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Fourth Judicial District, Boise County
Mary Prisco, Clerk of the Court
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR BOISE COUNTY

DENNIS LARGENT, MARY CORDOVA, CHUCK STEELE, JULIE STILLMAN, ROLLY WOOLSEY, MEMBERS OF THE BOARD OF DIRECTORS OF THE TERRACE LAKES WATER COMPANY, Plaintiffs, vs. ILENE JOHNSON, LONNIE BRAMON, DARLENE BLAKESLEE, Defendants.	Case No. CV08-21-103 FINDINGS OF FACT & CONCLUSIONS OF LAW FOLLOWING EVIDENTIARY HEARING

The Board of Directors of the Terrace Lakes Water Company ("the Company") seek equitable and declaratory relief concerning Defendants, in particular, Ilene Johnson's ("Johnson") repeated improper attempts to remove the current Board, and their failure to turn over Company records as required by stipulation and Court order. This lawsuit followed closely after the resolution of a suit between the same parties, in which this Court held that the Plaintiffs are the legitimate Board of Directors of the Company.[1]

In that case, Defendants executed a stipulation to resolve the case and acknowledged the Plaintiffs comprise the current Board of Directors of the Company. Defendants agreed to ensure that all Company books and records were transferred to the Board within 10 days. Defendants violated this agreement and undermined the settlement of this first case. Johnson, specifically, engaged in a malicious and improper campaign to remove the Board. She falsified and altered

[1] *See* Boise County Case No. CV08-20-247. This Court held that Mary Cordova, Dennis Largent, and Chuck Steele comprised the legitimate Board of Directors. On March 27, 2021, as the legitimate Board, they subsequently appointed Julie Stillman and Rolly Woolsey to fill the two vacant spots on the Board of Directors, pursuant to § 3.8 of the Company Bylaws.

documents to call for a special meeting to remove the Board. In trying to hold these meetings, she violated the very rules that she wrote for the Company. Defendants failed to hand over all Company books and records as required by the Stipulation and Court Order. Johnson's actions over the past year to try to retain control of Company were improper under the law and the Company's Bylaws.

The Plaintiffs seeks equitable and declaratory relief to prevent Defendants' further improper actions and interference. An evidentiary hearing was held on various matters. The Court makes certain declaratory findings, including that interim preliminary injunctive relief is warranted pending a trial on the merits on equitable fraud.

THE RECORD[2]

Background

1. Terrace Lakes Recreation Ranch, Inc. was created by Johnson and is run by Johnson and her two children, Lonnie Bramon ("Bramon") and Val Wardle ("Wardle").

[2] The record consists of the testimony and exhibits admitted at the evidentiary hearing held October 1 and 22, 2021 and January 28, 2022. The record also includes the verified complaint and affidavits of Mary Cordova (filed May 10, 2021), Barbara Beehner-Keene (filed May 10, 2021), Dennis Largent (3) (filed May 10, 2021, June 4, 2021, June 15, 2021), Rolly Woolsey (filed May 12, 2021), Ilene Johnson (filed May 24, 2021), Lisa Largent (filed June 4, 2021), Kattie Steele (filed June 4, 2021), Chuck Steele (filed June 15, 2021), Michael Kane (filed August 27, 2021), and Val Wardle (filed Jan. 26, 2022). The Court takes judicial notice of the following filings in Boise County Case No. CV08-20-247: Verified Applications for Writ of Mandate, Writ of Prohibition, Alternative Writ, Peremptory Writ, Petition for Declaratory Judgment, Motion or Temporary Restraining Order, Motion for Preliminary Injunction and Application for Injunctive Relief (filed Dec. 16, 2020); the Affidavits of Michael Kane (filed Dec. 16 and 29, 2020), Sandy Nabbefeld (filed Dec. 16, 2020), Annetta Zimmerman (filed Dec. 16, 2020), David Stillman (filed Dec. 16, 2020), Lisa Largent (filed Dec. 16, 2020), Mary Cordova (filed Dec. 16, 2020), Kattie Steele (filed Dec. 16, 2020 and Jan. 20, 2021), Melissa Lefevre (filed Dec. 16, 2020), Dennis Largent (filed Dec. 16 and 24, 2020), Chuck Steele (filed Dec. 16 and 24, 2020), Ilene Johnson (filed Dec. 23, 2020), Barbara Beehner-Kane (filed Dec. 29, 2020), Mark Iverson (filed Jan. 19, 2021), Robert Goodwin (filed Jan. 20, 2021), and Ronald Sneed (filed Jan. 21, 2021); Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss (filed March 2, 2021); Stipulation for Resolution of all Matters Between Parties (filed April 30, 2021); and Order for Resolution of all Matters and Dismissal (filed May 13, 2021).

2. In 2004, the Idaho Department of Environmental Quality ("DEQ") issued a notice that it disapproved of Terrace Lakes Recreation Ranch, Inc.'s water system due in part to its failure to submit required engineering documents and complaints related to the inadequate water quantity and pressure problems.
3. Terrace Lakes Recreation Ranch, Inc. entered a Consent Order with the DEQ requiring it to undertake various improvements and upgrades to the water system.
4. The Company was created in 2006 and assumed the responsibilities of the Consent Order. It was formed as a non-profit domestic water distribution company benefitting the members, referred to as "Subscribers," of the Terrace Lakes subdivision in Garden Valley.
5. From 2005 to about 2010, Johnson and Bramon worked with engineers and the DEQ to upgrade the water system and meet various requirements.
6. As part of this process, Johnson, on behalf of the Company, secured various loans totaling over $1 million.
7. Johnson formed the Company, was on the Board of Directors, and managed it as its President until October 2020. Darlene Blakeslee ("Blakeslee") and Bramon were also on the Company's Board of Directors for a number of years.[3]
8. The governing documents of the Company include the Articles of Incorporation, which were amended in 2010 ("Articles"), and the Bylaws. These documents were drafted by Johnson. The original Article of Incorporation were recorded with the Secretary of State; however, the amended 2010 Articles were not.
9. The Bylaws "constitute the code of rules adopted by [the Company] for the regulation and management of its affairs." Bylaws § 1.1.

[3] *See* Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss, filed March 2, 2021, in Boise County Case No. CV08-20-247.

10. The Bylaws provide that the Company shall only supply water to its Subscribers in the subdivisions known as Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One. Bylaws § 1.5(B), 1.2, 1.3, 2.1.

11. Neither the Bylaws nor the Articles permit the Company to supply water to a subdivision known as North Ridge.[4]

12. However, the Company has been providing water to North Ridge lots and receives payments from certain North Ridge lot owners.

History of North Ridge

13. In 2005, Bramon, purchased 48 acres that he developed into lots to be sold. The area is known as the North Ridge subdivision.

14. The upgrades to the Terrace Lakes water system also included the installation of a well and water system for the anticipated North Ridge subdivision effectively "connecting" North Ridge into the same water system that serves the Terrace Lakes subdivision.

15. Johnson, who is a realtor, sold lots in the North Ridge subdivision beginning in 2017. All lots have now been sold.

16. To entice buyers to buy lots in the North Ridge subdivision, Johnson waived connection fees without prior approval from the Company Board or Subscribers and without informing Subscribers as to any apparent conflict of interest she might have.

17. The Company Bylaws require lot owners to pay a connection fee to receive water. Bramon testified that such fees amounted to a couple thousands of dollars.

18. After North Ridge buyers connected to the water system, they were treated like Subscribers

[4] Johnson and Bramon testified that North Ridge is included in the water system because the USDA and DEQ approved the water system that serviced both the Terrace Lakes and North Ridge subdivisions. However, that approval has nothing to do with the creation of the Company and the Bylaws that exclude North Ridge and provide various rules to receive water. The Bylaws set forth the manner in which they can be amended. None of the Defendants ever took any effort to amend the Bylaws to include North Ridge.

of the Company, paid fees, were provided water, and allowed to vote.

19. There has never been a vote to make North Ridge lot owners Subscribers of the Company.
20. The Bylaws define Subscribers as those individuals and entities owning lots in the Terrace Lakes Subdivision.
21. To amend the Bylaws requires, in part, a vote of 75% of the Subscribers.
22. There is no evidence a vote was ever made to amend the Bylaws to make North Ridge lot owners Subscribers of the Company.[5]

Prior Litigation

23. On September 16, 2020, Johnson sent a notice to all Subscribers that a meeting would be held on September 27, 2020 "for the purpose of electing five Directors to serve on the Board of Directors." No meeting had been held for at least six years.
24. The Company Bylaws require annual meetings, which Johnson and previous Board members failed to hold.
25. At the September 27, 2020 meeting, Johnson announced that a quorum of Subscribers was present, an election was needed as there was "no" Board of Directors, and a meeting had not been held for several years.
26. The Subscribers at the meeting agreed to create an interim board for the purpose of facilitating an election. They also agreed to the procedure for an election.
27. Johnson did not object to the creation of the interim board or the procedure agreed upon for the upcoming election. In fact, Bramon was on the interim board and participated in coming up with the election process.
28. The election was held by mail and the winners of the election were Dennis Largent

[5] Defendants argue a Water Engineering Facility Plan evidences the "intent" to includes North Ridge within the water system. While that may have been Johnson and Bramon's intent – they failed to take proper action to amend the Bylaws, which required the Terrace Lakes Subscribers' vote.

("Largent"), Bramon, Mary Cordova ("Cordova"), Scott Dike ("Dike"), and Chuck Steele ("Steele"). Bramon and Dike's seats were subsequently vacated.

29. Shortly after the election, Johnson caused her attorney to send a cease-and-desist letter to the new Board stating that she and two others comprised the valid Board of Directors (without any legal or factual basis), the recent election was invalid, and she threatened a lawsuit.

30. Johnson then sent a notice of a meeting to Subscribers to hold a new election, which she intended to run.

31. On December 16, 2020, Largent, Steele, and Cordova, as the Board of Directors of the Company filed suit against Johnson, Bramon, Blakeslee, and the Company, seeking various forms of injunctive relief, writs of mandate, and requested a temporary restraining order prohibiting a new election called by Johnson and scheduled to be held on December 19, 2020. Boise County Case No. CV08-20-247.

32. On December 19, 2020, the "new election" was held with over 30 people present and in violation of the State of Idaho's then-prohibition against private gatherings of more than 10 people. Johnson, Bramon, Dike, John Jansen, and Blakeslee were apparently elected at the meeting.

33. Following a hearing on the matter, on March 2, 2021, this Court entered an *Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss*. The Order granted almost all the relief requested and confirmed that Largent, Cordova, and Steele comprised the legitimate Board of Directors. The Court also held Johnson's claim that the October 2020 election was illegal and void was without any merit, and her December 2020 new election was void.

34. Thereafter, the parties entered a stipulation resolving any remaining matters.[6] The stipulation recognized that Largent, Cordova, and Steele make up the legitimate current Board of Directors and imposed various obligations on Johnson, Bramon, and Blakeslee to transfer Company books and records to the new Board within 10 days. An order granting the stipulation was filed May 13, 2021.

35. Defendants did not hand over all Company books and records to the new Board within 10 days as required by the stipulation and Court order.

36. Instead, various Company records were handed over in the following months. The Company's amended Articles of Incorporation was handed over as late as August 2021. Despite Johnson's assurance that all Company documents were handed over, additional Company documents have been sporadically handed over since August 2021.[7]

Instant Litigation

37. On March 27, 2021, Julie Stillman ("Stillman") and Rolly Woolsey ("Woolsey") were appointed to fill the two vacant spots on the Board of Directors.

38. Shortly after signing the stipulation to resolve matters in the prior lawsuit, Johnson attempted to remove the entire Board of Directors to reinstate herself.

39. Johnson signed and issued a "Notice for Special Meeting" to Company Subscribers, and North Ridge owners, setting a meeting for May 16, 2021, at 2 p.m. at the Garden Valley Senior Center. The stated purpose of the meeting was to remove Largent, Steele, Cordova, Stillman, and Woolsey as Board members and to elect a new slate of directors.

40. Johnson issued and collected "Written Demands for Special Meeting," signed by 42 individuals.

[6] Johnson signed the stipulation on April 1, 2021. It was filed April 30, 2021.
[7] Kane Aff. ¶ 28 (filed Aug. 27, 2021).

41. These demands were issued prior to the appointment of Stillman and Woolsey. Johnson admitted she altered the written demands after individuals signed them by handwriting, "including Julie Stillman and Rolly Woolsey" as individuals that would be removed at the special meeting.

42. Johnson explained she did not ask the individuals that signed the demands if the alterations were acceptable to them and that it was her "mistake." She explained it was her intent to remove the entire Board, run an election, and reinstall herself and her son Bramon on the Board.[8]

43. On May 2, 2021, Largent received a packet of materials from Terry Pickens Manweiler, Johnson's attorney. The packet included the notice of the May 16, 2021 meeting as well as 42 demands for the meeting.

44. Largent noticed the demands were altered, included signatures by North Ridge lot owners, who are not Subscribers in the Company Bylaws, and signatures from other individuals who are not owners within either the Terrace Lakes or North Ridge subdivisions.

45. Largent, and other Subscribers and North Ridge lot owners, also received a packet of materials dated April 26, 2021. Included in this packet of materials was a letter authored by Johnson, a notice of the special meeting, and a proxy ballot.

46. In the letter, Johnson stated various lies, including that the monthly water bills will be substantially increasing, the grant was "no longer available," and the election of the current Board was illegal.

47. On May 10, 2021, Largent, Cordova, Steele, Stillman, and Woolsey, as the Company's Board of Directors, filed the instant action seeking equitable and declaratory relief against Johnson, Bramon, and Blakeslee.

[8] Johnson Dep. 148:8—25, 149: 1—25.

48. Plaintiffs request the following declaratory relief:

a. Declare that equitable fraud was committed by the Defendants upon the individual Plaintiffs and Terrace Lakes Water Company;

b. Declare that the Defendants have failed to secure the necessary percentage of Subscribers to call a special meeting for the purpose of removal of the Board of Directors;

c. Declare that in the event a special meeting is properly called and held, the number of eligible Subscriber votes which must be cast to remove any Director;

d. Declare that in the event a special meeting is properly called and held and a sufficient number of eligible votes are cast to remove a Director, the proper procedure to fill a vacant Director position is with any remaining Directors, not the Subscribers;

49. Plaintiffs request the following preliminary and permanent injunctive relief:

a. Restrain Defendants from holding a special meeting on May 16, 2021;

b. Enjoin Defendants, their agents, assigns, or others acting on their behalf in the future from seeking to hold a special meeting which is not in compliance with Company Articles, Bylaws, Idaho law and executive order;

c. Enjoin Defendants, their agents, assigns, or others acting on their behalf from seeking to hold a special meeting for the purpose of removing the current Board of Directors until such time that a Special Master reports that the Defendants have provided all unaltered Company books and records and there is no evidence that any Company book or record has been destroyed by the Defendants or at their behest and recommends that the injunction be lifted; and

d. Award of attorney fees, Rule 11 sanctions, and any other and further relief as deemed equitable.

50. On May 13, 2021, the parties stipulated to the entry of a Temporary Restraining Order prohibiting the May 16, 2021 meeting. An order was entered on May 14, 2021.

51. Thereafter, Johnson again attempted to hold another special meeting on June 19 to oust the entire Board. However, her attempt was again invalid, in part, because she did not have 10% of Subscribers requesting the meeting.[9]

52. On June 18, 2021, a hearing was held on Plaintiffs' Motion for Preliminary Injunction and Application for Second TRO, Supplemental Preliminary Injunction and Early Hearing on the Merits, and Defendants' Motion to Dismiss.

53. The Court issued a ruling from the bench and directed Michael Kane, Plaintiffs' counsel, to prepare and submit an order. However, a written order was never submitted, filed, or entered into the record.

54. At the June 18, 2021 hearing, the Court specified the following with respect to the procedural posture of the case:

    a. The June 18 hearing would be limited to hearing arguments on the propriety of entering a preliminary injunction;

    b. The matter was set for a court trial on the merits on September 3, 2021, with a pre-trial conference on August 13, 2021;

    c. Both Pickens Manweiler and Kane affirmed that no jury trial was requested; and

    d. The trial was set two months out to allow the parties to engage in discovery.

55. The Court also granted Plaintiffs' motion for a preliminary injunction and denied

[9] As explained herein, North Ridge lot owners are not yet Subscribers of the Company. In addition, there are closer to 500 Subscribers based on the plain language of the Bylaws.

Defendants' motion to dismiss, holding as follows:

a. The meeting on June 19 is prohibited largely by consent and agreement of the parties in a good faith effort to resolve the issues on the merits regarding the proper procedure to call and hold an election or special meeting;

b. No special meetings are to be called or held prior to the trial on the merits; and

c. A bond is not required to be posted given that the preliminary injunction is largely at the consent of both parties.

56. The Court also stated that at the pre-trial conference, the parties need to be prepared to address the issues at hand, which include: (1) whether and to what extent any or all of the existing board members can lawfully be removed and the exact procedure for doing so and (2) the process and conduct of the annual meeting to include election of Directors who are up for election or re-election. The issue of appointing a special master would also be addressed at the court trial.

57. On August 13, 2021, a status conference was held.

58. The parties stipulated to re-schedule the September 3, 2021 evidentiary hearing, because Johnson contracted COVID-19.

59. On September 17, 2021, a hearing was held on Defendants' motion to compel, which the Court denied.[10]

60. On September 19, 2021, Defendants filed an Answer and demanded a jury trial.

61. The parties filed motions, objections, and briefing over whether Defendants are entitled to a jury trial.

62. Another status conference was held September 29, 2021, two days prior to the evidentiary

[10] Defendants sought discovery pertaining to the October 2020 election this Court already declared valid and which Defendant subsequently agreed by stipulation led to the current legitimate Board. That election is not at issue and discovery related to it is irrelevant to the issues to be decided in this case.

hearing. At that status conference, the parties debated the parameters of the upcoming evidentiary hearing. The Court indicated that it would be an evidentiary hearing on the preliminary injunction and that it would be decided if and to what extent it resolved the entire merits of the case.

63. An evidentiary hearing was held October 1 and 28, 2021 and January 28, 2022, and the matter was taken under advisement.[11]

LEGAL STANDARD

A trial court's findings of fact will only be set aside if they are clearly erroneous. IRCP 52(a); *Walker v. Boozer*, 140 Idaho 451, 454, 95 P.3d 69, 72 (2004). In deciding whether findings of fact are clearly erroneous, a reviewing court determines whether the findings, even though conflicting, are supported by substantial, competent evidence. *Radford v. Van Orden*, 168 Idaho 287, 483 P.3d 344, 355 (2021). Substantial and competent evidence exists if there is evidence in the record that a reasonable trier of fact could accept and rely upon in making the factual finding challenged on appeal. *Id*. A reviewing court exercises free review of the trial court's conclusions of law. *Id*.

"An appellate court will not interfere with the trial court's decision to grant or deny a preliminary injunction absent an abuse of discretion." *Walker*, 140 Idaho at 456, 95 P.3d at 74. Likewise, a district court's rulings on equitable remedies are reviewed for an abuse of discretion. *Climax, LLC v. Snake River Oncology of E. Idaho, PLLC*, 149 Idaho 791, 794, 241 P.3d 964, 967 (2010). Under this standard, the relevant inquiry is "[w]hether the trial court: (1) correctly perceived the

[11] The parties filed closing arguments on November 1, 2021 and did not wish to provide any further written materials after the matter was concluded on January 28, 2022. Defendants filed a slew of affidavits on November 1, 2021, which were stricken, as they were allowed to present any remaining evidence on January 28, 2022.

issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

"Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial." IRCP 65(a)(2).

ANALYSIS & CONCLUSIONS

The progression of this case and the exact nature of the evidentiary hearing was amorphous due to Defendants requesting a jury trial just before the evidentiary hearing was set to begin. At the June 18, 2021 hearing, the parties agreed to preliminary injunctive relief such that Defendants would not call for another special meeting until an evidentiary hearing was held and the Court made certain rulings delineating the process by which they could do so. At the same time, the Plaintiffs were seeking declaratory and injunctive relief to prohibit Johnson from calling a meeting for a period of three years based on her prior improper attempts to overthrow the Board of Directors. Plaintiffs also sought declaratory and injunctive relief based on the prior Board's failure to turn over all Company records pursuant to the parties' stipulation and the Court Order entered in the prior proceeding.

On August 27, 2021, Plaintiffs filed a "Memorandum in Opposition to Defendants' Motions and Trial Brief." In the trial brief portion, they raised the following issues: (1) Johnson's failure to turn over all Company records, (2) how to proceed with upcoming Company election(s), and (3) whether Defendants have committed equitable fraud and appropriate remedies. Plaintiffs filed a supplemental trial brief refining the issues and their requested relief as follows: (1) Defendants have not provided all Company books and records and should be given a date to provide or show good cause why they should not be sanctioned for failure to provide the remaining documents; (2) Defendants should be preliminarily enjoined from counting North Ridge owners as eligible Subscribers entitled to vote until the Articles of Incorporation and Bylaws have been amended to include them as eligible Subscribers; (3) Defendants should be enjoined for at least three years from seeking removal of Plaintiffs, absent Court oversight; and (4) the Court, pursuant to Idaho Code § 30-30-106, should allow the upcoming annual meeting to be conducted via mail without requiring a proxy to be included in the mailing.

Thereafter, and just prior to the evidentiary hearing, Defendants filed an Answer and Demand for Jury Trial. The parties filed motions and objections related to Defendants' request for a jury trial. Defendants essentially request a jury trial on issues relating to equitable fraud based on Johnson's failure to turn over Company records and her other bad faith behaviors.

On September 29, 2021, a status conference was held at which time the parties and Court discussed the issues to be heard at the upcoming evidentiary hearing. The parties clarified that both requested a ruling regarding the voting process and debated the propriety of preliminary or permanent injunctive relief. The parties debated whether the hearing would be on the merits of

the entire case or just the limited election issues.

On September 30, 2021, Defendants filed their evidentiary hearing brief. They argued the following issues and requested the following relief: (1) a finding that North Ridge lot owners connected to the water system are Subscribers of the Company; (2) findings outlining the process to call a special meeting and that Defendants may call for such meeting; and (3) a finding that Subscribers can remove the entire Board and the election process if this occurs.

The evidentiary hearing morphed into a substantial three-day hearing that primarily dealt with Johnson's mismanagement of the Company and Defendants' failure to comply with the prior Stipulation and Court Order. The issue on whether Defendants were entitled to a jury trial was raised but a decision was deferred. As the Court indicated to defense counsel, Defendants were directed to present any evidence they thought was necessary to rebut the Plaintiffs' presentation of evidence. Post-hearing briefings were submitted by both parties addressing the fraud allegations as well as the election procedure. Defendants did not again request a jury trial or object to the evidentiary hearing as deciding all issues on the merits.

The Court finds that while Defendants may have a jury trial as they insist on having on the merits of the equitable fraud issue, Plaintiffs presented substantial evidence entitling them to preliminary injunctive relief pending the outcome of such jury trial.

(1) Defendants may have a jury trial on the equitable fraud issue.

After the June 18, 2021 hearing, where Pickens Manweiler represented that no jury was

requested, Defendants filed an Answer demanding a jury trial on the equitable fraud claim. Plaintiffs filed a motion to strike the demand for a jury trial arguing the issues are equitable and do not warrant a jury. Defendants argue they are entitled to a jury trial on the equitable fraud claim.

Article I, section 7 of the Idaho Constitution states that "[t]he right of trial by jury shall remain inviolate[.]" Idaho Const, art. I, § 7. However, "[t]he guaranty [in Article 1, § 7, of the Idaho Constitution] that 'the right to trial by jury shall remain inviolate' has no reference to equitable cases." *Bolognese v. Forte*, 153 Idaho 857, 862, 292 P.3d 248, 253 (2012) (*citing Christensen v. Hollingsworth*, 6 Idaho 87, 93, 53 P. 211, 212 (1898)); *see also Ada Cnty. Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 369, 179 P.3d 323, 332 (2008) ("It is generally recognized that the constitutional right to a jury trial applies only to legal claims and not equitable claims."); *Smith v. Glenns Ferry Highway Dist.*, 166 Idaho 683, 694, 462 P.3d 1147, 1158 (2020). This provision "secure[s] that right as it existed at common law when the Idaho Constitution was adopted." *Smith*, 166 Idaho at 694, 462 P.3d at 1158. "In determining the question of whether or not parties are entitled to a trial by jury, courts must look to the ultimate and entire relief sought." *Cooper v. Wesco Builders*, 76 Idaho 278, 282, 281 P.2d 669, 671 (1955). Actions seeking money damages are traditionally viewed as legal actions for which a right to a jury trial attaches. *Smith*, 166 Idaho at 694, 462 P.3d at 1158 (noting that even where money damages are asserted, the jury to a jury trial does not necessarily attach).

> Even when the cause of action, based upon a legal right, does involve or present, or is connected with, some particular feature or incident of the same kind as those over which the concurrent jurisdiction ordinarily extends, such as fraud, accounting, and the like, still, if the legal remedy by action and pecuniary judgment for debt or damages would be complete, sufficient, and certain—that is, would do full justice to the litigant parties—in the particular case, the concurrent

> jurisdiction of equity does not extend to such case. For example, whenever an action at law will furnish an adequate remedy, equity does not assume jurisdiction because an accounting is demanded or needed; nor because the case involves or arises from fraud; nor because a contribution is sought from persons jointly indebted; nor even to recover money held in trust, where an action for money had and received will lie.

Id. at 283, 281 P.2d at 671–72.

Error in denying a litigant a jury trial can be harmless error if it is apparent following a court trial that no reasonable jury could have found for that litigant upon the evidence provided to the trial court. *Wisdom v. Mallo*, 2010 WL 9590206, at *10 (Idaho Ct. App. 2010) (unreported) (citing *Dustin v. Beckstrand*, 103 Idaho 780, 786, 654 P.2d 368, 374 (1982) (erroneous denial of jury trial was not reversible error because, where defendants did not participate in the court trial, if a jury trial had been conducted the court would have been required to direct a verdict for the plaintiff)) (other citations omitted).

Plaintiffs request a declaratory judgment stating that Johnson committed "equitable fraud." Plaintiffs do not request any monetary damages on any of their claims. Defendants argue that Idaho only recognizes a cause of action for constructive, not equitable, fraud. They argue that they are entitled to a jury trial on constructive fraud where there are issues of fact.

"Where fraud is properly alleged by one party and denied by the other and evidence as to such issue is conflicting, question is one of fact to be determined by jury under proper instruction." *Cooper v. Wesco Builders*, 76 Idaho 278, 282, 281 P.2d 669, 671 (1955) (citation omitted). There is no Idaho case dealing with an "equitable fraud" claim. However, "[c]onstructive fraud is a

breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud." *McGhee v. McGhee*, 82 Idaho 367, 371, 353 P.2d 760, 762 (1960) (citation omitted). "In its generic sense constructive fraud comprises all acts, omissions and concealments involving a breach of legal or equitable duty, trust or confidence and resulting in damage to another." *Id*. It "usually arises from a breach of duty where a relation of trust and confidence exists; such relationship may be said to exist whenever trust or confidence is reposed by one person in the integrity and fidelity of another." *Id*. "[A] fiduciary relationship is only one example of the kind of relationship of trust and confidence that can give rise to a constructive fraud claim." *Davis v. Tuma*, 167 Idaho 267, 277, 469 P.3d 595, 605 (2020) (citation omitted).

The parties to a declaratory judgment act have a right to a trial by jury to whatever extent the particular claims being adjudicated carry that right. I.C. § 10-1209 ("When a proceeding under this act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other actions at law or suits in equity in the court in which the proceeding is pending.").

The weight of authority suggests that whether a declaratory judgment action is legal or equitable turns on the nature of the underlying claim and remedy sought. *See,* supra*, Smith v. Glenns Ferry Highway Dist., Cooper v. Wesco Builders*. If the underlying claim could be brought as a legal

claim, then it is usually legal.[12] Here, a fraud claim, though entitled "equitable," is the underlying claim and is a legal claim in Idaho. However, Plaintiffs are not seeking monetary damages, suggesting it is equitable. Some cases suggest that the form of the remedy sought is not necessarily determinative. *See* note 6. On balance and to err on the side of caution, the Court concludes Defendants may have a jury trial on the equitable fraud claim. To be clear, the only claim to be decided by a jury is whether Plaintiffs are entitled to declaratory relief that equitable fraud was committed by the Defendants upon the individual Plaintiffs and the Company. The rest are issues for this Court to decide.

(2) Plaintiffs are entitled to a preliminary injunction prohibiting Defendants from calling for a Special Meeting and attempting to remove the current Board, until after the jury trial on the equitable fraud issue.

Although the Court finds Defendants are entitled to a jury trial on the equitable fraud issue, Plaintiffs presented substantial evidence on Johnson's improper behavior that warrant temporary injunctive relief pending a trial on the merits of the equitable fraud issue.

The issues in this case arose after Johnson called for a meeting in 2020 to elect a new board of directors. Defendants had not held an annual meeting for at least six years and failed to observe other proper corporate formalities set forth in the Bylaws. The Subscribers subsequently elected a new board of directors. Johnson did not like the results, and/or believed the election (which she called for) was invalid. She unilaterally issued a notice for a special meeting and held a new election at which time she was elected to the Board. However, she did so after the Board elected

[12] In *In re SGS-Thomson Microelectronics, Inc*., 60 F.3d 839 (Fed. Cir. 1995), the court found a jury trial was warranted where an accused patent infringer demanded a jury trial on declaratory judgment counterclaims of noninfringement and invalidity, even though the patentee's suit only sought injunctive relief to enjoin future infringement and no money damages were sought. The court found the declaratory judgment counterclaim was legal in nature because the right to recover money damages existed even if it was not exercised by the patentee.

in the first instance filed suit and requested she hold off on holding a new election pending a court determination on the issue. She disregarded the reasonably filed lawsuit and held the election regardless. This Court subsequently held that the first election was valid, Johnson's attempt at a second election was invalid. Johnson then agreed that Largent, Cordova and Steele were the legitimate Board of Directors and agreed to hand over all Company records to the Board within 10 days.

Instead of following the Stipulation, Defendants withheld Company documents from the current Board.[13] Johnson's assurances that everything has been handed over lack credibility given the undisputed evidence that Company documents have slowly been handed over in the months following the Stipulation and Court Order.

In addition, Johnson engaged in a malicious campaign to undermine the current Board. While there is nothing preventing her from communicating with Subscribers or expressing her personal opinion as to the character of the Board members, she improperly and in violation of the Bylaws called for a Special Meeting to remove the entire Board and re-elect herself.[14] Her actions

[13] Defendants maintain they did not violate the Stipulation and Court Order requiring them to hand over company records. They sling numerous insults at Plaintiffs and their attorney arguing it is their incompetence in using QuickBooks that has made it difficult for them to follow the financials of the Company. Defendants' argument ignores the plain language of the Stipulation and Court Order which required them to transfer "all" Company books and records. It is unimportant whether or not Plaintiffs can ascertain the state of the Company's finances from QuickBooks alone. Defendants were obligated to ensure **all** Company books and records were transferred to the Plaintiffs. The undisputed evidence is the Company books and records have been slowly handed over to Plaintiffs over the course of several months since this litigation began. Defendants provide no explanation for their late disclosures. The evidence undercuts their disingenuous argument that everything has been transferred.

[14] Defendants argue that Johnson did nothing wrong because she cannot remove the Board or take over the Company alone – that it requires a vote to do so, and she is merely trying to have an election to make that happen. To be sure it takes a 10% of Subscribers to call a Special Meeting and a vote of Subscribers to remove a Director. Johnson has repeatedly violated the Bylaws by the way in which she has attempted to call for Special Meetings and preside over elections when she is no longer on the Board. She has represented she has a sufficient amount of Subscribers to call for a meeting; however, she includes person(s) who are not considered Subscribers under the

violated the Bylaws she wrote, because she gathered signatures from North Ridge lot owners who do not (yet) have the right to vote on Company matters and she altered signed requests for the meeting without authorization from the individuals who signed them. She failed to show that both times she tried to have a Special Meeting, in April of June 2021, 10% of the Subscribers called for a Special Meeting as required by Section 2.5 of the Bylaws. Her behavior has substantially impaired the current Board from managing the Company and sorting out the mess created by prior mismanagement. Her continual attempts[15] to overthrow the Board while simultaneously withholding Company documents violated the Stipulation and Order entered in the previous case. While this Court will not weigh in on the ultimate merits as to whether her actions amount to equitable or constructive fraud, the Court finds that Plaintiffs have made a sufficient showing that preliminary injunctive relief is necessary to prevent further harm. Plaintiffs requested injunctive relief preventing Defendants from attempting to remove them from the Board, without Court oversight, for a period of three years. The Court will not enter this "permanent" relief; however, the Court finds preliminary injunctive relief is necessary to preserve the status quo pending an adjudication on the merits of the equitable fraud claim.

Rule 65(e) enumerates the grounds under which a preliminary injunction may be sought. As the moving party, Plaintiffs bear the burden of proving their right to a preliminary injunction. *Harris v. Cassia County*, 106 Idaho 513, 517, 681 P.2d 988, 992 (1984). Under IRCP 65(e)(1), a preliminary injunction may issue when it appears that the plaintiffs are "entitled to the relief demanded, and that relief, or any part of it, consists of restraining the commission or continuance of the acts complained of, either for a limited period or perpetually[.]" This language is often

Bylaws, and she has altered documents after individuals have signed them. Her behavior demonstrates a flagrant disregard for the rules she wrote.

[15] The evidence suggested Johnson was aided by Bramon, Blakeslee, and Wardle, among others.

referred to as "substantial likelihood of success." *Harris*, 106 Idaho at 518, 681 P.2d at 993. A substantial likelihood of success "cannot exist where complex issues of law or fact exist which are not free from doubt." *Id.*[16] Under IRCP 65(e)(2), a preliminary injunction may issue when it appears "that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff[.]" Under subsection (3), a preliminary injunction may be granted "when it appears during the litigation that the defendant is doing, threatening, procuring or allowing to be done, or is about to do, some act in violation of the plaintiff's rights, respecting the subject of the action, and the action may make the requested judgment ineffectual[.]" IRCP 65(e)(3).

Here, Plaintiffs have demonstrated a clear right to preliminary injunctive relief under IRCP65(e), (1), (2), and (3). Johnson's behavior (as enabled by Bramon, Blakeslee, and Wardle) demonstrates a repeated disregard for the Company Bylaws and a willingness to alter and conceal documents. The stated reason is to retain power and control of the Company and these actions demonstrate a willingness to do whatever it takes, however improper, to achieve that end. Therefore, the Court enters the following preliminary injunction: Defendants are prohibited from organizing or calling for a Special Meeting until a jury trial on the equitable fraud issue is concluded. Thereafter, it will be decided whether further permanent injunctive relief is warranted.

[16] The Court will not weigh in at this time as to the merits of the equitable fraud claim as that will be for a jury; however, Defendants did not present evidence demonstrating substantial issues of fact with respect to Johnson's (and other Defendants') improper actions.

(3) A Special Master is appointed to oversee the transfer of Company books and records.

Plaintiffs have requested a Special Master be appointed to oversee and ensure that all Company records are handed over to the current Board. Defendants argued a Special Master is unnecessary on this matter, because all Company books and records have been handed over. As explained above, the evidence shows otherwise. Moreover, Johnson's testimony at the evidentiary hearing on this issue was contradictory and confusing regarding exactly what, when, where, or how documents and records were produced.[17]

The court in which any action is pending may appoint a master, which means a referee, a commissioner, an auditor, and an examiner. IRCP 53(a). "In a jury trial, a master must not be appointed unless the issues are complicated. In actions to be tried without a jury a master must not be appointed except to perform an accounting or on a showing that some exceptional condition requires it." IRCP 52(b). The compensation for a master must be set by the court and the court may direct payment by the parties or from a fund or subject matter of the action that is in the control of the court. The master must not retain the report as security for compensation; but when a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the party. IRCP 52(c).

The Court hereby appoints a Special Master for the limited purpose of conducting an accounting and determining whether all Company books and records have been transferred to the Plaintiffs.

[17] Her answers were convoluted and bounced all over the place. She referred to producing documents on different occasions, at different locations. She contradicted herself as to the number of records that were produced. Overall, it was unclear what was done and when.

If the parties cannot agree on a Special Master within 14 days of the date of the filing of this decision, they are each to submit to the Court's staff attorney, via email,[18] the names of three potential Special Masters and the Court will select among the names provided and alert the parties. The Special Master shall report back to the Court within 60 days following his or her selection. The Defendants are required to pay the Special Master's compensation, because they did not comply with the Court Order directing them to ensure all Company books and records were transferred within 10 days, and Johnson's explanations were not credible nor persuasive.

(4) Northridge lot owners are not Subscribers, because the Defendants failed to properly amend the Bylaws.

Plaintiffs argue that the Company lacked authority to supply water to Northridge lots, because the Bylaws were never amended to include this subdivision. They also argue that North Ridge lot owners do not have authority to vote on Company matters because they were never included in the Bylaws. Defendants concede the Bylaws were never amended; however, they maintain that North Ridge is included by course of conduct. They point to the fact that North Ridge owners have been billed for water and pay for it.

There is a process to amend the Articles of Incorporation and Bylaws. It requires a vote of 75% of Company Subscribers.[19] Defendants never did this, and North Ridge is not included in them. The Defendants' failure to follow corporate formalities led to the current mess. The evidence

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[19] Defendants argue that although North Ridge lot owners were not included in the Bylaws, they were "accepted" by the Subscribers and former Board of Directors. They claim this Court has no "right to retroactively reject those already approved." What is interesting is how Defendants insist on following the letter of the Bylaws in some instances, but in the case of North Ridge, they completely ignore the plain language of them. The Bylaws are plain and unambiguous in defining who is an eligible voter, and North Ridge lot owners are not included. The Bylaws are plain and unambiguous in defining how they can be amended. Defendants never undertook any effort to amend them to include North Ridge. That is their failure.

shows that Johnson and Bramon worked to provide water to North Ridge and benefitted financially from doing so. Johnson unilaterally, and without any approval from Company Board members or Subscribers, waived connection fees to generate sales. Bramon knew this and acquiesced in this. Defendants have provided no authority that the Bylaws were amended by "course of conduct." The Bylaws specifically require any amendment be made by "approval of 75% of the Subscribers present in person or by proxy at an Annual or Special Meeting of Subscribers at which a quorum is present." Bylaws § 8.2. Further, they require the Company to maintain certain books and records, including the "original or a copy of its Bylaws, including amendments to date[.]" *Id*. at § 8.3. Defendants provided no evidence of any amendment.

Thus, the Court concludes North Ridge lot owners are not included in the Bylaws and are currently ineligible to vote on matters as they do not meet the requirements of a Subscriber. This mess was due to Defendants' failure to properly ensure that North Ridge was included when they upgraded the water system. The Bylaws must be amended in accordance with the Bylaw requirements for North Ridge lot owners to have any right to vote in Company matters.

(5) Voting, Elections & Meeting Matters

Both parties requested rulings on the process for calling a special meeting and holding an annual election. The timelines and terms of Board members have been significantly affected by the proceedings in the prior action and this action. In addition, because not all Company books and records were timely handed over to the current Board, there has been further delay, and the current Board's ability to conduct Company business has been significantly impeded.

To resolve these issues, the Court must construe the Bylaws and applicable statutes. Because corporate documents are equivalent to contracts among the members of the association, the normal rules governing the interpretation of contracts apply. *Twin Lakes Vill. Prop. Ass'n, Inc. v. Crowley*, 124 Idaho 132, 135, 857 P.2d 611, 614 (1993) Contract interpretation begins with the instrument's language. *Christopher W. James Tr. v. Tacke*, 167 Idaho 25, 31, 467 P.3d 389, 395 (2020). If clear and unambiguous, the contract's meaning and legal effect are questions of law answered by the plain language. *Id*.

Plaintiffs have asked this Court to issue an order pursuant to Idaho Code § 30-30-106 to resolve the current mess. Under Idaho Code § 30-30-106(1), "If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or this act, then upon petition of a director, officer, delegate or member, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances." The Court shall issue an order providing for a method of notice reasonably designed to give actual notice to all persons entitled to notice, and the Court is authorized to determine who the members or directors are. I.C. § 30-30-106(2). An order issued under this section "may dispense with any requirements relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this act." I.C. § 30-30-106(3). Whenever possible, the order issued shall limit the subject matter of the meetings, including amendments to articles or bylaws, "the resolution of which will

or may enable the corporation to continue managing its affairs without further resort to this section." I.C. § 30-30-106(4). "Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and this act." I.C. § 30-30-106(5).

a. Eligible Voters

The Bylaws define who is eligible to vote. Section 2.2 provides that "[e]ach Subscriber shall have one (1) vote for each Lot eligible to have water delivered to it." "Subscribers" are defined as "[e]ach Owner of a Lot in a Subdivision[.]" *Id*. at § 2.1. "Owner" means "the person or persons or other legal entity or entities, including Grantor, holding the fee simple interest in a Lot." *Id*. at § 1.3. "Lot" is defined as lots within the Terrace Lakes subdivision. Lots within the North Ridge subdivision are not included in the definitions.

The plain language of these sections suggests that each individual lot owner is eligible to vote. This would mean that, for example, if a single lot is owned by five entities or persons, they would have five votes. If a lot is owned by a single individual, that individual would have only a single vote. However, this is contrary to the parties' original intent and to how owners are billed for water. Each lot receives one bill for water. Given that the intent (and common sense) is to have one vote per lot, the Bylaws need to be amended to clarify this ambiguity.

At this time, there is insufficient evidence for this Court to make a determination as to the exact number of eligible voters. The current Board will have to determine the number of eligible voters (a) after a Special Master confirms that all Company books and records have been transferred and (b) after a vote it held on whether to amend the Bylaws to include North Ridge lot owners. Defendants' lack of proper record-keeping has made this task onerous.

b. Board of Director Seats

Under the Bylaws, there are five Board of Director seats designated as A, B, C, D, and E. The parties agree the seats are currently held as follows: (A) Largent, (B) Cordova, (C) Steele, (D) Stillman, and (E) Woolsey. Under the Bylaws, the terms for the initial Directors elected at the first annual meeting of Subscribers is three years for the A and B seats, two years for the C and D seats, and one year for the E seat. Bylaws § 3.5 However, after this initial election, "the terms of office for each seat shall be three (3) years." *Id*. The parties have treated the current Plaintiffs' seats as subject to the three, two, and one year terms, because of the uncertainty over the terms of any seat.

However, given the above issues that need to be sorted out by the current Board, the Court, pursuant to Idaho Code § 30-30-106, declares that the Plaintiffs' board seats will be extended for one year. This will allow them time to (a) sort out the Company books and records, (b) hold a vote (in person or by mail) to determine whether to amend the bylaws to include North Ridge, and (c) determine the total amount of eligible voters.

c. Mandating an Annual Meeting

Defendants request the Court "mandate" the Plaintiffs hold an annual meeting. The Court will not do so at this time. Given the above issues that have been created by the Defendants' mishandling of the Company and mismanagement of Company books and records, the Court will leave it to the current Board's discretion to set an annual meeting within a reasonable time. The current Board can choose to hold any election by mail or in person. *See* I.C. §§ 30-30-106, -508. The only persons and entities entitled by law to vote at this time are those owning lots within Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One, not North Ridge.

d. Calling a Special Meeting

Defendants request the Court not prohibit them or anyone else from calling a Special Meeting. Under the Bylaws a "Special Meeting" can be called "at any time by the Board of Directors or ten percent (10%) of the Subscribers." Until the current Board makes a final determination as to the amount of Subscribers and eligible voters, Subscribers will not be permitted to call a special meeting. Defendants are enjoined from calling a Special Meeting as set forth herein. The Board should, however, with all reasonable haste, call a Special Meeting to vote on amending the Bylaws to add North Ridge water users as Subscribers, clarify there is one vote per lot, and provide for voting by mail without a proxy, if they are so inclined.

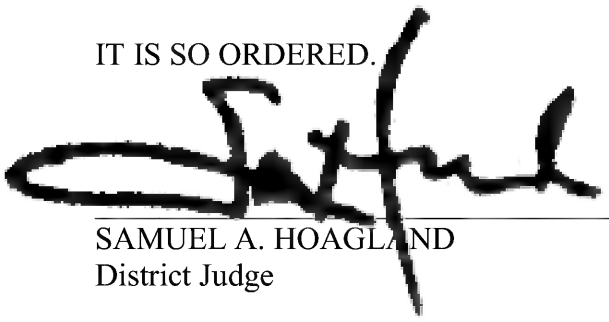
CONCLUSION

The messy situation of the Company is due to the Defendants' failure to observe the very Bylaws that Johnson admittedly wrote and their persistent improper attempts to regain control. This repeated improper interference has created additional complications necessitating this Court's

involvement.

The Court finds and concludes that while Defendants may have a jury trial on the equitable fraud claim, the Plaintiffs established the need for the entry of a preliminary injunction preventing the Defendants from further interference in the current Board's management of the Company. A Special Master is appointed as provided herein to ensure that all Company books and records are transferred to the Plaintiffs. The Court finds Defendants failed to take proper action to include North Ridge lot owners as Subscribers. The Plaintiffs should get this done. The Bylaws set forth the procedure for their amendment. Absent proper amendment of the Bylaws, North Ridge lot owners have no voting rights. The current Board must determine the number of eligible voters. Subscribers cannot call Special Meetings until (a) the Special Master confirms that all company books and records are transferred, (b) a vote on whether to include North Ridge is made, and (c) the number of eligible voters is determined. The Defendants are enjoined, as provided herein, from calling a Special Meeting, until a jury trial is held on the equitable fraud issue. These orders are necessary to get the Company on track and in compliance with its Bylaws.

IT IS SO ORDERED.



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SAMUEL A. HOAGLAND
District Judge

Date

CERTIFICATE OF MAILING

3/29/2022 03:27 PM

I hereby certify that on _____, I served a true and correct copy of the within instrument to:

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By _____
Deputy Court Clerk