Miller, pursuant to ¶ 5.5 of the bylaws, appointed interim Board members James
24 Powers, Neal Kimball, Jerry Parker, Susan Emry, Russ Bishop, James Case, Terry Child, and
25
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1 Rob Lee. See also RCW 64.38.025(2) (“the board of directors may fill vacancies in its
2 membership of the unexpired portion of any term.”).

3 86. The Community Ass’n bylaws contemplate in-person regular, annual, and
4 special meetings and votes. (Bylaws, ¶ 5.3, ¶ 5.8, ¶ 5.9, ¶ 5.11, ¶ 9.1, ¶ 9.2, ¶ 9.5, and ¶ 10.1)

5
6 87. With the general orders prohibiting large in-person gatherings in effect in
7 Washington, the interim Board cancelled the spring regular meetings of the Board. The
8 interim Board also cancelled the July and August meetings, including the annual meeting of
9 members normally scheduled for July of each year.

10 88. The bylaws specify that the annual meeting of the members of the Community
11 Ass’n “shall be held at such time in the month of July as shall be determined by the Board of
12 Directors.” (Bylaws, ¶ 9.1)

13
14 89. The bylaws also contemplate that the annual meeting of the members may not
15 always occur in July, and so the bylaws also specify that “If for any reason any such annual
16 meeting [of the members] is not held, or the authorized number of directors are not elected
17 thereat, the additional number of directors may be elected at any special meeting of the
18 members held for that purpose.” (Bylaws, ¶ 5.3)

19 90. Notice of the annual meeting “shall” be sent to each member “not less than ten
20 nor more than fifty days before” the meeting. (Bylaws, ¶ 9.1)

21
22 91. The bylaws also provide that “Special meetings of the members for any purpose
23 or purposes whatsoever may be called at any time by the President, or by a majority of the
24 Board of Directors, or by one or more members holding not less than forty percent (40%) of
25 the voting power of the Association[.]” (Bylaws, ¶ 9.2)

1 92. “Written notices of any special meeting shall specify, in addition to the place,
2 date and hour of such meeting, the general nature of the business to be transacted.” (Id.)

3 93. A majority of members may approve certain actions by vote without a meeting.
4 (Bylaws, ¶ 9.4) But, as it pertains to removal of members of the Board, the “members may
5 remove one or more directors, with or without consent, only at a special meeting of the
6 members called expressly for that purpose. The notice of the special meeting must state that
7 the purpose of the meeting is to remove one or more directors.” (Bylaws, ¶ 5.5)

8 94. The bylaws provide that the “membership register..., the books of accounts
9 and minutes of proceedings of the members, and the Board of Directors and Executive
10 Committee, if any, shall be open to inspection upon the written demand of any member at
11 any reasonable time and for a purpose reasonably related to his interests as a member.”
12 (Bylaws, ¶ 11.2) See also RCW 64.38.035(4) and RCW 64.38.045(2).
13
14

15 95. Plaintiffs seek declaratory relief, that the *ad hoc* election committee lacked
16 authority to ask the membership to remove board members via ballot without a special
17 meeting for that purpose, and it lacked standing to call a special meeting for purposes of
18 removing members of the interim Board, as it was not comprised of at least 40% of the
19 membership.
20

21 96. Furthermore, Plaintiffs seek declaratory relief, that the results of the *ad hoc*
22 election cannot be valid under either the bylaws or the statutes (RCW 24.03 *et seq.*) so long
23 as they remain, per the email from *ad hoc* Board president Mr. Smith, both secret and
24 unofficial. (See **Exhibit 29**)
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1 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF – COMMUNITY**
2 **ASS'N DOES NOT LEGALLY CONTROL WATER ASS'N**

3 97. The preceding paragraphs are re-alleged as if fully set forth herein.

4 98. The Water Ass'n was established in the same fashion as the Community Ass'n,
5 as a non-profit corporation comprised only of East Shore property owners who receive
6 domestic water from the private water system maintained by the Water Ass'n.

7 99. The Community Ass'n, through members of the *ad hoc* Board, continues to
8 assert that it controls the Water Ass'n.

9 100. The Community Ass'n does not have authority or control over the Water Ass'n.

10 101. Plaintiffs seek declaratory relief, that the Court determine that the Community
11 Ass'n has no legal basis to assert control over the Water Ass'n.

12 102. Plaintiffs further seek the Court's determination that the remedy for any
13 property owner aggrieved by the acts or omissions of the Water Ass'n, is through each
14 owner's membership in the Water Ass'n, per the recorded instrument establishing the Water
15 Ass'n.
16 Ass'n.

17 **THIRD CAUSE OF ACTION – REALIGNMENT OF OWNERS INTO COMMON**
18 **OWNERSHIP INTEREST COMMUNITIES**

19 103. The preceding paragraphs are re-alleged as if fully set forth herein.

20 104. The lot owners within the West Shore - Reflection Lake Addition own in
21 common the private roads within that development, but have domestic water service from,
22 *inter alia*, Spokane County.
23

1 105. The lot owners within the East Shore – Reflection Lake First Addition own in
2 common the private domestic water system, but the roads within that development are public
3 rights-of-way, maintained by Spokane County.

4 106. All lot owners on both halves of the Lake have common ownership interests in
5 maintenance of the Lake and its related facilities (dams, pumps, common recreation areas,
6 etc.).
7

8 107. The 2003 merger of the associations for the West Shore and the East Shore,
9 into the surviving Community Ass'n, inadvertently granted to disinterested lot owners
10 common ownership interests in the private roads and private water system of the other set of
11 owners.

12 108. The *ad hoc* Board lacks legal authority to act on behalf of the Community
13 Ass'n.
14

15 109. Plaintiffs request that the Court appoint an independent custodial receiver to
16 direct and control the Community Ass'n, for the benefit of all members. RCW 24.03.266,
17 .271.

18 110. Plaintiffs further request, pursuant to RCW 64.90 *et seq.*, that the Court re-
19 organize and re-align the property owners at Reflection lake into separate common ownership
20 interest entities, such that property owners with no ownership interest in a particular facility
21 (*e.g.* the water system for the East Shore residents) will no longer be members of the non-
22 profit entity responsible for maintenance of said facility.
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1 **PRAYERS FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for relief as follows:

- 3 1. For declaratory relief, as set forth *supra*;
- 4 2. For appointment of a custodial receiver for the Community Ass'n;
- 5 3. For re-organization and re-alignment of the approximately 133 lot owners at
- 6 Reflection Lake into separate common ownership interest communities for private water, for
- 7 private roads, and for the Lake and related facilities;
- 8 4. For costs and attorney's fees, as allowed by law; and
- 9 5. For such other and further relief as the Court deems just and equitable.

10 Dated: November 18, 2020.

11 **KSB LITIGATION, P.S.**

12 By: 
 13 _____
 14 William C. Schroeder, WSBA No. 41986
 15 Attorneys for Plaintiffs